

The following transcript is provided for your convenience, but does not represent the official record of this meeting. The transcript is provided by the firm that provides closed captioning services to the City. Because this service is created in real-time as the meeting progresses, it may contain errors and gaps, but is nevertheless very helpful in determining the gist of what occurred during this meeting.

>> Mayor Reed: We can get started, I think.

>> Alex Gurza: Good morning mayor, members of the city council. Alex Gurza, Director of Employee Relations. We have our weekly update on subjects covered since last Tuesday. And just like to move (inaudible) again any proposals that are made just as a reminder, anybody who haven't seen our updates are availability on the City's Website. We post promotion made by the city and proposals made by bargaining units on the day that they are made and they are available for public review. ABMEI, I think as we had mentioned we did reach an agreement in mediation. It is still subject to ratification by the membership and then subsequent approval by the city council in open session. One significant development is that we have issued last best and final offers to IBEW, the international brotherhood of electrical workers, we did that yesterday. The cover letter and the proposals are in front of you, you have hard copies. They're also available online. We have presented IBEW with alternate last best and final offers. We have presented them with an alternate that is a one-year term and an alternate last best and final offer in a two year term. We have asked them to get back to us by May 24th. And also, letting them know, that it is our intent to come before the council on May 31st with the last best and final offer but only the one year. As you may know if the council has to make the difficult decision to implement terms, you don't implement a contract, but you only implement terms for the ensuing fiscal year, and those would be the ones in the one-year alternate offer. If they do accept the two-year agreement, which could be possible, then we will issue a supplemental memo when we put the council memo out. So that is again available posted online for anybody to review. With OE 3 we participated in mediation on may 4th. Whether or not there is a second mediation date is still pending. The association of legal professionals is again still in mediation with AFSCME MEF and CEO participated in mediation on May 2nd and has another mediation date scheduled for May 12th. And another development, which yesterday, we met with the POA, late yesterday afternoon early evening. We had issued a package proposal to the POA, they did not accept our proposal and after a discussion we declared impasse and they did agree to participate in mediation. They also agreed to try to get it scheduled as quickly as possible and we are already working on identifying a mediator and getting dates set in the near future. I did also want to mention something about MEF and CEO. We understand that at community budget meetings there are employees represented by MEF and CEO that are indicating that they had offered the city a proposal that provides a 12% reduction, and the city rejected it. We just wanted to clarify that we believe they are talking about

a proposal they made on April 18th. That was given to the council, well, posted online that day but also given to the council on Tuesday which would have been April 19th. It is a comprehensive package proposal. This is not all of the terms of the proposal. But you will see at the top, it is actually from a 2011 to 2014, it is a three-year term. They do offer a 10% base pay reduction. But in 2013, they get a 10% pay increase. There's -- they also propose nine additional paid days off per year. And there are a lot of other terms that you will see that are in that proposal. So probably the most significant thing is that the 10% automatically comes back but that is by far the only issue. So the city did not accept that particular package proposal. But we at least wanted to mention that we believe this is the proposal that is being referenced. Again, as an update, we have been successful with five bargaining units in reaching agreements that include a 10% ongoing total compensation reduction starting with the San José firefighters and then the association of maintenance supervisory personnel. The engineers and architects and CAMP, the city association of management personnel and as I mentioned earlier with the building inspectors. And we're going to be continuing to try to reach agreement with the other bargaining units and hope to have updates for you next Tuesday. So that's the end of our presentation. Thank you.

>> Mayor Reed: I have no requests to speak. So we're going to adjourn into closed session. We'll be back here at 1:30 for the rest of the agenda.

>> Mayor Reed: (gavel strike) Good afternoon. I'd like to call the San José city council meeting to order for May 10th, 2011. We'll start with our invocation. Councilmember Campos will introduce the invocator.

>> Councilmember Campos: Thank you mayor. The reverend Dr. York Hayes is the pastor and teacher of St. Paul missionary Baptist church that has been located in the Mayfair community for over 56 years. The church prides itself for its involvement in the community, and has many outreach ministries. St. Paul also runs a tutorial program for the development of our youth, enabling them to achieve academic excellence in the classroom. Reverend Dr. Hayes has received a two-year pastor ministry certificate from William Jessop university. He also holds a bachelor of science degree from William Jessop university where he graduated summa cum laude majoring in bible and theology and Christian leadership. He holds a master's in theological studies as well as a master's in divinity studies from Faith Evangelical college and seminary. Because of his dynamic leadership, in 2006 he was crowned as clergy of the year by the 100 black men of Silicon Valley. His commitment to God and community, is unmatched, and we are honored to have him here with us today. With that, Dr. Hayes.

>> Thank you, councilman Campos, and to the others that are here today. My invocation scripture today is first Corinthians 10 and verse 31, and I will be reading from the New King James bible. As the apostle Paul speaks to the church at Corinth. He says, therefore, whether you eat or drink or whatever you do, do all to the glory of God. Here Paul exhorts the Corinthians to live their life for God's glory, to be positive without being offensive, and even in the daily activity of eating and drinking, to exalt God's goodness and his grace. Today, as Christians, we cannot glorify God and edify the body of Christ unless our lives are in harmony with him and each other. Nothing in our conduct should obstruct God's glory from being reflected in us. This is, in everything we do and say, no matter how insignificant. The world would be able to see that we are God's people and have love for each other. Let us pray. Almighty God, father of all mercies, we, your unworthy servants, who give you most humble and hearty thanks for all your goodness and loving kindness to us and to all men. We commend this council meeting to your merciful care that they be guided by your providence and that we may be secure in your

peace. Father, please grant the mayor and Vice Mayor of this great city, and the council and all other members, with wisdom and strength to know and to do your will today. We pray that you would fill them with the love of truth and righteousness and make them ever mindful of their calling to serve your people. With love and understanding, through our lord and savior Jesus Christ, who to whom with you and the holy spirit have all honor and all glory, in his name we pray, amen.

>> Mayor Reed: Thank you, pastor. Our next item would be the pledge of allegiance. Today we are joined by John Muir third graders from District 1. They're going to help us with the pledge. Please stand. [ pledge of allegiance ]

>> Mayor Reed: Thank you John Muir elementary school third graders. Are there any changes to the agenda order under orders of the day? We have a motion to approve the orders of the day. All in favor? Opposed, none opposed, the orders are approved. This meeting will be adjourned in memory of Anne Mack, a life long dedicated community activist, whose impact on the City of San José will always be remembered. Councilmember Campos has some additional comments.

>> Councilmember Campos: Thank you, mayor. Anne Manfredi Mack passed away April 22nd, 2011 surrounded by friend and family and lived a full and gratifying life and after retiring from Lockheed in 1991 she pursued her passion and became a full time advocate for seniors and senior issues. Anne was elected to the California senior legislature, in 1998, and served in both houses. Her last elected position was chair of the legislative committee which she held since 2006. She was on the board of directors of the senior care commission, congress of California seniors, and chair of the advisory council of aging and was active in the federation of retired union members as well as for the California alliance for retired Americans. She was also elected to the 21st assembly district, Santa Clara County democratic central committee. Along with her great accomplishments and titles, Anne will be remembered for her humbling character and boundless generosity. Her kindness and passion for those less fortunate will truly be missed. Anne is survived by her six children, Roberta, Ron, Ralph, Royanne, Renee and Russell, 12 grandchildren and seven great grandchildren. Thank you, mayor.

>> Mayor Reed: Thank you, Councilmember Campos. Next item, I'm sorry, Councilmember Chu. Certainly.

>> Councilmember Chu: Thank you, mayor. A full time advocate for seniors, Anne Mack was tremendous in leading the path to save lives every day. In the last 15 years that I got to know her, Anne was always giving, friendly and passionate. Her service to our community was a testament to her commitment to this community. With all her great accomplishments and titles, Anne was a remarkable woman and will be remembered as a greater leader who served on many commissions, committees and community based organizations. Anne's effort has touched many people's lives and has provided hope and positive motivation to those with whom she interact. She was a wonderful person and will be missed by all of us. May her memory and legacy forever live on in our hearts and minds. Thank you.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor I don't have a prepared speech but I would like to tell that you it was always amazing to me that despite the fact that Anne was suffering with a disease, I had no idea. Because her attitude was always very cheery, she was always very helpful and you would never know that she had any kind of a problem. She also had a tremendous sense of humor and seem to be the latest info on anything that was going on. She was a tremendous information gatherer. She really loved people and she showed it in an abundance of ways. She definitely will be missed.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. All can I say is Anne was very, very loved by many people. And her work is going to be continued by many people. And will not be forgotten.

>> Mayor Reed: Thank you all for your comments. Our next item is the closed session report. City Attorney.

>> City Attorney Doyle: Yes, pair. The council met in closed session this morning. There is no report.

>> Mayor Reed: We'll now take up the ceremonial items. I'd like to start by inviting Councilmember Liccardo, Councilmember Campos, Councilmember Herrera and Kerrie Adams Hafner of the office of cultural affairs and the recipients of the champions of arts education awards to join us at the podium.

>> Mayor Reed: You all come a little bit enclosures that way we'll all be on television because you're going to want your family to be able to see you although many family members are here. If you are a family member of one of these people standing up here, will you wave and let us know? We've got a good audience of family members. They're all here supporting you. Today we are recognizing five recipients of the City of San José's champions of arts education awards for the year 2011. I've got some commendations here and I'm going to let Kerrie hand them out. Sylvia Carol, education research volunteer for the San José museum of quilts and textiles. [applause]

>> Mayor Reed: Dr. Lisa Maria Gonzales, visual and performing arts coordinator for San José office of education. [applause]

>> Mayor Reed: Karen Altree Pemmig, director of outreach, San José repertory theater and director of the Red Letter Theater Company. [applause]

>> Javier Salazar, director of the Oslan academy. [applause]

>> Mayor Reed: And José Monzo representing the Linda vista elementary school and the Alum Rock School District. We do this annually to recognize the fact that we have leaders in our community who do a lot for our children in arts education, a vitally important part of our kids' education, want to congratulate these recipients for their achievements and thank them for their commitment for working with kids in the community and bringing art into the lives of young people. Thank you all very much. [applause]

>> Mayor Reed: Next I'd like to invite Councilmember Chu and Jordan and Michael baseball buddies to join me add the podium. Today we're commending the baseball buddies foundation for their dedication with providing children with proper baseball gear. Councilmember Chu has some of the details.

>> Councilmember Chu: Thank you, mayor. It's really a great honor to have Matthew and Jordan here. They are two very distinguished young adults in District 4. They founded the baseball buddies in December of 2009, while they were cleaning up their home garage. Matthew and Jordan were surprised of how much baseball equipment they have, and then they start having the idea, idea with -- very instinctive. Baseball buddies foundation gathers used and unwanted cleats, gloves, bats, any baseball equipment for children less fortunate. Matthew and Jordan receive donation by inquiring to local community members and organizations as well receiving help from their families. I understand their parents and grandparents from both sides are also here, thank you very much for joining us today. March 19th, 2011 Matthew and Jordan gave a prerequisites to the various league of our baseball buddies foundation and very proud to announce, on May 14th, so few days from today, they will be -- the first delivery to the Boys and Girls Club, that actually would be Matthew's birthday, Matthew will be turning 12, on May 14th. So they want -- they really wanted to have the under privileged kids enjoy the baseball with proper gear. District 4 is fortunate to have Matthew and Jordan, go young and humble and motivated youth whose inspiration is to help other young enjoy the game of baseball. Now may I ask the mayor, the honor to present this commendation to Matthew and Jordan. [applause]

>> Hello. My name is Jordan Lefler and here is my little brother Matthew Lefler. And first of all we would like to thank the city councilmembers, Mayor Reed and Councilman Kansen Chu and various little leagues for recognizing the baseball buddies foundation and making this all possible.

>> Our mission is to bring the joy of baseball to kids here around the world. Today we have some great news. Mr. Miguel Tejada, agent, sent us an e-mail that reads: Hi baseball buddies. I apologize for the delay. Below is the name and address of a church you can send your donation to. They will distribute to the local kids in McGill's home town. Bonnie, Dominican republic. Thanks again for your generosity, Cesar.

>> We are fortunate to live in the City of San José and fortunate to share our good fortune with others. Thank you. [applause]

>> Mayor Reed: Now I want to invite Councilmember Constant, Bill Sherry and representatives from San José's tourism industry to join me at the podium. We are recognizing May 7 through 15, 2011 as national travel and tourism week in the City of San José. Councilmember Constant has some details.

>> Councilmember Constant: Thank you, mayor. As you can see we're joined by quite a few people here to integrate national travel and tourism week. These are the people that work all year long to make sure that people outside of San José know how great the City of San José is, and why people should come and visit us. Today, May 10th, is travel rally day and it's a part of the national travel and tourism week. This tradition started in 1984 and has grown substantially since spurring localized events in cities and states across the country championing the power of travel. Based on data from the U.S. travel association travel is among the largest private sector employers in the United States, supporting over 14 million jobs, just in 2010 alone, including 7.4 million directly in the travel industry and 6.7 million others in other industries. One out of every nine jobs in the United States is dependent upon travel and tourism. Nationally, travel and tourism generated \$1.8 trillion in economic output and travelers generated roughly \$117 billion in federal, state, and local tax revenue. Which is a lot, but not enough, we need more, so keep visiting. We all know that San José is an amazing and unique destination that stands apart from the rest. Our travel and tourism model integrates the convention center, our hotels, local attractions, arts and businesses all together to act as one to ensure that visitors have a fun and worthwhile visit in San José. According to our own local estimates, we had over 7 million people visit San José, and they spent \$70 million, totaling 195,000 room nights in our hotels. And we need to keep that going. I want to encourage everyone out there who's listening to make some travel plans, unless you live in San José. I don't want you traveling outside, I want you to have stay vacations, stay-cations here. But if you're outside of San José watching on the Internet, like I know people across the nation are doing right now, it is a great time to go online and book your travel to visit the City of San José, great place for family and fun and you can do a little business while you're here too. So mayor if you could present this to Bill Sherry our CEO of our convention and visitors bureau of Team San José.

>> Bill Sherry: Well, what a joyous day this is. My name is Bill Sherry. I'm CEO of Team San José and also director of aviation for Mineta San José international airport. And on behalf of both those entities I'd like to thank the mayor and Councilmember Constant and the entire city council for not only for this proclamation, but also, for all the support you give us over the course of the year. I won't go into all the stats, Councilmember Constant did that. But obviously, we're talking some very serious economic impacts through travel and tourism to San José, is very, very important. I would like to recognize our partners, and those that help us bring these economic impacts to our city, including the San José hotels, arts leadership, business community, local labor, I'd like to thank the airlines, at the airport, also some specific partners, the downtown association, the City of San José economic development office, and Redevelopment Agency, the Silicon Valley chamber of commerce, I see Jason here from the chamber, the San José sports authority, Patricia is here, thank you for coming. And the tech museum, Elizabeth is here as well. So again, thank you, mayor, thank you, city council for this proclamation. We're very thankful for this recognition and we look forward to supporting the city in the future. [applause]

>> Mayor Reed: Like to invite Sandy Fontana and San Mateo police officer Jeffrey Dick, of the Northern California Chapter of Concerns of Police (inaudible) to join me at the podium and chief Moore, San José police chief Chris Moore, come on down for this. Today we're recognizing May 15th through 21st as national police week in the City of San José. In 1962, President John F. Kennedy designated May 15th of each year as national police officers memorial day, and a calendar week in which the memorial falls as national police week. Approximately 900,000 men and serving in law enforcement in communities across the country, unfortunately, we usually lose over 100 police officers that are killed in the line of duty each year. National police week honors the services and sacrifices of our law enforcement officers who were killed in the line of duty, while loyally and unselfishly protecting our communities and safeguarding our democracy. The San José police department has lost 11 officers in the line of duty in its 160 year history. Including officer Jeffrey Fontana who was killed ten years ago in San José. I'd like to introduce Sandy Fontana who has some additional words.

>> Thank you, Mayor Reed. Thank you, councilmembers. And thank you, everyone who is in attendance. Concerns of police survivors is an organization that gave my family support after Jeffrey was killed

here in October of 2001. Without this organization, I'm not sure that I would be sane today, after seven and a half years of waiting for a trial. So I am here to give back to families who have lost an officer in the line of duty. I'm president of the Northern California chapter of COPS and I'm very here to accept this plaque in recognition of COPS. Again, thank you all.

>> Mayor Reed: And while we're at it of course, we'd like to thank and acknowledge the service and sacrifice of all the men and women of the San José police department. Every day when they go to work, they're serving the community. And this is a special time of year for them, when we do this memorial but we appreciate their service, day in and day out. Our next item is the consent calendar. Today we're taking up both the city agenda and the RDA agenda consent calendar items. At the same time. If anybody wishes to speak on them, I have no cards from the public to speak on any of the consent calendar items. Any of the -- we have a motion to approve the consent calendar including redevelopment items. All in favor? Opposed, none opposed, that's approved. We have one redevelopment item 3.2, the monthly financial progress report. That's not on the consent calendar, that we'll take up. If anybody has any questions about it, staff is here. Motion is to approve. All in favor? Opposed, none opposed, that's approved. Including the Redevelopment Agency portion of our agenda, want to now go back to city items. 3.1, report of the City Manager.

>> City Manager Figone: Thank you, Mr. Mayor, members of the council. As you are aware tomorrow we will begin a series of budget study sessions. These meetings will provide the council and the community with a better understanding of what we are facing in this coming fiscal year and hopefully, they will lay the foundation for the council to make some very difficult decisions. The proposed budget contains a number of very significant service reductions. The inevitable consequence of needing to close our \$115 million budget deficit. I cannot stress strongly enough to both our employees and the community that additional and even more painful service reductions may still be necessary in a tier 2 of budget proposals. And so why is this? It's because the proposed budget assumes that we will be successful in achieving the city council's direction, which is that every employee group receive an ongoing 10% reduction and total compensation and a roll-back of any salary increases received in the current fiscal year. So to the extent we are unsuccessful in achieving the council's direction, the additional reductions required in the police department would be \$20 million, and roughly 156 additional sworn

positions. And on the nonpublic Safety side, it would be \$22 million and some 290 additional positions. Because the city council will need to approve the final budget on June 14th, time is running out. To date, only five of 11 bargaining groups along with unrepresented employees have accepted these concessions. Our budget director will have more information at tomorrow's study session regarding what these additional tier 2 cuts would look like. And on one final note tonight we will hold the last of a series of 11 community budget meetings, for any community members who would like to learn more about the City's fiscal situation and the budget recommendations for the fiscal year, that starts July 1st. The meeting begins at 6:30 at the Berryessa branch library in Councilmember Chu's district, council district 4. And that concludes my report.

>> Mayor Reed: Thank you, City Manager. Our next item of business is item 4.1, negative declaration for the Coleman soccer fields project. I have one note. We have a motion to approve. I just want to make sure the agenda language correctly notes that the declaration was circulated in 2010, not 2011. So November 17th, 2010. I have no cards from the public to speak on this item. We have a motion to approve. All in favor? Opposed? None opposed, that's approved.

>> Councilmember Liccardo: Mayor may I ask for one clarification?

>> Mayor Reed: Certainly.

>> Councilmember Liccardo: The record indicates council district 4. For purposes of the record, outreach involved that could be district 3 for purposes of understanding when staff goes back and needs to know where they need to do outreach. Thank you.

>> Mayor Reed: Got that staff? Someone will get it. Of course we are going to redistrict, that may change again but currently it's in district 3 today. All right. Item 5.1, schedule of park land fees. We have a motion to approve the schedule of park land fees. Annual changes noted, no requests from the public to speak. All in favor, opposed, none opposed, those are approved. Item 6.1, report on bids and award of contract for the 2011 Hillsdale avenue resurfacing project. Hans Larsen has a presentation on this.

>> Hans Larsen: Mr. Mayor, members of council I'm Hans Larsen director of transportation. And the action before you today is approval of a construction contract for the resurfacing of Hillsdale avenue. This is the first of four pavement maintenance contracts that will be coming before the council this month and next month. And as we have done in past years we would like to take an opportunity to provide you just a brief overview of our pavement maintenance program that we have for this summer. I just wanted to also alert you and your staff, your attention to the info memo that was released on May 5th that provides kind of a comprehensive overview of our pavement maintenance program. If you or staff have any questions on this you can contact myself or Kevin O'Connor. What I would like to just share with you in perspectives in terms of where we are in funding and the extent of our program this year, a little bit of a follow-up to the study session that we had with the city council last October. So the first perspective I wanted to share is, the level of funding that we have. This chart here shows the current fiscal year in the middle, fiscal year 10-11. And if you look in the past can you see a lot more money that we had for pavement maintenance, and you look five years in the future you see a lot less money. What's interesting about this chart is red indicates the level of city funding that we're able to put to pavement maintenance. And can you see the trend of that is down. Yellow indicates state gas tax revenues, that were actually increased as part of the prop 42 program. So we have that as a stable source. And then you can see the green bars which indicate a variable level of regional, state and federal grant funds that we're able to secure for pavement maintenance. The past three years we're fortunate to get a significant amount of money for pavement maintenance. This has come from the federal recovery act program. We've finished spending those moneys. We also had state prop 1B funds. We've also exhausted our opportunities in those. As we look forward we have the state gas tax revenues and a big part of the green out in the future represents additional pavement maintenance moneys that were approved by voters, Santa Clara County, as part of the \$10 vehicle registration fee increase. And so we will start collecting those moneys in fiscal year 12-13. But overall, you can see the trend in available funding is down, and as the council is aware, our needs for pavement maintenance are increasing. So in terms of overall perspectives, over the next five years we have an average amount of money of about \$14 million annually. And as we discussed at the study session, the need for pavement maintenance for San José streets is about \$100 million annually. This is in order to provide a good level of pavement condition, and to eliminate the current backlog that we have. So we're looking at an annual funding gap in the order of about \$86 million, and we

recently had a discussion with the transportation and environment committee about the backlog for pavement maintenance, which is the largest of our infrastructure backlogs as well as where we are on other parts of our infrastructure system. The other perspective is the condition of our streets right now, about 20% of our streets are rated in poor condition. And we are on a trend with current available funding that, within a decade, if there's not new money for pavement maintenance, we will see the condition of our streets decline to where we have 54% of our streets are in a poor condition. The other perspective is that the cost to pay for eliminating the backlog and rehabilitating our streets will only get more expensive the more time that we wait. This chart here shows the current backlog we have. \$277 million. And you can see the increases over the next five and ten years, that we would experience based on current projected funds that are available. The other perspective that is disturbing is that a lot of the money that we get that goes to pavement maintenance comes from state and federal gas tax sources. And this is actually a declining source of revenue, it's not a sustainable source, and for good reasons. As people are shifting to higher-mileage vehicles, shifting to electric cars which would certainly, we absolutely encourage, but that also decreases the tax base that we have for pavement maintenance and transportation infrastructure. So the other concern is, is that we're relying on a declining source of funding. This is a serious issue that the council has paid a lot of attention to. As I mentioned recently we had a discussion with the transportation and environment committee. The city council's legislative priorities focus on trying to increase investment in pavement maintenance from all sources, regional, state and federal. And it's a big part of our advocacy agenda to try to get money from other sources. The other perhaps sort of best near term opportunity to try to generate additional local money for this is a measure that's being considered which the state legislature now that's called AVA 4. Assembly constitutional amendment 4. This would provide more tools for local agencies to generate more tax funds locally by decreasing the voter approval level from two-thirds to 55%. This is currently something that school programs enjoy for their bond programs. And so we have been advocating to be able to have that ability as well for transportation infrastructure. Let me get back to our program that we have for pavement maintenance this year. The first action before you today is recommendation to award a construction contract for the Hillsdale avenue resurfacing project in council district 9. Next week we have two items, construction contracts to award that will address pavement maintenance needs on arterial sealing and residential street sealing. And there's two contracts there. First a remove and replace contract and then also a slurry seal contract. And then later, in June, the much-anticipated project in Councilmember Kalra's district is the award of

the Monterey Road resurfacing project from Blossom Hill to Bernal. So we have four items that represent our contractual work. There is also work that we do, D.O.T. staff, in terms of basic pothole repair and other citywide maintenance that make up our overall program. So thank you for the opportunity to provide you with an overview. Kevin O'Connor and myself are here for any questions. Again we recommend approval of the Hillsdale contract here today. Thank you.

>> Mayor Reed: I think we'll have a few questions. Councilmember Rocha.

>> Councilmember Rocha: Thank you, mayor. I'd like to thank staff for your work on this and also for taking the time to brief myself in my office on this project. I have some questions that came to my mind actually after we met and I was curious if maybe I could ask a few of those right now. It's really about discretion in terms of awarding the contract based upon the bids. Are we required to go with the low bidder and are there certainty requirements whether it is state funding or local, our own dollars?

>> Hans Larsen: I might have Kevin come up and join me on that. Our policy are to award projects to the lowest responsible bidder. In this case we're recommending the low bidder open this project.

>> Mayor Reed: City Attorney I think has --

>> City Attorney Doyle: It is a requirement in the charter that any Public Works project be awarded to the lowest responsible bidder. That's a charter requirement and the projects, the threshold for the amount is \$100,000 or more. Are.

>> Councilmember Rocha: So I'm trying to remember the local preference policy and how that factors in to that might not be related --

>> City Attorney Doyle: Local preference does not factor into that. When we do an RFP we give a certain percentage for that.

>> Councilmember Rocha: We are given zero discretion, we must award the project to the lowest bidder. I'll move for approval.

>> Mayor Reed: Motion to approve. Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. Hans, we discussed this at great length at T&E, but I had a couple of quick questions. Wanted just to be clear, the ballot measure from last year were to fund the green portion on that graph if we were to go back to the bar chart, some portion of the green, is that what you're seeing?

>> Hans Larsen: Yeah, I think what you see there is what we expect to receive from the measure B program that was approved last year, it was \$5.3 million. This chart represents expectation that we'll also receive some federal funds as well.

>> Councilmember Liccardo: Okay. So the expectation or I understand we're looking in the future and we certainly can't know. But we're making the assumption that we're going to get maybe 3 or 4 million a year in federal funding?

>> Hans Larsen: That's correct.

>> Councilmember Liccardo: Okay. One issue that Norm Kline our Planning Commissioner raised and I had thought about it and it actually made some sense and I'd be interested in seeing whether or not this has been fully explored. Knowing what we know about the deterioration of roads and the rate of deterioration and how when we get to a point in which there is a point of no return, any maintenance becomes vastly more expensive and I know that we're getting there on several of our roads and we don't want to be there, does it make sense to have a conversation around bonding?

>> Hans Larsen: Absolutely.

>> Councilmember Liccardo: To get some money up front, obviously recognizing there is an interest cost to that but that cost would be significantly less to the failure to maintain. Is there a receptivity to those kinds of bonds in the market?

>> Hans Larsen: I think certainly a bonding program makes sense. I think the interest cost associated with that is much less than the deterioration that would you get by waiting. So that there's a lot of sense that that makes. I think our challenge is that we don't have a source of revenues that we can rely on to bond against. And so I think that's one of the --

>> Councilmember Liccardo: Well, why wouldn't we consider G.O. bonds? Obviously I recognize the condition of our --

>> City Attorney Doyle: You'd need voter approval. You would have to go to the voters to get voter approval.

>> Councilmember Liccardo: Right. We all understand what the straits that our General Fund is in but recognizing this problem is going to get us in a much deeper hole down the road. Have we considered the possibility of G.O. bonds?

>> City Attorney Doyle: I don't think we have and I think we would probably have to get back to you on what options there were. At one point in the '90s we bonded against gas tax money and money to front-end a lot of construction work. But beyond that I don't know and I think we would have to work with finance to give you what level of options.

>> Councilmember Liccardo: I also recognize this \$5 million a year isn't much. I think it's 13 million valley-wide. But do we get anything much of anything out of just bonding off of that revenue, I'm guessing not much more than 20 or 25 million up front, but have we looked into that?

>> Hans Larsen: Yeah, let me -- there's a number of things, currently the revenue is a lot of this topic. The Department of Transportation is working with the attorney's office to provide the council with an information memo to find out what our funding opportunities are, and certainly we'll address that. As a follow-up to the discussion with the transportation and environment committee we're proposing to come back to the committee as part of the fall work plan to have a more fuller discussion with the committee about what our options are.

>> Councilmember Liccardo: Okay, thanks Hans.

>> Mayor Reed: City Attorney or City Manager did you have a comment on that?

>> City Manager Figone: Just as I'm trying to remember, Hans when we had the study session with the council on this issue a few months ago, I do think we put out what a bonding tax level would need to be and for a G.O. in the classic sense you would need to have a tax increase in order to pay the bonds, so that's where the general obligation is. And so that's different than the other suggestion, councilmember, which is bonding an existing stream.

>> Councilmember Liccardo: Right. And I certainly appreciate the challenge of going to the voters. I was wondering if there was any way of decoupling the issue of actually increasing a tax from the issuance of bonds, that is whether or not you can bond off existing General Fund revenue. It sounds like you're saying the answer is no.

>> City Manager Figone: Well, there would need to be a reliable stream I think for the bonding community to be receptive to this. So that's really where we would need to drill down and take a look at what the different options might be.

>> Councilmember Liccardo: Okay, thanks.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I have a couple of questions for you. First of all, the ECA 4, E stands for education?

>> Hans Larsen: ACA 4. It's in the state assembly. Assembly constitutional amendment.

>> Councilmember Pyle: Okay. So we have no thoughts of any bill at this time, we haven't begun the process of doing this on a state level? I think it's worthwhile to get this information to our representatives in Sacramento. And see what could be done. I don't think Betsy's with us today but I think we start there and then go on from there.

>> Hans Larsen: Absolutely. Yeah we've been working closely with Betsy Shotwell as well as Roxann Miller and I think our immediate focus is on ACA 4 that would provide us the kind of increased ability to try to take something to the voters.

>> Councilmember Pyle: Right. And then how do you determine the order of need in reference to repairs? And I ask that because I'm sitting there with 73 miles of bad roads.

>> Hans Larsen: Yeah, we do have -- as part of the information memo, there is a section in there, I'd be happy to follow up with you and your staff on how we select projects. But there's a number of different criteria we use based on need, what's the right treatment at the right time. Largely a lot of the funds that we have are from grant sources, so we have to follow whatever rules or guidelines that they have for the program.

>> Councilmember Pyle: But there's nothing that determines safety? And here's what I mean by that. There is some part of meridian avenue that are so bad, that people try to zigzag through so that they avoid the potholes which are wonderful if you want to have your whole car go out of balance. So that's a real safety hazard. And I have seen people do that all the time. And I'm just thinking one of these days, somebody's going to zig or zag the wrong way and there will be a problem. So is safety a consideration?

>> Hans Larsen: Absolutely. Yeah, kind of the difference here is we want to absolutely ensure that we have safe streets in San José. But I think kind of a larger issue is the bumpiness of the streets. We have resources that if there's a pothole in the street that needs to be filled we can take care of that right away.

>> Councilmember Pyle: So can I follow up with your staff.

>> Hans Larsen: Absolutely.

>> Councilmember Pyle: All right, thank you, I appreciate that.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. On the topic of that got raised by Councilmember Liccardo, and so Rick Doyle, on the voter approval of money for you know capital like streets is that two-thirds or 50%?

>> City Attorney Doyle: Yes and that's 80 think Hans Larsen's comment about ACA 4 is important, if the legislature lowers that threshold to 55% there's a greater opportunity to get the voter approval.

>> Councilmember Oliverio: And City Manager your comment was that to do that you would have to have some type of tax revenue to bond so that would be like a parcel tax for example?

>> City Manager Figone: Exactly what the voters approved, that have built out our library system and our fire stations. That's a G.O. bond where the voters approve to increase taxes on themselves in order to get the funds to do those improvements.

>> Councilmember Oliverio: And then Hans I think you've covered that idea at our traffic maintenance study session, the idea of a parcel tax. And if I remember correctly.

>> Hans Larsen: Yeah, we -- probably the example as City Manager raised that if we could do something for pavement maintenance similar to what was done for public safety facilities, parks, libraries, community centers, if you look at the \$277 million backlog that we have of streets that are in poor condition, that's about the dollar amount for the park and library programs that we had. And so those all required two-thirds approval. We have done some polling on pavement maintenance. I think the last poll we did years back indicated 58%. Not two-thirds, but that's kind of why ACA is important, ACA 4 is important. If we could reduce that to 55% it would give us a much greater opportunity to get that future revenue and then be able to bond against it much like we did with our other programs during the last decade of investment.

>> Councilmember Oliverio: And then I'm trying to think. Did we go to the voters when the city purchased the Hayes mansion or purchased golf courses?

>> City Attorney Doyle: No. Those were lease revenue bonds. And they were not voted -- they were not subject to voter approval.

>> Councilmember Oliverio: So what are the tradeoffs of doing lease revenue bonds to finance road paving?

>> City Attorney Doyle: I'm going to let the director of financing address that, because that is really a business decision as to the best and what's available if we had the capacity, that's really more of a business call.

>> Scott Johnson: Good afternoon, Mr. Mayor, members of council, Scott Johnson, director of finance. The lease revenue bond structure, we would have to find assets to collateralize for that lease revenue bond structure and we would have to have a revenue source, because there would not be a specific revenue source that would be generated for that specific financing structure. If it was General Fund related expenditure for purposes, then that debt service would have to be paid out of the General Fund.

>> Councilmember Oliverio: So in your recollection on the lease revenue bonds for the Hayes mansion and golf courses what did we put up?

>> Scott Johnson: The Hayes mansion originally there was a lease with the -- there was a lease arrangement originally with Hayes mansion where HRLP, they were paying the lease payments. Unfortunately, in the early 2000s with the economic downturn after the dot-com bust they weren't able to support that debt service. So now a portion of that is being paid out of the General Fund.

>> Councilmember Oliverio: And then on golf? So where did that money come from? What did we bond -- what did we put at collateral for the lease revenue bonds?

>> Scott Johnson: The golf courses themselves are collateral.

>> Councilmember Oliverio: Okay, the land?

>> Scott Johnson: Right, and the revenue from the golf courses, a portion of the revenue supports it. However, there's not enough revenue to support the debt service on the operations for the golf courses, so the General Fund does subsidize the debt service on golf courses.

>> Councilmember Oliverio: Can you buy a piece of land with the lease revenue bonds and put that back as collateral?

>> Scott Johnson: Yes.

>> Councilmember Oliverio: That's kind of interesting.

>> Scott Johnson: They're called certificates of participation, does not require voter approval. You are not adding an additional appropriations, you are taking additional funds to pay for that debt service.

>> Councilmember Oliverio: It just seems odd, though, right, so okay, you are going to buy a house and lease it back, but that's how it works.

>> Scott Johnson: And Councilmember, as you mentioned there is a number of different options that the council can consider in regards to different financing tools that can be available. I know in the past we've done a report with Department of Transportation on different financing structures and we'd be happy to work with D.O.T. and the city attorney's office to provide additional information on that.

>> Councilmember Oliverio: And so each time we issue commercial paper for example to manage the financing of the CRAF loans, does that limit our ability to do lease revenue bonds in the future?

>> Scott Johnson: It could. The rating agencies do look at our debt capacity and the funding source. So it really depends on the there's a dedicated funding source other than the General Fund. There's not as much of a restriction in regards to our debt coverage. If there's a dedicated revenue source. For example if there's a general obligation bond to the City Manager's point, that's an additional property tax that all the property owners within San José pay for those -- the debt service on those general obligation bonds.

>> Councilmember Oliverio: And is there anything left in the City's portfolio of land that we haven't looked at doing a lease revenue bond on? I mean it seems like we've done so much borrowing commercial paper et cetera that there is a lot of the city assets that are already collateral.

>> Scott Johnson: We do maintain a list of city assets that are collateralized versus those that are not collateralized.

>> Councilmember Oliverio: Is there anything significant that's not collateralized?

>> Scott Johnson: There are some assets that are not collateralized.

>> Councilmember Oliverio: Can you name one, or is that kind of --

>> Scott Johnson: I'd have to go back and look.

>> Councilmember Oliverio: Fair enough, just off the top of your head, and it was nothing specific. And then, Hans, on the tax, you had in the chart where the tax was going to fall from the gas, and remind me, is the gas, the state tax per gallon or is it per the cost? I.e. when gas increases, we get more sale taxes because it's \$4 a gallon versus \$3 a gallon. How does it work on the state tax?

>> Hans Larsen: I wish it were the latter. Because we would actually have an increase of money now. But both the state and federal gas tax are flat, and so they're a fixed amount based on the fuel purchased, not on the price. And so back to the point that I made, as gas is consumed to a lesser degree, because people are shifting to higher mileage vehicles or electric cars, that actually reduces the amount of gas tax receipts that we will be getting in the future.

>> Councilmember Oliverio: That will be a good problem to have, but I guess we'll see how quickly the consumer changes habits. And then just since it's on the topic of budget and it's gas, even though the city of San José -- maybe City Manager -- even though the city of San José may be reeling in more tax revenue based on the increased cost of gas, at the same time our vehicle fleet has to buy gas at the current price, so it's really a wash. We're not really making more money because our police cars have to --

>> City Manager Figone: I'm not sure about the wash but certainly our costs are going up.

>> Councilmember Oliverio: Okay, thank you.

>> Hans Larsen: I would just add too is that because the asphalt that we use for paving is an oil based product so as the cost of oil goes up the cost of doing pavement maintenance work increases as well.

>> Mayor Reed: So do we want the price of gas to go up or down? Just let us know so we know which way to pray. Since it doesn't respond to anything else maybe prayer will help. Councilmember Herrera.

>> Councilmember Herrera: Thank you mayor. Thanks for the report Hans. I had a couple of comments and questions. I know that we talked about some pavement maintenance. I know there was some happening in my district. Is that from a different project list or different source of funding or does this cover all pavement maintenance projects, this particular --

>> Hans Larsen: Yeah so our information memo that came out last week has a listing of all the street segments that we planned to do pavement maintenance work this summer. You may recall, we had an item to council several, I don't know, many months back that identified projects that would fund with new federal grant that we received. And that money's going to come to us in two phases. So the first phase is for the Monterey highway project. I know there is I think Ocala was one of the projects in your district that is going to be funded in the next phase. That will go out next summer.

>> Councilmember Herrera: And we talked about Quimby.

>> Hans Larsen: Quimby yes.

>> Councilmember Herrera: Great. And just on that subject of how we prioritize things, I think that obviously I think safety -- Councilmember Kalra brought up a great issue on safety. But also looking at economic development areas, if we could look at areas that could actually -- if the roads were surfaced it would help bring in more business, thus more sales tax and more revenue. I think that needs to be considered also. And I --

>> Hans Larsen: If I made add Councilmember Herrera, yeah, that's a point you raised at the transportation and environment committee meeting. I think for -- we should be spending \$100 million a year but we only have \$14 million and so I think there's an important policy issue that we'll need to address with the council on how do we

best supply the limited moneys that we have. And so there's some thoughts on whether we put it on the arterial streets where most of the travel is? Do we give priority to transit corridors or bike ways, given this is bike-to-work week, or do we put it in areas that have some economic significance. And so I think that's as we frankly kind of need to triage where we apply our resources that's going to be an important issue. Again, I think we'd like to from a process standpoint, run that through the transportation and environment committee as part of the work plan this fall. And see where we go with it.

>> Councilmember Herrera: And I'm also very interested in what are the options to finance this? I think getting our roads fixed so that we don't have to completely rebuild them, which we're facing in the future as they continue to degrade, and more and more of them end up in a state of poor condition. I think it's really important if we can figure out some way to get this financed. I think it's the right thing to do, it's the responsible thing to do. I'm hopeful that the legislation you mentioned passes because it would give us leverage in that. Another piece of legislation, I don't know if this is directly applicable, Senate Bill 653, Darryl Steinberg's bill is talking about allowing local governments more ability to adopt taxes including -- not that I would accept income, but vehicle, alcohol, cigarettes, oil severance taxes, so they're talking about loosening up on the ability of local governments to have more ability to tax, in the event they're looking at it in the event the state government cannot pass a budget and so they're wanting to allow some more ability for local governments to do that. And so that's it. Thank you.

>> Mayor Reed: I thought they were thinking about dissolving the state. Was that just a rumor? Perhaps I should -- Councilmember Constant.

>> Councilmember Constant: Big picture and little picture. As with we're approving the contract and talking about the big problem that faces San José or one of the big problems that faces San José. As you know, every opportunity I have gotten over the last five years, I like to harp on our deferred infrastructure maintenance and the cost and the lack of a plan. And my concern is just commentary, no question, that when we look at these big issues, one of our biggest problems we have here is lack of a committed plan, on our behalf. Not your behalf. I know you have a plan of how could you do it if we could have the commitment to fund it. And I just want to liken this to the GASB 43-45 issue where we had this huge big unfunded liability sitting in front of us. And we know we

couldn't just write a check to pay it off but we came up with a plan. And we not only came up with a plan, but the funding for that plan is in our budget every year, every projection and it is just part of the cost of doing business in the City of San José. We look at our retirement plan issue issues, the unfunded liabilities there, the exact same way. And I can't overemphasize how important it is for us to do the same thing here. We have to get an implementation plan and a funding plan and just make it the cost of doing business. And I know it's hard when we look at all the red ink that we've had over the ten years and the future years, but remembering that you told us it would take \$90 million a year pretty much forever, for us to keep our roadways up, or \$140 million a year for the next ten years, to really catch up on the problem, those are huge numbers. But every year the numbers get bigger and bigger, and we have to come one a plan. I know you know that. You and I talk about it every time. I'm not necessarily directing it to you, I'm saying it to everybody. We have to figure out a way to get whatever funding stream it may be and just get it in as a cost of doing business in the City of San José. Because at the rate we're going, with these little not even really down payments on maintenance every year, in ten years, the problem is going to be horrendous. I don't even want to think of how exponentially high those numbers are going to be. And what these graphs, like the one we're looking at now, well, these are the revenues, but the expenses, what those graphs will look like, it's just going to be horrendous. So just every opportunity we get to say it we're going to say it, and thanks for making the presentation on the award of bids.

>> Hans Larsen: Thank you, just a quick comment. The study session we had in October was really a good first step in foundation, understanding the magnitude of the problem. And the work we're doing with the transportation and environment committee, looking at funding strategies it will be the ingredients that pull together a plan here, I would expect over the next several months. It's certainly within the year. And hopefully, as the local economy improves we'll give some more opportunities to try to -- what I refer to, kind of a new decade of investment where we look at investing in kind of some of our core basic infrastructure. Pavement and sewers and things like that, that will help the city in the next decade.

>> Mayor Reed: One last couple of questions that I have. Back when we were rich -- in the '90s -- when revenues were going up faster than expenses, how much money were we putting into street pavement

maintenance? Your chart goes back a few years but was there ever a time when we spent enough money on our roads to keep them from deteriorating?

>> Hans Larsen: I think what Kevin cited, if you look back the last 15 years, we probably had about five years in which we were funding, had from local, state, federal sources that we had enough money in there. And so I think we have -- I mean this has been a subject that we've had a lot of discussions on over the last decade. So I think really we're at a point in our history where our streets have aged to a point that they need a more expensive level of rehabilitation treatment. And so the combination of needing more major maintenance and combination of the lack of revenues at the local, state and federal level really put us in quite a dilemma here. We've done a decent job in the past. It would have been good to do more. We wouldn't have the backlog that we have. But again, we appreciate the council's attention and focus on the issue and I'm optimistic we'll find a way to solve this problem here in the next few years.

>> Mayor Reed: Remember when I first came on the city council about ten years ago. We were in the -- I think the third year of a ten-year plan, on road maintenance and repairs. And that lasted for one year. So maybe there was four years there in which we were increasing the money that we were putting into maintenance. But I think even then we weren't keeping up at the level that we were needing to be, in order to prevent deterioration. We were just sort of increasing the spending. So I think if you just analyze the 15 or the 20-year history, it won't be enough for revenues to go up. Because the other demands for those revenues are always going to outstrip the demands for street paving. So the idea of a dedicated funding source or something that we can use is perhaps the only way to be successful over the long haul, of being able to do that. So these null are new bills that the state legislature is contemplating giving us some additional power may be the only way to make it happen. Councilmember Herrera.

>> Councilmember Herrera: I just had one other comment. So I think it's -- I'm recollecting from the meeting, I think the average person spends \$750 a year, we're estimating the cost for additional maintenance to cars because of the bad road conditions, Hans, I'm just recollecting somewhere in there.

>> Hans Larsen: Yes, it was something we discussed with the committee and actually raised at the study session. There is a cost to the public right now for driving over bumpy roads. And it's been estimated that the accelerated damage to people's vehicles for driving over bumpy roads is seven to \$800 a year. And for a portion of that investment, you know, if we --

>> Councilmember Herrera: A parcel tax would be something less than that.

>> Hans Larsen: You know, \$300 a year for investment would basically give us smooth streets and you would avoid the deterioration that our vehicles are experiencing.

>> Councilmember Herrera: So they're already -- people are paying more than what they would pay in a parcel tax to get this problem taken care of.

>> Hans Larsen: Yes.

>> Mayor Reed: The difference is, they don't have a choice on their vehicle damage, but they do have a choice on a parcel tax. And so far the choice has been not enough yes in our polling. But those things do change, which is why we need to continue to look at it. Any other questions or comments on this? I think we had a motion, but I'm not sure. City Clerk, we got a motion on this? We did, Councilmember Rocha had it. All in favor, opposed, none opposed, that's approved. Item 7.1. Report on bids and awards of contract for the Morrill avenue and Sierra road sanitary sewer improvement rebid. We have a motion to proven. All in favor, opposed, none opposed, that's approved. Item 8.1, the 2010 IPA year-end report. Judge Cordell is here with members of her staff, so we'll have a presentation. And then we'll take up item 8.2, the San José police department internal affairs unit report on department-initiated investigations. We will first hear from independent police auditor.

>> Judge Cordell: Thank you, mayor. I thank the mayor and the city council for giving us the opportunity to present to you the 2010 year-end report. May I first introduce to you the IPA staff, and while we are the smallest

city department, just six of us, what we do is anything but small. Would each of you please tell everyone your name, your job title, and how long you have been with the IPA office. Come on up. Go ahead.

>> Hi, I'm Diane Dillan Diaz. Let's see, I've been with the IPA office and City of San José for five years. I'm the point person for community outreach, and I also am involved in auditing cases and intake primarily for the Spanish-speaking population.

>> Judge Cordell: Thank you, Diane.

>> Hi, I'm Brenna Silbrey. I've been with the IPA for all of five months. And in that time I've been auditing cases and I'm also doing community outreach and a lot of the complaint intakes.

>> Dear mayor, and city council members, my name is Vivian Do, I'm a senior analyst at the IPA office for almost nine years. And I work more like on the financial and also do the database management and subsequent data for the report. Thank you very much for all your support during the year.

>> Hello everyone, my name is Jessica Florez. I work at the front desk, do data entry, and fill in wherever is needed. Thank you.

>> And I'm Shivaun Nurre, assistant auditor. I've been with the office about four and a half years, and I assist the IPA.

>> Judge Cordell: At the end of every day I make it a point to tell each of my staff how much I appreciate them. And now I get to do it in public and before my 11 bosses. So please know, each of you, that I find each of you to be the hardest working, dedicated, and caring individuals with whom I've ever had the pleasure to work. Shivaun, Brenna, Diane, Vivian, Jessica, you inspire me every day, so thank you so much. [applause] I now return to my very first year-end report. I began my work at San José, as San José's IPA exactly 51 weeks ago today. It will be one year next Tuesday. And in this report, I endeavor to produce a document that is reader-

friendly, forthright, clear, and leaves nothing to interpretation. I provided a draft of the report to chief Moore, to lieutenant Wager, the commander of internal affairs, to the office of the City Attorney and to the City Manager for their comments. I was not required to do this, but I felt it was the right thing to do. The comments and edits that I received from them were few and important, all of which I incorporated into this report. At no time did any of them ever ask me to delete anything from this report. The report has five chapters. The first is an overview of my journey that began May 2010 and discusses the changes that I have implemented. One of which is the 60-day contact program in which Jessica Florez calls all complainants with cases still under investigation to advise them every 60 days of the status of their cases. Another is the IPA San José police department mediation program which got underway this year. We have already held three mediations in 2011 with more to come. I assigned primary responsibility to Diane for the writing of chapter 2. After all, who better to write on the subject than our highly regarded outreach specialist who is also highly regarded in the City of San José. And we have a first slide up. The first slide shows and a number on here, a number that started me, and that was the attendees at outreach events with whom we had contact in 2010. 8,408. Almost double the number of people reached in the entire year of 2009. And more people reached than in any years prior to this. Next slide. One of my new programs is the IPA road show, an outreach tour to every council district, reflected in the next slide. The road show will be back by popular demand this fall. Moving on to chapter 3, statistical review. I assigned to Brenna and what a good choice I made in doing so. When someone mentions statistics to me my eyes tend to glaze over. But not so with this chapter. We take you through complaint process, step by step. And give you statistics in each phase of the process so that they are in context and make sense. Now, one question -- next slide -- yes, one question that we felt the council would want answered is, in what city council districts did the incidents that gave rise to the complaints of misconduct closed in 2010 occur? And if you look at this next slide it was not surprising to us that the greater number of incidents occurred in the downtown area District 3 since there is far more activity in this district. There were seven types of issues that came to our attention when we audited the cases sent to us after internal affairs closed their investigations. Timeliness, and that's reflected in the one year statute of limitations which basically means once a complaint is brought to the attention of the city, meaning internal affairs, our office or the San José police department, there is a one-year period in which the complaint must be investigated and, if discipline is to be imposed, must be imposed. If the process exceeds the one-year period and if an officer should be disciplined, the officer cannot be disciplined. It is the one year statute of limitations. So that's one issue that

came up. Classification. Only internal affairs can classify the allegations dependence police officers. So we take them in but we do not classify them. It could be a procedure allegation, it could be neglect of duty. That is their job. So we sometimes have concerns or issues where we feel there has not been a proper classification. So we will interact on that basis. Allegations. Whether or not the allegations, meaning neglect of duty, procedure, bias-based policing, force, were properly listed. Supporting documentation, whether or not internal affairs had sufficient documentation to support whatever findings they came up with. Internal affairs interviews. Whether or not the interviews, certain interviews were conducted and sometimes we felt that perhaps interviews should be conducted which were not done. And the IA analysis, that's the last two there, where we have issues of objectivity and the logical application of procedures and policy to the facts. What sometimes gets lost in the discussion of the issues discussed in our report is that, of the cases closed by internal affairs in 2010 and audited by us, we agreed with internal affairs 89% of the time. This means that overall this system works. Can it be improved? Absolutely. And more of that in just a bit. The writing of chapter 4, use of force, was the primary responsibility of Shivaun, so I'm going to let her talk about this chapter.

>> Shivaun Nurre: The number of forced cases, and by force cases I mean a case in which there is at least one allegation of force, remained pretty steady. In 2009, there were 59 force cases and in 2010 there was one more, 60. The number of allegations, alleging force is 98. And I see on our slide it says 133. We found that discrepancy just this morning and we've double checked. So it's 98 allegations of force in 2010, which is similar to the force allegations in the year prior. In terms of overall the force chapter we didn't see any dramatic changes from prior years. We do track through audits important details to identify whether they're trends, and those are the level of injury sustained, as alleged by the complainant, the type of force used as alleged by the complainant, and the parts of the complainant's body which is impacted by force. Again, no disturbing trends. I think the only trend that actually needs to be culled out is we have seen a small increase of alleged applications of force to the head. So we're going to be tracking that even more closely in the coming years. The end of the chapter has an overview of the officer involved shooting process and some of the events that occurred in 2010. Also important to note is the IPA role and how it differs in reviewing these incidents if the citizen files the complaint about the incident or if there's no citizen complaint about the incident. The distinction is, basically, if there is a citizen complaint on the

issue the IPA can review the investigation of whether or not the officer acted within policy. And so that's important to us. Thank you.

>> Judge Cordell: Thank you, Shivaun. The final chapter 5 covers two areas, recommendations and concerns. First, the recommendations. In 2010, I took a different approach in how the IPA office weighs in on making recommendations for improved police policies and procedures. Previously the IPA would make her recommendations annually at a city council meeting and requesting that the council adopt the recommendation. My approach as can you read in the report is to raise our recommendations with internal affairs and the police chief as they come up during our audits. It is a year-round rolling recommendation process. And the result has been that in 2010, we made 11 recommendations to the San José police department, some of which have already been adopted, and others are under consideration. And all those are listed on pages 43 and 44 of the report. The second part of chapter 5 addresses matters of concern that we feel are significant. And I will focus on three. Timeliness. We believe that it is problematic that cases are closed in internal affairs after more than 300 days, and that it is especially problematic when cases are closed at or over 365 days. There were 49 cases that were closed in 2010 after more than 300 days, leaving our office insufficient time to conduct our audits. And those cases and the times are listed on page 45 in the report. Sustain rates, second issue and this reflects the slide now before you. In 2010 there were 98, not 133, but 98 force allegations, 30 bias-based policing allegations and 19 neglect of duty allegations in cases closed by internal affairs. None of those allegations were sustained. We believe that these zero-sustained rates raise a red flag. It is possible that, for cases closed in 2011, the sustain rates on bias based policing allegations may rise because of Chief Moore's decision to expand the definition of bias-based policing. I do believe that timeliness and the zero sustained rate issues are systemic problems that require immediate attention of the San José police department leadership. The third concern, objectivity, I do not view as a systemic problem. Rather the lack of objectivity in the internal affairs analysis of some of the cases occurs because of the assessment of these cases by individual officers. Not all of the analyses conducted by internal affairs are lacking in objectivity, some are. Since it is the chief who has the final say over who is assigned to internal affairs, those who are not objectively performing their work can be retrained or ultimately replaced. Already, chief Moore has responded to some of the concerns we have raised in our report. He has added more staff to internal affairs to address the timeliness issue and he has taken a hands-on

approach to internal affairs, unlike his predecessors letting the officers know that he takes very seriously their responsibilities to be objective in their work. I conclude by letting you know that the relationship between our office and internal affairs, between our office and the San José police department leadership, between our office and the San José police department rank and file is one of civility, and mutual respect. And I could not ask for anything better. Our office will continue to act diligently not only to fulfill our mandates but to go beyond the call of duty with our team leadership council, with our mediation program and with our ongoing effort to help rebuild trust between law enforcement and the community. I am glad to autograph your reports and take your questions at this time.

>> Mayor Reed: I think we're going to hold off on the question until the chief can make his presentation and then we will get the autographs later.

>> Chief Moore: While that's coming up I want to thank Judge Cordell and the IPA's office. As she stated we had the opportunity to review the IPA report and found it very readable and very enlightening. I'm grateful of the model of police oversight we have in this city. It allows me as the police chief and my department to get an almost real time review and critique of the work we do and because the internal affairs function is so critical to the trust and confidence that the public places in us, it's important to get that timely feedback. Couple notes on her issues of concern, one of them is the timeliness issue. Absolutely spot-on. Any time that you have a case that goes on beyond 300 days it's a problem, not only for the public's perception of how we do business but also for the officers. It's only fair for the officers if we're able to resolve these issues quickly. If there's discipline to be imposed, that it's imposed, if it's not, that it's exonerated and we move on and that the IPA has an opportunity to opine on the completeness and thoroughness of the investigation. Now that I have my slides up I'll just touch base. The report you have before you on item 8.2 is the department initiated investigation. As opposed to the complaints that come through the IPA, IA process which are citizen initiated, the DI reports, the department initiated are purely those that come out of the police department or perhaps misconduct that is brought to our attention from other law enforcement agencies, the courts, something of that nature. But typically it is, we have somebody within the department, typically the supervisor above, but not always observing misconduct and then reporting it up through the chain of command. That is a healthy thing when you have members of the department reporting misconduct in

such form as it's investigated. More important we have a much greater sustain rate compared to those citizen initiated. Just add a couple of talking points then we can answer questions for those of you who might have. We've tracked the number of department initiated complaints against officers over the last five years and again the number is relative small. Last year was 66 which was a five year high but on average as you know on the slide it says roughly 57 a year. The two most frequent of these types of investigations center around procedural violations. Processes and procedures that duty manual sections to tell the officer to do something and not do something and they in fact do the opposite. For an example if somebody is to process a post of evidence in one process that's described in a duty manual they do it a different way or don't do it at all that would be a procedural violation. The second item which becomes somewhat more problematic and is of more concern to me because it goes to the heart of the public's trust and confidence in the police department is the conduct unbecoming, what we often refer as CUBO, and that is conduct either on duty or off duty that basically adversely affects upon the police department. A lot of times it is sometimes criminal in nature. We have officers that from time to time are arrested for misdemeanor offenses or are stopped or are in contact with law enforcement, from other jurisdictions or our own. That reflects poorly upon the police department. Those things raise red flags for me, and also become issues for other potentially greater discipline down the line. And we watch those very carefully. Just to keep in mind we had just under 400,000 formal calls for service and many more that were not formal in 2010. Of those contacts, 27,000, almost 28,000 resulted in either arrest or citation. So you have a large number of cases that generated a relative small number of complaints both on the citizen initiated as well as the department initiated but as the judge said eloquently, we're not perfect but we can do better and we will do better. And part of that is knowing what to measure, what red flags to follow, and to be brought to our attention quickly, to make sure that our investigations are timely, that they're thorough, they're fair, they're complete and if they're not, they're called to our attention, and if they can't be handled at the internal affairs level, they're brought to my level. If for whatever reason we still have a disagreement then they can be brought to the city attorney's attention for ultimate decision as per the city charter. This is a system in my opinion that does work. I share the judge's -- my admiration for her and the work that she's done makes it easy to do my job. Easier not necessarily easy. But the truth is I'm very honored to work with her because every suggestion she's brought to my attention, and I can say this in public because I honestly believe it, has been thoughtful, and has been implementable, if you will, I think it's something that makes sense, and the couple of times where there may have been frustration, I've

been able to address the frustration, and we've been able to move forward. That doesn't mean, just rest assured everybody that hears this, that we agree on everything. Because we don't, and we shouldn't, honestly. I think there are things that we may come down to fundamental disagreements, but those are very rare, and most of the time we'll be able to get through them. In the event that we can't then we obviously have a resolution process. I'm looking forward to whatever questions councilmembers may have.

>> Mayor Reed: Thank you. I have a few questions. I'd like to start with first a couple of comments for both reports. Suggestions for next year is, chief, you had it on one of your slides, in fact the slide is right there. 387,000 formal calls for service. 27,969 arrests. That's potential for a lot of unhappy customers. And I think it's important in both of these reports to keep this in context. We're focused on this small piece of the puzzle because we want to get better what we do. But by and large there's hundreds of thousands of relationships and interfaces with the community that don't result in any complaints from anybody. And I just like to have that data out there so we understand, we have a great police department. We're trying to get better. And so I think that could be reflected a couple of plagues in both of the reports. The other thing in the IPA's report back in the appendix, containing additional statistical information, again there's some good five-year data there and I just want to make sure I understand table 4, the five year review of complaints received by individual officers. It looks to me, if I'm reading this right, that we had in 2010 only seven officers out of the entire department that had more than two complaints. And I -- make sure I'm reading this right. So the average patrol officer, I think, makes hundreds of arrests. And they have the most interface with the public. And yet small handful, if more than a couple of complaints. And I think that speaks well for the department and we've seen that trend over time. It's a good thing and we have a good department. Another page in the IPA's report, 42, the in custody death training review panel. There's a blank space at the bottom. I think that would be a great place to put a chart or a graph of the officer-involved either shooting deaths or in death -- whatever we're calling it now. Because we've had a significant decrease in that in the last decade. In 1999, the department established the officer involved shooting incident training review panel. We've done some other things like issued tasers and other things. But the numbers have come down. And I think the IPA and the department can be proud of that. Because a death is not good. Sometimes it happens but we can I think we should be proud of the fact that we've reduced those numbers a lot. And then finally, I know that this is the 2010 report. But you could take a little bit of license and talk about

things that have happened in 2011, namely, the mediation process that I know you've started and we've actually accomplished that. It's been a long time in the talking to get it there and it's got done. So if Judge Cordell will just brief us a little bit on the mediation, please.

>> Judge Cordell: Absolutely. And thank you for asking. In fact, we had a discussion when we were drafting this report among our staff about whether or not we should put 2011, I pushed back and said no, this is a 2010 report. But that being said, the item I had for mediation really came from actually Shivaun was very keen on this when I first got here, about doing it and had immediate discussions with the leadership of SJPD and we collaborated in putting this mediation program together. As a result we are now mediate being courtesy rude conduct complaints. Before they even start to go through the whole IA investigation process. So we're saving time, I think we're saving money. We now have a roster of retired judges, judge Foley handled our first mediation which was in March. Judge Emerson handled two mediations which were last week. So we're identifying, and it takes a little bit of time to identify the case that's appropriate for mediation. And we think we have another one maybe in the works now. So the idea is, we have plenty of judges doing it for free. We handle the mediations in a private room, in a conference room here at City Hall. And we just expect, we hope that more will come through. So nothing but good things. It's a win-win. I am -- we do have all the participants complete a survey, right at the close of the mediation. It's a satisfaction survey. We're keeping all of those. And when we have our 2011 report, you'll have a report on how officers and members of the public are perceiving these mediations, as they are going through them. It's going to be very interesting and I hope it is going to be positive.

>> Mayor Reed: That's good. One area on page 35, use of force section, and maybe it's someplace else in the book and I missed it, is we have complaints in 64 cases, use of force cases, but I can't remember how many arrests out of the 27,000 arrests involved the use of force. I think the complaints were down to less than 1% of the amount of force was used. But I'm not sure about that.

>> Shivaun Nurre: There is a nuance in capturing that data because SJPD officers report on force when a force gets to a certain level. It's called reportable force. And in force complaints we take all levels of force, and some

of that is not -- does not reach the threshold in which we have a reportable force as defined by SJP. So that nuance creates, you know, some reporting problems.

>> Mayor Reed: But if -- I'm just trying to get the number of cases in which force was reported, compared to the number of cases we have complaints, and again my point is, it's really a very small number of complaints for the size of the city and the size of the department.

>> That's correct.

>> Mayor Reed: Then I want to thank both the City Attorney and the chief and Alex Gurza for getting the information boasted online that's now available on the discipline cases after we're done with the discipline to go back and legality the people know that an officer was disciplined for something. In the past we'd have police officer outcome, no idea what happened in the middle because of POBAR rules and other things like that. But if anyone wants to look online can you look at the 2010 report and you can see officer did something and they were disciplined for it. Which you can read between the lines here. But I think it's important and we should be proud of the fact that our police department takes care of its problems. And these officer-initiated issues that we looked at in this report, I think are something to be proud of. Because there are no better people to take care of the problems in a department than the people in the department. And I think we've demonstrated that that's a mark of a great professional department and something that we can all be proud of. Then one final thing. I'm not sure I know the answer to this because it used to be you had a good rich, this is the -- both of you had a good relationship with the POA. So we have different relationships with the POA, but what I've seen is our police union has been willing to engage, discuss, meet, the mediation wouldn't have happened without their willingness to take a flier and try it. So I'm hoping that relationship remains a at least professionally courteous relationship, that they'll listen to you and that you'll listen to them. Okay, I have some other questions. Let me get tot list. Vice Mayor Nguyen.

>> Councilmember Nguyen: Thank you mayor. Let me start out by saying that I've been here for almost six years and I've never seen so cordial working relationship between the police chief and the IPA. I'm just really

happy to see the ongoing working relationship between the two of you. Of course it reflects a lot to the staff and what we see in the community. This is also the first year that I did not receive one single phone call from critics of the police department regarding their opinions about what's being reported in the IPA report. So that's you know that's another positive. So I just wanted to take this opportunity to thank the two of you for your willingness to work with each other. Because that really show a huge positive reflection, not here at City Hall but also out in the community and I think it puts less pressure on us as councilmembers to have to address some of those issues on behalf of both your office and the police chief's department. So thank you. And in Judge Cordell, I'm very proud to say that, you know, I have come to support you to be our IPA, I think -- I continue to be very impressed with the work that you do here and your ongoing efforts in terms of reaching out to the different council districts that have shown a lot -- the last meeting I had in the Santee area somebody actually mentioned your name and asked us questions about can we raise this issue with the IPA's office? That's the first time I've heard that too. So that really shows the outreach you've done has been really, really effective. I have just two really quick questions. On page 33, in your report, under the percentage -- the percent of offices receiving complaints. I'm a little surprised by the years experience between zero and one year, the 50% of Office receiving the complaints. I know that in the past reports we get to look at the various training programs that officers have to go through. I was just wondering if this is something that you know that was continued or maybe didn't because of the budget cuts. But this is a rather large number, and I was wondering if you can speak a little bit to that.

>> Chief Moore: Given that we haven't hired in a while and it's a relative small number, generically speaking, those that are early in their career, I mean really early and out of the academy, starting on -- they're -- our experience is they are more prone to make more mistakes, and that's why they get a greater level of supervision, so those mistakes are caught, so you're not likely to see those in years 2 through six seven eight, because by that time they've been monitored, they've had their mistakes corrected. Which we expect. We anticipate those types of mistakes early on in their career because the folks just don't have that level of experience and they haven't been exposed to that number of cases that potentially could lead to misconduct. But it's fairly typical pattern, the early mistakes, and you see a period where there's not as many of them, and then you see some more surprisingly enough and then towards the end of the career you don't see much at all.

>> Councilmember Nguyen: Thank you, chief. And then on page 44, judge Cordell, you are recommending that an age threshold be set before juveniles can be required to sign the form. You're working with Santa Clara County to make this revision. I was just wondering when this would be ready or if there's an update status since you released it.

>> That's a very good question. I haven't had any feedback, when I raised it the juvenile justice, getting all the names wrong, but this is a form that's utilized county wide and we were able to red-flag an issue with it, spoke with Lieutenant Waber, by the way who is here and whom it is a pleasure with whom to work and is the commander of internal affairs, thank you, who agreed that this form need to be changed, and in two respects, requiring a parent's signature and also not having a ten-year-old sign a form that takes someone considerably old to even understand. So I have also raised it with a -- someone in the District Attorney's office, Chris Ariola, who has the same concern. So I don't know, but understand when we make a recommendation and we don't see that something has happened, we don't let it go. So you will see in 2011 report, I hope you will see in it that that has been taken care of, that the form has been revised, if not, you will see that it hasn't and you will see why.

>> Councilmember Nguyen: Thank you. And just finally, I just wanted to thank your staff who is here. I am glad that you took the opportunity to ask them to be present so we can thank them publicly. But really, just thank you for the work, the report. I believe chief Moore used the terms that I wanted to use is very clear and very enlightening. It's very straightforward, you presented the facts and that's what we want to see so thank you very much.

>> Judge Cordell: Thank you. I do want to state one thing about my staff I didn't mention. Two are fluent in Spanish, one person is fluent in Vietnamese, Cantonese and Japanese, and that is Vivian. So we have tremendous talent and versatility in our office.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thank you. I just want to say how nice it is to have such a quiet council chambers. When we have a discussion between the police chief, the IPA and the council. And I know judge, you weren't here for some of those. You missed quite a show. It's just a complete difference. It's like night and day. I mean, just looking up there, and listening, and observing the commentary from both sides as you present it's just a world of difference. So regardless of what's in the report, regardless what anybody thinks of the report I just want to be very clear. That it's a huge and appreciated difference on both sides. So thank you.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: I wanted to echo the praise, Judge Cordell, thank you for providing such a wonderful model of leadership I think for all of us. And chief, thank you. You really hit the ground running in a very short period of time. And I really appreciate how collaborative you have been given the extraordinary strain your department's in with regard to resources but you've gone above and beyond I know to really make accountability a hallmark of your leadership. So I appreciate that very much. I also want to thank Judge Cordell for all the work you've done in District 3. I know you've been present quite a bit. I hope you're enjoying your time in District 3. I know that we create a lot of business for you. We yell because we love. That's the motto we use in our neighborhoods. Anyway, I wanted to ask about a couple of the ongoing concerns that I know that Shivaun and I have had a lot of conversation about in the in past years. And just to understand a bit more concretely, what we can likely expect given the constraints and resources from San José PD around the timing issue. I understand that you just supplemented your IA staff, chief, but is id -- are we going to be able to come back next year and see that all these reports are being completed within 300 days or -- I mean, what can we expect?

>> Chief Moore: I think that with the additional sergeant that we put over there to address the backlog, plus the continued attention to this issue, and I know that lieutenant Wager literally meets weekly with the staff to determine where they are, really not that they're not working because they clearly are working but if you focus attention on those things particularly that are starting to age out and they're getting to approach deadline, it's a matter of priority. Some of these cases will inevitably exceed the time limit beyond our control. Some because there are some exceptions to the statute of limitations for pending criminal prosecution, and on those types of

things that really we wouldn't necessarily be investigating, there's not much that we can do about that. But for those cases that we can, and there are a number of them, we have to really focus on getting those done, and prioritizing those ahead of some of the others. What has happened here in this case is we had a couple, a number of high-profile cases that have been in the press that were junior in time but greater in severity. That caused us to jump those ahead of the line for our investigative resources, which let the other ones age before they should have gone. And that became a resource issue, and that's when I immediately when I came in as the acting in October, when I looked at the numbers and added another sergeant to get started on getting those older cases out the door. We still have a couple high profile cases that are going to start to age pretty quickly so we are really focusing on it so Rick, lieutenant Wager has done a great job in pushing that. So I don't think you're going to see very many next year. You'll see some.

>> Councilmember Liccardo: And I appreciate this problem clearly preceded you coming into office. We were having a lot of conversations about it two years ago. And it's not necessarily IA's fault, because I understand often the reports were getting off their desk and sitting upstairs and that kind of thing. At the time I remember talking to Dan Katz about it, and he said he had the reports piled on his desk, and everybody just felt overwhelmed. I understand there's a challenge here. I guess beyond the personnel and adding people what is likely to happen in terms of what mechanisms will there be in place to ensure that the IPA can get the reports in a timely way?

>> Chief Moore: Part of it is my attention to this. Again, as a former internal affairs commander which, when the 3304D, which is the statute when it first came into effect, and how we'd lost a couple of cases at very beginning of this, and I don't know if Rick recalls this, but the idea was, we will never let that happen again. To the extent that we can make it happen. So when it becomes important to me it becomes important to everybody else. I ask the question routinely as to where we are on these cases and if I had to I would add additional resources until such time as we got below the threshold on all cases where we had the impact or ability to influence it. The idea is not to have any next year. I do believe I'm sure there will be a handful because we can't do anything about they'll probably be there.

>> Councilmember Liccardo: All right, fair enough, thanks chief. Then as I ask these questions I'm very mindful of what the mayor said, almost 400,000 calls, 28,000 arrests, 1% of the arrests ever end up in a complaint, and 90% of those everybody agrees are not sustained or something equivalent. So I understand we are focusing on a very small number of the total reality here, but to focus on that small number again, as we think about the questions that are asked inside the room, you know I'd heard in past years ongoing concerns about the fact that questions would be suggested by an IPA, I know it's detailed here, I think on page -- on page 47 of the report, and what I'm particularly concerned about is a response to the IPA or assistant IPA that the questions are refused because they're not relevant. I understand there are legal reasons why the IPA officer needs to be asking the questions but I'm really concerned about determinations of relevancy that are being made prior to asking questions.

>> Chief Moore: Councilmember, when I first heard it, I had the same concerns that you did. The judge brought it to my attention, and I think we remedied it within a day. Just to make sure people understood. The other thing is, we're going to do -- the judge and I are going to be training not only on relevancy, was just over the top, but with respect to the objectivity and leading questions and what constitutes a leading question. I think there is some training that we will be doing in June to address that.

>> Councilmember Liccardo: Great, chief, I appreciate your attention to all that. And the last thing I know I'm getting nitpicky, but on page 7 of the department's report and if you look at page 6 on chart 2 B it discusses or -- displays the completed allegations versus completed sustained allegations. And in particular, the footnote is what I'm looking at and I know this wasn't really discussed much, but it caught my eye. And it was that there were no department initiated allegations, a search and seizure, arrest or detention bias based policing received. Now I understand there are a lot of concerns raised around the fact that some kinds of complaints were never sustained. But this stuck out in my mind because you know as we sit through the court process we reckon occasion judges will suppress evidence because of violation of fourth amendment. It's not terribly unusual we obviously will all hope it doesn't happen very often but it happens. It happens with some frequency. And I'm a little concerned that there are no DIIs initiated by the department in this area. And I'm -- over a span of I guess roughly

five years. And should we be concerned about that? And I guess I'd ask both -- both judge Cordell and the chief, should we be concerned?

>> I think as far as the a DII the sources from which those would come from, typically are the citizen-initiated where we do have those numbers there. But from the bench on those occasions when that might occur I'm not aware of any coming into us at internal affairs, I'm not sure if the judge has any, whether you would get them, the judge having been there I don't know what the practice of the bench was.

>> Councilmember Liccardo: I'm sorry, I probably wasn't clear with my question. I wasn't suggesting that the complaints had come in as a result of what the judge did or didn't do. It's more of a question of some look, we understand that many department fourth amendment violations are going to happen, right? And eventually if it gets to the point where the judge suppresses the evidence, then we know okay, at least in the view, the judge under law then there was a problem, right? Why aren't there any identified instances within the department in which the department's saying, probably shouldn't have entered without a warrant in that case? Even before it ever gets to a judge, gets to a court.

>> Chief Moore: Pure speculation on my part that we're that good that it doesn't happen. But in trying to think threw scenario where there might be a concern, and that as supervisor might be reviewing a report and be concerned about the language in the report, or the lack of probable cause or some -- and either take remedial action then or if it's an issue of documentation, that the documentation is correct, that it's factual but it's sufficient enough that you don't have those complaints. In the times over in my own career you ask the officer you read a report that on its face would say I have questions about, that would you ask the officer before you sign the report because this is your name attached as a supervisor to that report. Tell me what happened. And they would relate to you what would happen, and it would be sufficient but not well documented and they said you need to write this, to include that, what occurred.

>> Councilmember Liccardo: Right.

>> Chief Moore: As opposed to I've never had the experience when an officer came up and said, I just felt like searching, some obvious violation. I'm just not familiar with that. But I'm sure we have had a number of people complaining, there was no reasonable suspicion to stop or reasonable cause to search, or anything like that and they would come in with an initiated complaint.

>> Judge Cordell: I just have two observations, one is that, I hope councilmembers are aware, the IPA office is not permitted to audit any of the department-initiated investigations. So I can't with any kind of authority comment on the lack of there being these kinds of concerns that are listed in the footnote. Do want to make one other comment and that is in response to not only what the mayor said but also what Councilmember Liccardo said about the small number of complaints in light of how many hundreds of thousands of calls for service that have come in. I just think it's while that is a fact that the complaint numbers are very small, the impact of just one of these cases can be tremendous. And in a negative way. And that's why even though the numbers are small, it's very important. Because the handling of just one of these complaints or few of them by the police department, and by our office, can either assure the community that is police department takes its -- the complaint process seriously, or not. And that goes a long way toward establishing or not establishing trust in the community. I agree the numbers are small but at the same time I think every one of these cases, all the case are important, but some are especially significant.

>> Councilmember Liccardo: I appreciate that judge. Maybe if I could just offer this perspective because I don't pretend to know what the reason is, knowing this is a complex organization and there's a lot going on. But as a DA I certainly sat in a position of having to issue a case and deciding we just weren't going to file a complaint. Or you know, the information or go to the grand jury with an indictment because there's a fourth amendment problem. There's an arrest problem as well, maybe a Sixth Amendment violation or fourth amendment violation on search or whatever it may be. And the response to the detective who comes to us is, sorry we can't file. And that happens with some again some regular later, though obviously not a lot some particularly San José PD tends to be very professional in doing what it needs to do to follow the rules. And I recognize that some of those calls are judgment calls that are close questions, and there's a lots of gray area. But it seems to me that there should be a

better feedback loop, to ensure there's a DI that gets filed when there seems to be a clear egregious violation of the fourth amendment fifth amendment Sixth Amendment where an officer should have just done something.

>> Chief Moore: Councilmember, what I'd like to do is reach out to the District Attorney, Jeff, to ask him for that, to raise that concern. It's about a concern if we're not seeing any numbers at all and his office is seeing something how do we close that loop? I will reach out to him and maybe the judge and I both can.

>> Councilmember Liccardo: I appreciate that chief.

>> Chief Moore: You bet.

>> Shivaun Nurre: Just a comment on that last suggestion. I have not seen any hard and fast rules in other oversight communities about whether or not the D.A.'s failure to register a case automatically registers as a DII. But other departments are tracking that data in an early warning system, and I know the department here is looking at perhaps expanding their early warning system to include other elements. So for instance I believe in Los Angeles they do look and track cases which -- in which an arrest is made which is rejected for filing by the different.

>> Councilmember Liccardo: Thank you, and I wouldn't expect it to be automatic but I think it would be at least worthwhile looking at.

>> Councilmember Nguyen: Councilmember Rocha.

>> Councilmember Rocha: Thank you, vice mayor. Let me thank you, Judge Cordell for this report, I find it extremely well done. And I also feel your approach from the short time I've been here, the job, position and work is right on target and commendable in its motive and intent and I'm very impressed each and every time I see any work you put forward or see you speak on any issues. And I too want to share the same praise for chief Moore. For your openness and willingness to listen and work towards a goal, any of these goals and good

outcomes for residents and officers. I think the interest both is really important. As for your recommendations I concur with both of them and it is my hope that you continue this work and also track your current and past recommendations in each annual report. I think that would be really helpful. Do I have a specific question, I think it's more for the police chief if you don't mind. And that is IA in general. And my question, I want to say a concern, my question is more out of I guess for lack of a better word ignorance or negativity on the issue in understanding the IA work and your department. Actually, Councilmember Liccardo just spoke to those unfortunately. So it was more about staffing levels and staffing decisions internally for those assignments and if you feel that the division is on target in the work its doing or if you see any need since the short time you've been the police chief for any changes, minor or major.

>> Chief Moore: Thank you for the question, councilmember. I'm fortunate to have served in that role, and some people think that's an odd choice of words, that I was fortunate to be the IA commander, but it really does give you an insight into the workings of police work and police oversight, and how do you monitor misconduct and how do you address it in an organization and how really important it is for the trust and confidence. I think back to our staffing levels when I was there in early 2000 and we had more civilian staff we actually had a senior analyst. We had more analytic capacity and support than we do today and yet we have a very similar number of investigators. So what we are doing is we are doing the investigative work because we have to do the work but we're missing some of the analytic piece. And what I see, with the judge's presence, she's been able to add that to us and it's been a value-add that we've lost over the course of the last six, seven years. Having said that, sure, I would love to have that analytic capacity in-house, to detect trends. But in the absence of that we realize with our budget constraints we probably won't see that soon, that we rely upon better tracking system. We are, we have a new, not new computer system but since I left, IA pro. We are looking at a new early warning system, or early intervention system, to help us with that tracking capability. But it takes somebody to sit there and go through that data to tell you okay these numbers are there but what do they mean? And what could they mean? And how do you address them? Long winded answer to your question, I think it is fall behind particularly on the timeliness I will add staff to address that. But at the same time, I think where we could use some help is some analytic support.

>> Councilmember Rocha: Let me concur with the point you made in that the effectiveness and the integrity of that department is really critical. The public trust, I don't have to tell you about that, so thank you for making that statement. So I'm going to close with that and let me offer judge Cordell any help my office can be to you and your outreach in the community or your work here my door is always open so thank you for your time.

>> Councilmember Nguyen: Councilmember Pyle.

>> Councilmember Pyle: Can I ditto that? I would like to say too, I am just amazed and I'm not surprised because you always do things in such a professional way but I am very impressed with your very professional and talented staff and I can see why you are so immensely proud of them and very appreciative. This is a beautiful report, and I have this right here. I do want an autograph. It's very well done. It's a very definitive layout. It's interestingly put together, but it includes a ton of information. However, you don't feel like you don't have time to read it. It's very interesting. I notice it's the first time I've seen an inclusion of the Mexican consulate. And I do understand that a consulate, David, will be going on to another assignment, so next year we'll see another consul at member. I applaud you for that. It was a very wise decision. And according to my calculations which are primitive at best, you made outreach to almost 200 people. You must have roller skates, maybe that's why your knee gave out, I'm not sure. But I know you are on the go almost at all times for quite a long time. So thank you for that. The review process and the evaluation form, the review process on page 41, I did want to compliment. That was very impressive, I thought. There it is. It's the first time I really understood what in blazes goes on between the time that a person is accused of something, and what happens at the end. This is a wonderful graph. Thank you for including that. And I also liked the recommendations and concerns on page 43. Not to pooh pooh the evaluation form on 67. That was something that I thought that was very valuable as well. So everybody as some -- you get feedback in reference to how people felt as they dealt with your office. That's a very wise thing. And then of course, the media contacts, oh my gosh! I appreciate the fact that you got right out in front of the news when there was a leak or a supposed one or a rumored one and you put it to rest. I thought that was great. The final assessment is page 4C, and that would be right here. Hold on one second. I appreciate the fact that you're always looking for trends. To me that tells volumes where we're going, how we're heading and what to anticipate. It's interesting to me, too, that you do track injuries to the head. I

thought that was a greatly thing to do because sometimes there are problems later on that we really don't detect so thank you very much for an extremely well done job. And Chris, I appreciate you as well. The leadership that you've shown has been stellar, and I do appreciate too, the fact that you do the oral counseling. To me, every time you counsel an officer you are potentially saving his or her life. And I don't know do they understand that, that they have a better sense ever survival if they get the counseling and they do get into the good habits?

>> Chief Moore: Some do more than others. But like any employee, when you bring it to their attention they are much less likely to do it again, because they realize people are paying attention.

>> Councilmember Pyle: So I really appreciate that. You've done a tremendous amount of work and I'm really happy about this. I did have one question. Once again, excuse my scratchy math. But you had around 387,178 formal calls, and then of that there were 27,969 arrests. So that is a lot of people that were just not included in this whole system. How did that work?

>> Chief Moore: As far as -- yeah, a lot of times we'll get a call for service where we don't arrested or cite anybody. In fact it's a vast majority of those we don't necessarily have to take enforcement action. But we are called to the scene of an event, it's even a car crash or something like that or even a dispute, you're able to mediate the dispute and able to move on without taking any enforcement action. It's not necessarily a positive action, but something that we're being called to something that's requiring our presence, has the possibility of an arrest yet there's no arrest.

>> Councilmember Pyle: I appreciate all you're doing.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, judge Cordell, I just want to let you know that I'm very pleased and impressed and happy with everything that you've done in such a short period of time although I absolutely can say I'm not surprised and my praise certainly extends equally to your staff many of whom I've known for some time

and their tremendous hard work really shines. And this report is, as I concur with other council colleagues, very well done very easy to read and understand, most importantly for the public. I think sometimes we can understand some of the details after being here for some time and the public's ability to understand it I think is the most important thing. And that's why I really appreciated how it read and how easy it was to understand. Most of my colleagues have asked the questions and expressed some of the concerns that I share. I do support the recommendations and I particularly for something that hasn't been mentioned yet detailed the recommendations regarding tasers, I think that's certainly a moving target both from a legal side, manufacturer's perspective and out on the street how they're used. Which has always been a concern of mine. I understand it can be a tool that is valuable. However I think it's something that we need to closely monitor, both in terms of litigation cost, and any potential future litigation and more how our officers are using the tool and making sure that it's being done appropriately. On the issue of timeliness I think that it's clear, that the chief is listening and I think that we're not always going to be able to maybe give you all the resources that you need to ideally meet expectations. However I think that setting the expectations with the appropriate time line and with the best of intentions, I think that we'll hopefully be able to meet the recommendations which I think are prompt in order to ensure again both the individual complainant as well as the officer can receive some closure in a reasonable period of time. And mediation I know that might be in a future report and I really look forward to the result. I think they're going to be outstanding, the had the pleasure of running into judge Emerson last week when he was in City Hall, preparing for the mediations, he was very excited, I think Foley, Emerson, and these are some -- for those that don't know, these are some of the best of the best judges that this county's ever seen. And to have them volunteering their time for this program, I think that the residents and the police officers are going to gain so much out of this. And it's just going to ultimately make our officers better and make our residents nor satisfied with the whole process. And frankly, cut down on some of the caseload as well, which again as judge Cordell indicated earlier will save us money which is always a good thing during these times. And finally, you know Chief you indicated that your -- that judge Cordell, the IPA office, although it may make your job easier, it doesn't necessarily make your job easy. And it's not there to make your job easy. But as you said earlier, you're grateful with the model of police oversight we have here in this city, and the reality is, it wouldn't work with both the independent police auditor and the police chief being the right people and being willing to work together. And that's been mentioned a few times. I think the city should be grateful for both our independent police auditor and our police chief for

working together and for understanding that we have a common goal of having a police department that is the best of the best, and we can't get there unless we work collectively and we understand the needs of the community and make sure our officers understand, they're only human and we will keep making them the best they can be. And that our residents can be proud of the department. Thank you so much.

>> Thank you.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. I also wanted to echo my appreciation to the IPA and all the staff for a very thorough and detailed work I want to especially thank Shivaun for stepping in during the first part of 2010, where we very, very much needed your leadership there. And thanks to our chief, and your openness, I just after I read through this report, I just wanted to point out to the public who's listening that I believe San José does have a very good police force. Like the chief said, we're not perfect. We have room for improvement. I can see you're very committed to make those changes and I'm just -- I know that the department will be a better one a year from today. Also I wanted to personally thank the judge, the IPA office and the chief for coming out to my District 4 public safety dialogue. As you may know that I have held a series of public dialogue in Spanish, Chinese and actually allowed me to do a little quick ad here, we'll have one in Vietnamese this coming Saturday at the east side union high school district. Although the dialogue will be in Vietnamese, but you know, anybody from any district are welcome. If you don't have a chance to meet with our chief and meet with our IPA, here is your opportunity, so thank you very much for report again.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you mayor. A lot of my colleagues have expressed much of what I feel. I just want to congratulate the judge on a fantastic report. Very easy to read. Very informative and I think as already been said it doesn't surprise me. You basically when you went through interview you told us what you were going to do, and you're doing it. So it's just great to see the results here. I just wanted to call out a few hinges

things. Really appreciated your outreach coming to District 8, District 8 round table. I think a lot of people were impressed by that presentation. And also the outreach, the organizations that you've created, the IPAC involving people on an ongoing basis. And your youth program, the teen leadership program I think is tremendous. In fact I got a call from someone who wanted me to know that their child was accepted into your program and you -- I mean it was as if this person had won a scholarship to Harvard. I mean the pride and the -- you know the feeling of being included in this, it's really -- it is really taken on a great significance in the community and I thank you for that. Also the way that you work with your staff. You brought them all up here. You reminded me, I'll bring out my staff and remind them what a wonderful job they are doing. They just heard it. The partnership with the chief. This is just such an incredible partnership we see here. And I think before this, before we brought you on and in past when we've had not such happy meetings here when we're talking about this subject it's just wonderful to see how the teamwork has changed this. I mean, you can almost hear crickets out here right now, and that certainly wasn't the case before. I like the rolling implementations. You are not waiting until we have the recommendations and then we're going to implement it next year. You're implementing as you go, which is fantastic, so we're getting the results and probably even saves us money somewhere in there. Even though there's a very few events and I think that everyone here is proud to say we have a really great police department, I'd say one of the best in the country if not the best in the country I think creating that trust resolution those little issues makes their job easier. It makes it easier for anybody in the community that did have an issue to now feel good about trusting our police department, as most everybody does. So I just -- I just think it's incredible. So my other comment on this is that you guys are creating institutions that will outlive you. Because even though you two are fantastic, you're not going to be here forever. So those outreach groups that you're creating, and I wanted to also add -- you guys to address that issue, both of you how are you creating sustaining aspects of this that are going to go on after you're not here anymore?

>> Judge Cordell: I concur with your opinion that a good organization is not one that is personality driven. Because when the person goes, you want an organization that continues. So it is -- you're seeing what I'm doing, at least in my office, and that my staff gets it. They're very involved. They understand my approach to all of this. And it's just a mentality in our office that I didn't have to instill. It's there, about one working hard, but also

understanding what our mission is. So I don't think this council should have any concern that when it's my time to move on, that this office won't continue to do what it's doing and doing it in a stellar fashion.

>> Chief Moore: And I'll echo that same sentiment. Part of succession planning in an organization, particularly a large one, is that you model your behavior so that those that are coming up behind you understand the importance of it. They might not get it right away, the rationale, but they watch you doing it, they ask the questions, why are we doing it this way. You are able to offer them the reasons and show them, it becomes much easier for them to model that and it becomes institutionalized so you don't have to recreate the wheel every time you have a change in leadership.

>> Councilmember Herrera: That's great. And my last question, or a question that I have is on the slide on page 27, complaints concerns by council district. You have looks like about 13%, yeah, it is 13% of unknown outside city limits there's 37 of them. If they're outside the city limits, how is the San José police department involved in that? I'm just curious.

>> I think the answer to the question is, it's more unknown than outside the city limits. There may be an occasion where a San José police officer takes enforcement action outside the city limits, you know if we're in a pursuit and we end up someplace else and a complaint is generated, those situations are rare, very anniversary rare. They are still beholden to us for their actions wherever they may be. Sometimes conduct unbecoming where people live outside the jurisdiction may be finding themselves in the contact of law enforcement elsewhere and becomes a problem there.

>> Shivaun Nurre: I think Chief Moore is on spot with that answer because some of the CUBO allegations that we get occur outside the city limits, but because they meet the definition of CUBO in that the officer's conduct reflects negatively on the department, we do enter that complaint in the complaint system.

>> Councilmember Herrera: So it might not be in official capacity of their duty when that happens. I got it, okay.

>> Judge Cordell: The other thing we're going to do in 2011 is track the residences of the complainants to see if this is tracks where the incident occurred but it might be interesting and I think it may have been the mayor who suggested it at one of our meetings, to track how many outsiders are there lodging the complaints, versus insiders, meaning living in the City of San José, hadn't been tracked yet, so those are some of the incidences we're going to track for 2011.

>> Councilmember Herrera: Well, that's why I wasn't sure if that's what that was.

>> Judge Cordell: That's incidents where the incidents occurred.

>> Councilmember Herrera: Great. And I just remembered, I do have one more question. So we are looking, we're assuming, we are tracking in here community. Are we also looking at how the police officers, they're feeling now about how things are going? Because I know that before there was a lot of concerns about the perception of the public. And I'm guessing police officers are going to start to feel better as they feel less of these media incidents and more of an effective relationship with IP and everything. I don't know if we track that or we do -- do we try find that out?

>> In some years past there was a survey sent to officers but we stopped doing that because we had so few officers responding. It became a resource issue. But given the current climate and maybe the interest of the officers we could always look at something else.

>> A whole lot that's going on I'm not sure that they're necessarily focused on this partly but any attention that is not on the media is probably a good thing all things considered. That's why again working with the judge we have been able to sort of dial down the temperature a bit, as a result of how we're doing business. That helps overall, how you measure it I'm not sure except through a survey instrument that we could do.

>> Councilmember Herrera: I am hopeful that if you did do one you would find out that there would be a different attitude or more improved attitude about the police officers too I think we have the finest police department in the country and you guys are making it better, thanks.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. Just wanted to again kudos to the chief and the judge. I would say, on how you both complement each other and how you've worked together, so well, I'm just coming onto the council so I've been able to see the two departments, regular Joe citizen from the outside and have seen some of the contentious positions that the two entities have had in the past. And I think the beneficiary of the leadership here is that we can now start a road to where a segment of the community can start to rebuild trust back into our department. And I do remember times where trust was a lot better in the '90s and when the compartment and the IPA initially came up. I just wanted to recognize you all, and I just see it getting better. I wholeheartedly agree and support the recommendations, and particularly, on page 44, where we're looking to revise the requirement of mandatory notification to parents. I worked with kids for a number of years and I can't tell you when kids are getting just a citation, and if the -- you know, the parents aren't notified, those parents aren't going to find out. And you know working at a youth center, occasionally we'd have to bring in officers to deal with kids. And the one thing that the kids were most tear fight, they knew we were going to call the parents. Because they knew if it didn't happen there, parents weren't going to find out. So I think that that's an added benefit because parents -- you know, parents want the best for their kids and if they know what's going on in their lives they are going to pay much more attention to make sure the kids do what they need to be good sons and daughters. My colleagues have expressed everything else that I felt so again congratulations and I look forward to great things from both of you. Thank you.

>> Thank you.

>> Mayor Reed: City Manager.

>> City Manager Figone: Thank you, mayor. I just wanted to add a few thoughts. First and foremost you know, I really appreciated judge the no surprise approach that you've taken. We meet monthly. And you know, the early heads-up, I think has really helped me to understand better the issues that you and the chief are already working through. And you've really not had to bring anything to my attention because of the really I guess unconditionally constructive relationship that you and the chief have. And I really appreciate that. The other would just be I share your concern about timeliness. I haven't had to hear any appeals since you came on board and the chief came on board. As the chief knows in the past when those came to my desk late, I felt that my back was up against the wall. And so I share the concern about timeliness so that we can work through these issues in a way that gives everybody the space to do the right thing. I really appreciate working with you judge and you chief thank you for the tone that you've helped set through this collaborative relationship.

>> Mayor Reed: Motion to accept both reports. I have no cards from the public. Make note of that! Not a single card! On the motion, all in favor, opposed, none opposed, that's approved, they both are approved and congratulations, thank you.

>> Thank you, I just have one final comment to make. One is on our team leadership council, we've already met, our first meeting, it was Diane, the parents and the kids came to the first meeting it was wonderful. Second you notice on page 12 and 14 most frequently asked questions about the IPA, that was Brenna's idea. And we've now made it into a one-page handout. So when I do my outreach we also are able to hand these out. Eventually we're going to have them in Spanish and in Vietnamese, so people can really understand what our office is about. And finally it is the mayor, Councilmember Rocha and Councilmember Campos who have been over to our office. It's only two blocks away. I invite you all, come see where we work. And I think Councilmember Chu has been over. And I don't remember seeing you Councilmember Oliverio. I don't know. I don't know.

>> Councilmember Oliverio: You your predecessor. Your predecessor.

>> Well, so I encourage you who have not come over please look see where we are. I'm glad to show you, it's a small space, it's an important space. Thank you so much, all of you councilmembers, the mayor, City Manager for

your ongoing support. I could not do this work in the way I've done it without your support. So thank you very, very much.

>> Mayor Reed: Thank you. Do we have any requests to speak under open forum? No cards under open forum. That concludes our meeting, so we are adjourned. However, come back tomorrow, we were a little bit early today, we'll make up for it tomorrow. Budget meetings start.