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>> Mayor Reed: (gavel strike) Good afternoon. I want to call the San José city council meeting to order for August 3rd, 2010. Welcome everybody back from the recess. I know that most of you kept working the whole month of July, but it was nice not to have council meetings interrupt the work. And a lot of people got a chance to take some well-deserved time off. That was a good thing, but we are back to work. We will start today's meeting with an invocation. Councilmember Nguyen will introduce the invocator.

>> Councilmember Nguyen: Thank you, Mayor. Good afternoon. It is an honor and a pleasure for me to welcome Reverend Gerald Sakamoto from the San José Buddhist Church Betsuin located in the heart of Japantown. The San José Buddhist Church Betsuin serves members throughout Santa Clara County who are deeply connected to the history and development of the Japanese-American community who settled this valley at the end of the 19th century. Reverend Sakamoto has been with the San José Betsuin since 1986. He brings a high level of energy and focus on youth. His experiences as a former Eagle Boy Scout have inspired him to continue to be active in scouting programs with the church. Please help me in welcoming Reverend Sakamoto.

>> Thank you, Councilmember Nguyen, good afternoon, Mayor Reed, and members of council and staff, I'm honored to be here today. If you would join me with quiet thought. Buddhism, my preference are your preferences, creating division and collisions among classes, ideas and people. When I no longer see the other as brother or sister, then the problems and difficulties become my problems, versus your problems. Driving further the wedges that separate and divide the world into pieces. To begin to bring the world together again so they simply see it as it is. But it is not easy. We must make choices and decisions based on what needs to be done. Perhaps the path to enlightenment lies in seeing the other as like myself. Driven by seemingly inescapable conditions. May all beings be happy, may they be joyous and live in safety. Thank you very much.

>> Mayor Reed: Thank you, reverend. Thanks for joining us. We will now do the pledge of allegiance. I will note we have a pack of Boy Scouts, pack 337 Boy Scouts to lead us in the pledge. Please everybody stand. [pledge of allegiance]

>> Mayor Reed: First item of business are orders of the day. We need to modify the agenda order slightly. I will take up item 9.1 to be considered immediately following 3.1 which is the City Manager's report, and then item 3.3, ballot measures we heard last but not earlier than 2:30 p.m. Any other modifications under orders of the day? I have a motion to approve orders of the day. All in favor? Aye. Opposed, none. We will adjourn today's meeting in honor of Herb Wadley, who was a great person I met from the Berryessa school district. I know Councilmember Chu has a few words to say.

>> Councilmember Chu: Thank you Mayor. It is with deep sadness that we learned about the passing of George Herb Wadley on June 11, 2010, after a long struggle with cancer. Herb served with the Berryessa Union School District until he retired in July 1999. Prior to joining the Berryessa Union School District Herb started his career in education as a teacher, and then an administrator, at Campbell Union School District. During his time working in Berryessa, Herb quickly became an integral part of District 4, actively engaged and involved in the community. Herb was tireless advocate for teachers, children and the underprivileged. He has been a great pleasure to work with and I had the pleasure to work with him during his time at the Berryessa school district. Herb dedicated his life to improving the community that he lives in. Through his career in education and his involvement with the community, Herb is the highly respected, admired, and recognized as an excellent role model for all. Herb's efforts have touched many people's lives and have been privileged -- and provided hope and positive messages for those whom he interacted. He will be missed. Today we have Marsha, Herb's wife, as their son joining us today in remembrance of her husband. Thank you very much, Marsha.

>> Mayor Reed: Thank you. I thank the Wadley family and friends who have joined us today. Herb was a great, great person. He will truly be missed by all of us. We'll now move on to the next item, which is the closed session report. City Attorney.

>> City Attorney Doyle: Mayor, the city council met this morning in closed session pursuant to notice, there is no report.

>> Mayor Reed: I'll take up ceremonial items, I'd like to invite Megan Marshall and Tiffany Chu to join me at the podium. Today we are acknowledging some folks who helped contribute to our falcon program, helping name our City Hall peregrine falcons which we enormously enjoy having around during the season when they are here. We love to watch them fly and we have got the community involved in the naming of this in hopes of sparking some interest in the environment, and our falcons, and it's been a great success getting some folks from small to a little bit older engaged in it. So Tiffany Chu is a sophomore at Independence High School, and she used a little bit of her knowledge of peregrine falcons and a little creativity to submit the name Kikoa for the 2010 falcon-naming process. And that name was selected by the judges. And we also have Megan Marshall, a first grader at Forest Hill Elementary School in San José, who used her knowledge of peregrine falcons to submit the name Maya for the 2010 falcon-naming contest, and her name was one of the ones selected. So we are very happy to recognize the people that help us with this program. We have lots and lots of falcon friends. The falcons do have a Facebook page. You can sign up to be one of their friends. And we have people worldwide who follow these incredible animals, the fastest animal in the world. And we are really happy to have some of our students helping us in the program. So I have a commendation for Tiffany and one for Megan. [applause] Thank you very much. We'll now turn our attention to the consent calendar. Are there requests to pull items off the consent calendar for discussion? I have requests for 2.8 regarding the outside employment approval process. Are there others, Councilmember Campos? Any others? I have no requests from the public to speak on the consent calendar, I believe. Okay. Motion is to approve the balance of the consent calendar. All in favor? Opposed, none opposed that's approved. Item 2.8 has to do with the request of the independent police auditor for an approval process, and before we get started on this I'd just like to suggest that in addition to what's been outlined here as a possible way to deal with this, that there is an alternative that I think our IPA would find workable. And that is, to have these requests go to the Rules Committee, which has four councilmembers sitting on it meets every week, it will be done relatively quickly. Ultimately of course there would be public scrutiny of that decision, not just having the mayor and City Attorney do it. That would be another alternative I certainly would find workable. And I see judge Cordell nodding her head out there as she's heard of that idea before. That's one thing I would like to throw out for the council to consider, as I recognize Councilmember Constant.

>> Councilmember Constant: Thank you, mayor, as well for that suggestion. I would be comfortable with that. In this particular situation, we have an appointee that reports to the entire council. And when we make hiring decisions as a council it's done as a group of 11 of us. And when we establish the terms and conditions of employment, again, it's done as a consensus or at least a majority vote of the 11 of us. And I really think that if there's going to be any modifications to that, that it should come back to the council, or at minimum, a council committee like the Rules Committee that you mentioned, because then it gives an opportunity, although this is the first time I'm hearing it, it gives an opportunity for the Rules Committee to vet it, and then also if there's any concerns when the Rules Committee report comes to council, any other concerns can be addressed. I just think it's important that council appointees report to the entire council. And that's my concern. But based on what you've said I would like to make a motion that is essentially what the mayor outlined, and that is, having any requests for outside employment be referred to -- or submitted to the Rules Committee and go through the Rules Committee approval process.

>> Mayor Reed: Okay. We have a motion as outlined by Councilmember Constant. Councilmember Liccardo.

>> Councilmember Liccardo: Just to respond to some of the controversy here. I think I'm concerned, I have a background concern here, about what I would consider to be something of an attack on Judge Cordell. I don't know anybody who has been employed by this city who has hit the ground running faster than Judge Cordell, and I have seen her in the public on a couple of occasions describing what has happened in her 50 days in office, which I think has been extraordinary. The fact that she, like other retired judges, might for instance take on a mediation over a weekend, is certainly unremarkable to me. We have councilmembers who have outside employment. I know Councilmember Constant, you have two outside jobs as well. This is really far from the extraordinary, seems to me, particularly in a time when we're all taking pay cuts. If judge cordell can do the job in an extraordinarily high level, seems to me there's not a significant reason for us to be raising issues about her judgment. You know, I guess the last thing I'd say is, as a council, if the council can freely take outside jobs, and in fact does so, you know, this is a little bit like Rob Blagojevich telling political officials that they continue use blow dryers. We really shouldn't be in a position to be telling somebody else that they can't take an outside job, when we have completely free rein to do so and in fact do so with some regularity. In fact, frankly I think we put

ourselves in a fairly difficult position on this. I was perfectly fine with the proposal as it existed. The mayor's suggested alternative is fine, it's well, frankly the council is not in the best position to judge, unless in fact we're willing to forgo our ability to take outside employment, as well. And allow some other authority to rule on that.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you. I couldn't agree more. I don't agree with you with the Blagojevich thing. I kind of missed that a bit but outside of that I think you made some tremendous points. Now, supposing this happens more than once, so every single time that somebody wants to spend their weekend, which they're entitled to, over the job, do they have to continue to do that? Certainly councilmembers don't. So I don't understand why it would have to be docked in. If it was a case of giving information, in order to just let us know about it, so that if anything resulted as a problem, we would be fully aware. Outside of that however, I don't really think it needs to be something that is brought forward at every single Rules Committee meeting. And there is some urgency too with this request, as I understand, would that be accurate? So with this urgency, does that mean that this -- tomorrow, it last to go before Rules before we say yes? I mean, that's a bit sticky.

>> Mayor Reed: I think the way Councilmember Constant framed the motion, is that if judge cordell wanted to do some mediation job as an outside employment, on Thursday she would do a memo to Rules, it would be in the packet for the following Wednesday, Rules would make a decision on Wednesday. And so relatively quick turn around. I anticipate small number of these requests, like in single digits, somewhere around one but not many. So it wouldn't be a regular item on the Rules Committee agenda. It's just an easy way for her to get the decision quickly, to be timely and an easy way for the council to have some oversight.

>> Councilmember Pyle: Okay. I'm not sure where we're going to go with your proposal, Sam, in that --

>> Councilmember Liccardo: I didn't make one.

>> Councilmember Pyle: -- I agree with you and sit a formal motion?

>> Councilmember Liccardo: I didn't make a competing motion.

>> Councilmember Pyle: Okay, okay.

>> Mayor Reed: Okay, yes, Councilmember Herrera.

>> Councilmember Herrera: I am going to make a motion but I just wanted to say that I supported Judge Cordell for this position, and I'm very, very glad I did. I'm so impressed with the work that's already being done and how fast she has come up to speed and is getting things done. My main concern about this alternative proposal going to Rules is I just think it's unfair. And I think it's already been stated that city council members don't have to go through this process and I'm concerned that we're singling her out, I'm not sure why. There are other appointees. Are we going to make them go through the same process? I think it's patently unfair. I would like to support the request that our IPA made in the first place I would like to make a substitute motion to that effect.

>> Mayor Reed: All right, we have a substitute motion to support the original request that those be approved after consultation with the City Attorney and the mayor. That's the motion on the floor. Councilmember Campos.

>> Councilmember Campos: Thank you. First of all, Rick, I know you weren't in the discussion with the full council when we were discussing to appoint the independent police auditor. But I recall that there was no concern about employment around mediation. It was a specific item that there was concern about seek employment, and this just seems like a really broad net, asking for her to go before the mayor and in consultation with your office, to see whether the two offices can approve an appointee that clearly reports to the full council. So I will not be supporting and with great reason. I don't think that the independent police auditor should have to seek authority or approval from the mayor's office, and the city attorney's office, to do mediation. I can support some of the comments that have been made from my colleagues around additional employment. I think if we're going to approve additional employment, that it needs to come to the full council. I can't support it going to Rules and I can't support it only going to two shops. There are seven councilmembers that will not be able to give input. And

from what I understand, the terms were around employment in a specific area. So not knowing whether I can disclose that discussion, but since it was in closed session, I just will not be supporting the motion. And it has nothing to do with the work of the independent police auditor outside of city employment. I just think that if she decides that she wants to do mediation, she should be able to make that decision. And move forward and not have to bring it to a selective body.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I don't necessarily disagree with the sentiment that Councilmember Campos made. However, the contract that we all agreed to with Independent Police Auditor Judge Cordell does speculate that she needs to request permission for outside employment. Given the fact that the current motion on the table, which is the recommendation that was first put forward with the memorandum, dated July 12th, 2010, states, it's a very narrow recommendation, which basically says just in regards to outside employment providing mediation services that she go to the mayor's office, the mayor will consult with our City Attorney make sure there's no conflict in the mediation that's being provided. If we don't approve this, that will preclude Judge Cordell from doing outside employment, and I don't think that is the intention, at least doesn't sound like the intention of folks up here, regarding mediation services, given the fact that she is a retired judge, and that's commonplace for retired judges to provide mediation services. I will support the motion on the table because I think it will allow a smoother process which will be very simple -- should be very simply implemented by Rick and the mayor just to make sure there's no conflicts with the mediations that she will be providing.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: I just wanted to respond to a few things. I don't understand how asking a council appointee to do exactly what every other employee in the City of San José, save the elected officials who are not employees, to do and that is, to request and receive permission for outside employment by their appointing authority, that is in place for every single person under the employment of the City of San José, I don't see how that is an attack or as was referenced in the newspaper as hateful behavior, when it is simply something that we

do with all employees. And council appointees are employees. It is contained, as Ash pointed out, in the employment, it was something that was negotiated, and this body is the appointee. There is -- also the difference with the elected officials is that we report our outside employees out very regularly. People can see our outside income on a quarterly basis, annual basis with our Form 700. So there is transparency in what we're doing. In fact, voters are very clear on that and they make the decision and they're our appointing authority and they can, if they feel someone is employed too much outside, they can do that. By the way, I only have one form of outside employment if anyone reads my disclosure reports, unless you count the one that makes zero money for the last two years because there is no employment did in those are areas. I don't think what we're doing is all that extraordinary. It is as a matter of fact for pretty much everyone else, to address the issues that Councilmember Campos brought up, the rules committee actions are not final until the Rules report is brought to the city council and ratified by the entire city council, just like all other actions whether they be open government initiatives, sunshine appeals, any of those other things that come to the Rules Committee, have that. But I think it is important that the appointing authority be able to look at destiny request, and see what the impacts are. Sam made an assumption that it's just weekends. It may be. It may not be. We don't have that information. Those are information that is requested by the appointing authority or the supervision of employees when they submit their form for outside employment. We have existing forms that people do. And that way, you can see if there is perhaps mediation that is Monday through Friday 8:00 to 5:00 is completely different than mediation that occurs on Saturdays or Sundays. I think it's simply making sure that the council upholds its responsibility as the appointing authority of all the council appointees and I think that's the way it should be.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Rick, a question for clarification. The IPA, like any council appointee would be required to file a Form 700, for public disclosure?

>> City Attorney Doyle: Yes, yes.

>> Councilmember Liccardo: So the public could see at any time her outside income and her employment?

>> City Attorney Doyle: Any source income, right.

>> Councilmember Liccardo: Great, thank you.

>> Mayor Reed: I have one request from the public to speak, I'll take that now, Steven Hazel.

>> Yes, Steven Hazel. As you know in the past, you have resisted requests from the previous auditor and made her life more difficult. She was in a no-win situation with a spy and everything. She had no chance. Now Judge Cordell, the residents of San José are fortunate to have her as an independent police auditor. Mediation, a policy which should be embraced and adopted by other cities. What is she doing? She's in essence practicing what she preaches. Okay? Now, you call -- you say you're her boss. Did you expose the spy? Right? The spy, the mole, the rat, Suzanne Stauffer? No. She got the spy out of her office, okay. Now she could do her job, okay. Now, you rely on the City Attorney for his expert legal advice and opinion regularly. I think that's appropriate. If there's a problem he'll let you know. And even if she did have a gig a month, that's 12 a year. If that's appropriate, even 12 a year, what's a number, one a month? A mediation? A superior court judge with almost 20 years' experience? So, you know, and not getting off track, eternal vigilance. There's always going to be a Johannes Messerling in the police department. Who comes to mind? Chad Marshall. Thanks a lot.

>> Mayor Reed: That concludes the public testimony on this item. Any other requests to speak? I have a motion on the floor, Councilmember Liccardo's motion to approve the original -- I'm sorry, Councilmember Herrera's motion, did you get the second Sam? Okay, I was close. Councilmember Herrera's motion to approve the original request from the independent police auditor. All in favor, opposed, we have two opposed, Councilmember Constant and Councilmember Campos, and I would have been happy with either one, so I think that concludes that one. That passes on a 9-2 vote. Thank you, judge cordell. That concludes the consent calendar. Now move to item 3.1, report of the City Manager.

>> City Manager Figone: Thank you, Mr. Mayor, members of the council, welcome back. I have two items to report on this afternoon. First of all on our organizational transition which is underway. Last week was a difficult week for our organization as we laid off roughly 200 employees, something that is unprecedented in recent memory. While there has understandably been much attention focused on the layoffs the organizational impacts that are occurring, not only as a result of these layoffs, but also, from people moving into new positions, with new responsibilities, is profound. The ranks of this organization have thinned since a year ago by more than 700 positions which is a 10% reduction in our workforce. No organization can undergo this sort of change without experiencing a real decline in capacity and a loss in productivity. We must view this time as an organization-wide reset of expectations. As a result of seniority and bumping effective next week 460 employees will be sitting in new positions with new responsibilities. In some cases these transitions will be happening smoothly and quickly but in many more cases employees will need some time to learn the new skills and responsibilities that they will be required to perform in order to be successful in their new jobs. As a rule of thumb employees in new positions need at least six months to master the skills and knowledge required of them as they go about their new jobs. While our desire to meet every request remains unchanged, as an organization we will at times, quite simply, be forced to say we wish we could but we can't. I would like to thank all employees for their professionalism during this very difficult time. And I would ask the city council and the community to be understanding of this new reality. My second report is actually a comment on an unheard of and unfortunate set of circumstances that have occurred during our session. During the July break the Los Angeles times wrote a story about the city of bell and the obscenely high salaries that officials there, including the City Manager, were being paid. These salaries have been widely condemned, both by the public and by literally every professional public management association in the country. The national and California chapter of the international city county managers association, otherwise known as ICMA, noted that the excessive compensation packages during a time in which local governments are struggling to provide essential services to communities are damaging the public trust. The league of California cities stated the salaries reportedly paid to senior administrators and the city council shocked the conscience. I wanted to add some personal thoughts about this. As public administrators we have a duty to uphold the public trust and to always keep the best interests of our cities first and foremost in the decisions we make. Like so many others, I'm shocked and dismayed at the compensation levels of the Bell City Manager and others in that city. At a time when cities across California and the nation are facing such severe

problems nothing could be more important than sustaining the public trust and our professional credibility which is why these excessive salaries are so disturbing to me. The powerful antidote to salary abuse is transparency, and the City of San José has a long history of transparency in this area. With the sunshine reforms approved by the city council are now routine in our operation, the salary of every single employee is routinely released, and the salaries are posted for all to see on the Websites of our area newspapers. I would also point out that for decades San José has routinely released the salaries of our highest paid managers allowing the public to clearly see how our managers are compensated. In closing I wanted to ensure that the council knew that I find what happened in the city of Bell completely unacceptable. And that concludes my report.

>> Mayor Reed: Thank you, City Manager. We'll now take up in joint session with the redevelopment agency item 9.1, some actions related to major league baseball. I want to disclose as we get into this matter that in preparation for it I had a lot of conversations with the owners of the A's, Lew Wolff, Jim Kineen, their representative, along with folks like Michael Mulcahy and others of pro-Baseball San José in preparation for this, and I see that Michael Mulcahy is here, along with Susan Hammer, the co-chairs of that organization. And as most everybody has figured out, I'm no longer recommending that we go to the ballot in November. As the request of the commissioner of baseball, that we give him some time to do his process, do his due diligence in the manner that he chooses, however slow and painful it may be for us. And because the commissioner offered to help pay for a special election, for a baseball matter, I thought it was appropriate to not push it into the November election cycle at his request. But nevertheless, I do think it is appropriate for us to adopt another resolution of support of the A's moving to San José which we have in the past and more importantly to make some amendments to the negotiating principles which the council approved back in May of 2009. To give a little more specificity to what it is we're trying to do but understanding that we don't have a contract, we don't have a project, we don't have a team to negotiate with, and so the negotiating principles are just that. It is not a transaction, but it does give the public an idea of what we think are important, and what we hope to be able to negotiate some day as soon as major league baseball gives us the "hit away" sign. And one of the things that I think is really important in the negotiating principles are the fact that we think this is a great transaction for the City of San José. Especially since it is privately financed, privately built, and privately constructed, with a 500 -- nearly a \$500 million investment in the City of San José, that will generate thousands of jobs, some in construction, some part-

time, some full-time, but nevertheless a lot of jobs and millions of dollars of tax revenues for local government, about 3 million to the city and the redevelopment agency. So there are a lot of reasons why we're enthusiastic about the possibility of this kind of a major private sector investment in our city, not the least of which of course is, there are quite a few baseball fans around, and that's a good thing. But ultimately, there are really important economic considerations in doing this, and I think modifying the negotiating principles helps clarify that. Many people would like to have more detail, more information, as would I. I would like to be able to sit down with Lew Wolff and negotiate some kind of a deal. We can't do that because major league baseball hasn't given us the go-ahead. But these negotiating principles do give people a pretty good idea where we think we need to go when we do get permission to start these negotiations. And that's why I asked that they be brought forward today so the council could take a look at them and direct staff to bring back a resolution incorporating those items which I've outlined in a memo with Councilmember Liccardo, Herrera and Pyle. With that I would recognize Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. I wanted to thank the mayor for his leadership and certainly, to thank mayor Susan Hammer and Michael Mulcahy for their leadership as well. The memorandum sets forth a set of additions to negotiating principles. I'd like to make a motion to approve those along with a resolution demonstrating or reiterating council support for a ballpark in the City of San José for major league baseball.

>> Second.

>> Councilmember Liccardo: Thank you.

>> Mayor Reed: I think we have a motion on the floor.

>> Councilmember Liccardo: I'd also like to emphasize. I've got a lot of questions from the public about exactly how the money, if there's any public money involved in this how it exactly gets spent or not. And I think it's really important to reemphasize, I think these negotiating principles make it clear, there is not going to be a dime of General Fund money in the stadium. The stadium will be entirely privately financed. There will not be any tax

increase of any kind to support this effort. And that the redevelopment money that is slated for many of the improvements that are described and have been mentioned in the EIR and so forth, much of that expenditure is investment that we would need to make anyway in the city. And in fact that we have slated in our downtown development plans for many years. For instance, the discussion of autumn Street is what we are required to build out if we are going to expand in the downtown with additional high rise development. It is a constraining factor to our ability to continue to develop in the downtown and for that reason we have planned to build out autumn Street for many years here. And it was expected that the redevelopment agency would be participating in that and obviously will continue to chase federal grants and other sources for that. The assembly of this site relating to the various parcels and money from redevelopment agency that we might use for the assembly, I think it's again important to emphasize that we have long regarded that as a key development site, whether there is a stadium there or a corporate headquarters there, that is a site which we need to assemble for the future economic development of our city and our downtown and it's critical to our future. And so it seems to me that the concerns that people may have about the use of redevelopment money need to be taken into context with our long term ambitions and goals as a city. And clearly, this is a stadium that offers us a half a billion dollars in private investment without, as I mentioned, without a single dime of General Fund money. And in fact, earns the General Fund considerable revenue, well over \$1 million according to the economic signals. We know, we've -- economic analysis. We know we've seen positive results from efforts like these. We've got an arena that provides between 4 and \$5 million in general fund revenue to the city, and I'm confident that this effort is going to leave this city much better off economically and fiscally. Thank you.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I just want to thank the mayor, for his bold leadership and also, thank Susan Hammer and Michael Mulcahy. I also had the opportunity to meet with Lew Wolff and Jim Kineen. This half a billion dollar economic development shot in the arm for us is going to be -- is significant. And I certainly don't apologize for our attempt to get this on the ballot. I think it was a wake up call, I think it was needed, and I think it has really let everyone know how serious we are. The community is serious and that we

really want to move forward with this. And I look forward to the day where we have baseball and a baseball park in sunny San José. Come out of the fog belt and come to sunny San José and watch baseball. Thank you.

>> Mayor Reed: Thank you. I will take some public testimony. I have a few people who want to speak on this item. Please come on down when I call your name so you're close to the microphone. Susan Hammer, Michael Mulcahy, Carl Guardino.

>> Good afternoon. Mayor Reed and councilmembers. Well, we're before you again to tell you how excited we are about the opportunity to get major league baseball in San José. Let me just say that most of you know that since our campaign to bring the giants here in '92, I have -- or I have continued to hope since then that we would have another opportunity. And back then, when we were trying to get the giants, the A's claimed as some of you may remember, Santa Clara County as its territory and they generously gave up those territorial rights for the giants effort. And I believe the time has now come for the giants to return the favor and allow San José and the A's to create a better future for the team here in our downtown. In many ways this opportunity to build a downtown ballpark for the A's represents San José's greatest opportunity since the voters had the foresight long ago, to approve what is now HP pavilion. That was in 1988, some of you may remember. More than 22 years ago. At that time, Tom McEnery was the mayor. I was a councilmember representing the nearby neighborhoods and Chuck Reed was a downtown attorney who also happened to be an invaluable treasurer who assisted with our various campaigns. Today, Mr. Mayor, I applaud your commitment and passion to follow through on this wonderful vision for our city and I stand with political and civic leaders from across our region ready to assist you, the council and baseball San José for this campaign whenever it may happen. Look at the Renaissance of Downtown San José that has taken place over the past 20 years and imagine, just imagine what the future could be, with a new baseball park just south of the existing arena. While there are details remaining to be worked out, the site is ideal for a ball park due to the proximity of public transportation, freeway access, parking, nearby restaurants hotels and businesses. San José can't afford to swing and miss again. I will repeat. San José cannot afford to swing and miss again. This is our best effort, and perhaps, our last chance, to build a ballpark and keep the A's in the Bay Area and generate the jobs and tax revenue our city so badly needs. Thank you.

>> Mayor Reed: Thank you. Michael Mulcahy, Carl Guardino, Paul Higgins.

>> Mr. Mayor and councilmembers. I first want to point out to you that we have many members, volunteers of baseball San José here to support, not all speaking but I just want to recognize them as representatives of the future of your support for baseball in San José. Clearly a ballpark in downtown and your unrelenting pursuit of that goal is something I hope you'll all continue to agree upon today. As we face budget cuts at every level it is important to remind our community that the additional tax revenue generated by the ballpark will provide millions of dollars to local schools and the city's general fund, and most importantly, won't result in any taxes on San José residents. 2.9 billion -- that's with a B -- in total economic output over the next 30 years. \$1.5 million dollars annually net new General Fund revenue. The ballpark adds revenue to the city. It does not take away. Working with the A's to build a ballpark will generate 2,000 jobs, full and part time, of which 1,000 will be net new jobs. The ballpark adds jobs to the city. It does not take away. A ballpark fits the criteria for what RDA-owned land should be used for, to lure private investment, that creates economic impact. The ballpark lures nearly \$490 million in private investment. The ballpark adds private investment to this city. It does not take away. Baseball San José is geared up for a campaign. We've hired staff, we're raising money. And we're working hard to mobilize and capitalize in the support we've built over the last four years. With another positive vote today you'll continue the message to MLB and commissioner Selig that San José is ready to be the next and best home for the Athletics. Thank you.

>> Mayor Reed: Carl Guardino, Paul Higgins, Yolanda Reynolds.

>> Mayor Reed and council, thank you for the opportunity to speak with you today. For the record, my name is Carl Guardino. I'm president and CEO of Silicon Valley leadership group and our 325 member companies stand proudly with you as you continue on this path. In fact, our board of directors voted unanimously to stand with you should you go forward in November and we will continue to do so as you move ahead. There are four main reasons why the Silicon Valley leadership group supports the principles that you are considering today, and we think those four reasons add up to a home run for San José and its citizens. Its employers and our regional economy. So the first base, no taxpayer dollars invested in the capital construction, operation or maintenance of

the stadium. The second base, at a time when we are suffering through an 11% unemployment rate, a half a billion dollars in economic development, and a thousand jobs, is a great economic incentive. Third base, the new stadium is a line drive from the current CalTrain, light rail, and ace station and the future home of BART and we hope and believe high speed rail. And finally rounding third and running home, Silicon Valley is a world class region known for its invocation and creativity. Our workers and their families will benefit greatly from a world class major league baseball team and stadium in our downtown. We're with you, mayor and council. Thank you for your leadership.

>> Mayor Reed: Paul Higgins, Yolanda Reynolds, Kimberly Brady.

>> Good afternoon. My name is Paul Higgins and I'm an organizer for baseball San José. It's a great joy to have the opportunity to be involved in a cause that incorporates my passion for major league baseball and my desire to do it for and in the city I call home. With a vote today, you have the opportunity to further lay out the terms that bring us closer to bringing the A's to San José. This process has no doubt been exhausting but nevertheless necessary that will send a clear message to residents and Major League Baseball that our desire for an A's move must be done in eastern that enhances and protects the long term interests of San José. The question becomes what next? There is no doubt that passions run high in the city for an A's move to San José. Which leaves us a choice. We can pound our heads against the wall while we wait for a decision from major league baseball and territorial rights or we can work to further our case that San José has and always will be the best home for a baseball franchise. I choose the latter. So I ask those of you here today and watching on TV to join baseball San José as we work to bring San José residents and baseball enthusiasts from across Silicon Valley together and forge a movement that leaves no doubt San José can and will sustain its desire for a professional baseball team of its own. Thank you.

>> Mayor Reed: Yolanda Reynolds, Kimberly Brady, Mark Morris.

>> Good afternoon, Yolanda Reynolds. I wanted to make some clarifications. I did send an e-mail to all of you and I got a responds from Mr. Liccardo. I had made the comment that in the San Francisco chronicle it mentioned that

AT&T maintenance facility employed around 100 people. I wrote that in my e-mail, his response was that he only saw 15 parking spaces. My husband and I went there this morning. They have their park spaces numbered, in the rear of the building. The highest number was 72. In the front, and the side, there was space for another 25 cars. So I did call because it's a very secure building, and she said I can either confirm or deny. But I could count the spaces there. So that's number 1. I hope you take a good look at where you're putting this ballpark, and you commented also, that this would be acquired this property for office building high rise. I disagree with that entirety. And contrary to the comment that there would be this ingress and egress that would cause a lot of congestion, you can have staggered work hours. That works a lot of places, it could work there, as well, and you could have people starting to work at 7:00, 8:00, 9:00, 10:00, and a lot of people like that sort of situation. I want to commend you on the negotiation principles, a lot better than I have seen in the past. However you got my memo, I think there are some real gaps, I won't go into that. However, one thing I do want to point out, say this publicly, I do really urge that you put in there, there will be no renegotiating if, afterwards, the developer, I don't care who it is comes back and says it doesn't pencil out. If it doesn't pencil out he can sell it to us for the reduced price. I don't care -- I don't think he's spending 500 million, he's spending 300-something, that's what's been in the paper. Now the other thing I want each of you and everybody in the audience that might be losing their job to read this book, "bad sports." It is written by a sportswriter who's a real enthusiast about sports. But what's happening is happening right in the city and the promises are made and he goes through almost every new stadium --

>> Mayor Reed: Sorry your time is up.

>> -- that has been constructed in the United States. Thank you.

>> Mayor Reed: Kimberly Brady Mark Morris, Christopher Mollus.

>> Good afternoon mayor and members of the city council. My name is Kimberly Brady and I am a board member for the San José downtown residents association. Last year our board of directors voted unanimously to support this proposal. The residents we represent are also supportive of a potential downtown ballpark as indicated by detailed survey that we conducted last year. We support a downtown ballpark because it would first create an

increased awareness of San José and bring it one step closer to becoming a verifiable Northern California destination city. Second it would encourage more businesses to open up downtown and create much needed jobs for the some 40,000 unemployed in San José right now. Lastly, it would generate additional critical revenue for the city's General Fund budget. We encourage your support of the Mayor's proposed amendment to the city's negotiating principles, as they clearly lay out that there will be no new taxes and no public expenditures related to the building and operation of this ballpark. Finally, because we understand and appreciate the concerns raised by some of our other neighbors, we want to work closely with the residents and the city to ensure that these issues are identified, discussed, and resolved, in a manner that ensures the best experience for those who live around the ballpark. Thank you.

>> Mayor Reed: Mark Morris, Christopher Mollus, Neil Struthers.

>> Good afternoon, my name is Mark Morris, from better sense San José. I don't have any illusions about the outcox your vote today. I think that's a done-deal. And you have a lot of difficult issues on your agenda. So I'll try to be brief but perhaps I can leave you with a thought or two. The issues you're going to talk about today are difficult because we're in a severe budget crisis. This must be a time when we're extra-careful about all spending not just current spending but also long term debt. You're talking about today about one aspect of long term debt obligations, pension reform where you're contemplating the painful choice of taking away important benefits from city employees. Another very important part of long term debt is redevelopment agency money. RDA money is debt on which interest must be paid and a obligation of this city. Spending RDA money on a stadium doesn't make it free as keeps being implied in negotiating principles and some of the comments we've already heard today. RDA money is real money and it must be treated seriously. Important issues about spending on a stadium are answered. What are the costs, we don't know. What's the return on investment, nobody's told us. Based on what we know, the return on investment is pretty poor. Proposed stadium site is potentially one of the premier sites in the city immediately next to what will be one of the major transportation centers in the U.S. I hate to compare us to the cities of the north, but San Francisco is developing an entire commercial and residential neighborhood around its high speed rail station. In San José, alternative use of the Diridon station site is a much better investment than a city with many more jobs, 4,000 full time jobs versus 135 jobs for the stadium, that's

4,000 compared to 135. Twice the tax revenue from alternative element. Four times the economic benefit. That's almost a long term loss of \$10 million. You can ignore that potential only if you don't believe in San José's future. Thank you.

>> Mayor Reed: Christopher Mollus, Neil Struther, Steven Hazel.

>> Thank you, mayor, members of the council, my name is Christopher Mollus, and I'm general counsel for Intero Real Estate Services, a sustaining member of Baseball San José, and I'm also a resident and voter in San José. I'm here today because I believe San José needs to open itself up for business. I'm here because each of you, our elected leaders, face an opportunity of colossal importance to our future. I'm here because I think this resolution is a no brainer. We can either be proactive in reputing a huge international business presence, major league baseball to downtown San José, or we can refuse to act, we can gingerly sit back as neutral third parties and risk losing a huge international business presence, the Athletics baseball franchise, from the Bay Area entirely. During these tough economic times during this recession the entity charged with doing right by the people of the South Bay are you guys. It's not necessarily major league baseball or Peter McGowan or Bud Selig, it's you. And if you don't fight every day to open up San José for business, no one else is going to. Since the early '90s Major League Baseball, I believe, has been dragging its feet on this issue, and I think it's hurt San José. It's been good for San Francisco. They now have baseball, that venue and all that comes with it. It's been great for select owners and investors but it hasn't been good for the people San José. I think you need to vote yes on this resolution today. I think you need to be the ones actively fighting day in and day out to bring baseball to San José and I think we finally need to open San José up in form business and baseball. Thank you.

>> Mayor Reed: Neil Struthers and then Steven Hazel.

>> Good afternoon, honorable mayor and city council, Neil Struthers head of the building trades council. And as before for the last year, in front of you I've talked about the unemployment rate in the construction industry and it still remains at 30% and sometimes higher. It should come as no surprise that we support a downtown ballpark and the A's coming to San José. The previous speaker mentioned that this was not a good investment of RDA

dollars. And I would argue that he left out the fact that the purpose of RDA is to drive private investment. And we have an investor willing to invest \$500 million in a construction project and I say that is what the RDA is for and I think that's a good investment and I don't know where we find those other types of investment that could equal that. So I would argue with the previous gentleman that this is a good investment, we do need to put people back to work and I think it is common sense that we move forward and it should come as no surprise that the building trades council supports the recommendation in front of you today. Thank you.

>> Mayor Reed: Steven Hazel.

>> Yes, Steven Hazel. Don't let this shirt fool you. I should have worn my green shirt because I've been an A's fan for about 40 years. The problem I have is, let's go back to the grand prix. Remember that? What happened there? Suppose you had your contracts in place, the Ts were crossed, I's were dotted. It cost you \$4 million. Okay? You took a hit for \$4 million. You promised the vendors and restaurants all this money. The reality is, you're not going to make any money off the stadium okay? I'd like the A's to come but the fact is it's your land and from a giants standpoint it's like the A's want to put a granny unit in your backyard. Hey, that's your property! That's the reality right there. You just have to face it, okay? I like the A's but you know I think they should stay in Oakland but if they're not going to build a shared stadium, 49er-raider stadium there, put it there. That's county land but you've got a huge parking lot there. That's one of the things that the stadiums don't have, that is the only site in the whole valley that offers onsite parking. You will not have onsite adequate parking at the proposed A's site as it is now. Okay, it is a bad spot. You don't have the land. You'll never get the land. You don't have onsite parking. It's a bad place, okay? It's never going to happen, I'm telling you right now, so quit spinning your wheels. All these promises about money and economic benefit it's not going to materialize. Okay, I'm just telling you, it's not going to happen, okay? Now there's a stadium out there at the fairgrounds, you got a parking lot. You get economic benefit from a stadium out there. You got the parking lot, you don't have to invest, you don't have to give away free land to these multimillion dollar owners. I mean, that's ridiculous. These guys have money. They could buy the land if they wanted to, okay? They are always hitting up on city, and who gets burned? The residents get burned. They have to pay for it in the long run.

>> Mayor Reed: Sorry, Your time is up. I have one more request to speak, JosuÉ Garcia.

>> Thank you, mayor and city council members. I'm here to ask you to please support the staff recommendation to bring the baseball stadium to San José. This will create real jobs, real jobs that cannot be outsourced that will stay in the community, both construction and operation jobs. Again these jobs cannot be outsourced and I think by now everybody knows that we need jobs so thank you very much for your support.

>> Mayor Reed: That concludes the public testimony on this item. I think we have some additional council discussion. Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I just wanted to say that because, there has been a day and it is going to go from November to the spring, that's a good time to educate the public, and in reference to some of the questions that you heard here today. There is some confusion, and if we do that, by the time we get around to voting it will be a more assured vote. So I'd like to begin by putting an article in my newsletter and perhaps, we could get that same kind of action from other councilmembers, as well. Thank you.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: I just wanted to disclose that one of the public speakers in support of this is Neil Struthers and he is my husband.

>> Mayor Reed: I think that concludes the council discussion. We have a motion on the floor. Councilmember -- I forget who had the motion but we have a motion on the floor, Councilmember Liccardo I believe. Further discussion from the council? All in favor? Opposed, none opposed, that motion is approved unanimously. I'm sure we will be back on this topic in the future.

>>> Now our next item on the agenda is item 3.4, that's the recommendation to approve the terms of an agreement with San José Police Officers Association. City Manager.

>> City Manager Figone: Thank you, Mr. Mayor, members of the council. I'm pleased to announce that we have reached an agreement with the POA that avoided layoffs of police officers. As you know, the city council direction was to receive a 10% reduction in total compensation throughout the workforce. On June 22nd, the council approved the '10-11 budget that eliminated 159 police officer positions. 70 of those were filled, and those employees were subject to layoff. The council then directed staff to continue to negotiate with the POA to reach an agreement that would avoid layoffs. The agreement before you today, while short of the 10% goal, achieves enough savings to avoid the layoffs for this fiscal year by yielding approximately \$8 million through just under a 4% total compensation reduction. The agreement generates almost exclusively one time savings that will prevent the layoffs of the officers for this year only, and thus, is a stop-gap measure for this fiscal year. We shouldn't forget, however, that nearly 90 vacant positions will still be and actually have been eliminated. Now the alternative would have been to proceed to binding interest arbitration which takes many months and the 70 officers would have already been laid off. We would like to thank the POA leadership and recognize in particular president George Beatty and vice president Jim Unland for staying at the negotiating table and taking our time line seriously so we could get this deal done in time to make a recommendation to the council and avoid the layoff of the 70 officers. Again, this is only a one-year agreement and one time funding so we do look forward to getting back to the bargaining table with the POA soon to work on our longer term solutions as we will be inevitably be confronting the layoff of these 70 positions once again as we develop the '11-12 budget. Thank you mayor, and we are recommending approval of the tentative agreement before you today.

>> Mayor Reed: Councilmember Nguyen.

>> Councilmember Nguyen: Thank you, mayor Reed. I just want to echo the City Manager's sentiment. I wanted to thank Alex and his team and the POA leadership for coming to the table and helping us save services out there in the community. I think that the 70 police officer positions that have been saved because of this tentative agreement means that there are more officers that will respond to the calls for service, and this will also provide an opportunity for our residents to sleep a little better, knowing that there are more officers protecting our streets. So thank you for your leadership and thank you for making there happen.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. First I'd like to make a motion to approve this item.

>> Mayor Reed: All right, we have a motion on the floor to approve the recommendations.

>> Councilmember Constant: And then my comments, I also wanted to echo thanks to everyone who has been mentioned, especially not only the POA leadership but all the POA members. My understanding is, this is one of the highest turnouts for voting in the history of the POA. Hopefully, indicative of what's going to occur in the future. And it was resoundingly approved and ratified by the membership. I believe it was about a 75% approval on there. I think it says a lot about the POA and the members. I know that there were a lot of tough discussions that we've had over the last year. But I'll tell you that the residents do truly appreciate it. And I know those officers that were on the layoff list appreciate it, as well. Thank you.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: So I just want to recognize the Police Officers Association leadership, the members, and I think that it's fitting that we're voting on this today, since tonight is National Night Out. And I think it's a symbol of saying that public safety is a priority, not only for the council but it's also a priority for the police officers. Because they know that in order to have a city that's safe and secure, so that people feel that as they walk out their front door, that they're going to be protected, that it goes both ways. So you're to commended for coming to the table and working with the leadership, so that we could come up with an agreement that works for both parties. And I will be supporting the motion.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I also want to thank new leadership of the San José Police Officers Association and our bargain team for coming together and coming to an agreement. It has always been, at times there's been a question as to how we can have leverage with our police officers. With the existence of binding arbitration. I think this tells us here the leverage we have is the quality of our members of the police department, Thayer willing to come forward and sacrifice and give back in order to save their fellow officers' jobs and in order to keep being able to provide a safe environment for the people of the city. So I have confidence that the police officers will come forward and do the right thing. This is further proof of that that they're willing to sacrifice for our city, they're willing to sacrifice for our community and they're willing to sacrifice for each other. So I want to thank you all for that.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you. I'd just like to say, George, Jim, officers, such a pretty shade of blue in this room, I've never seen it quite this intense. You were there for each other and you were there for us. And that's a message that will resonate through every person that we talk to during National Night Out tonight. I appreciate all that you did to make sure that the safety of our city is our first consideration. And I hope that we'll be able to move on and work on other things collaboratively as well. My son asked me to tell a story. Last week he was unfortunately burglarized. And his motorcycle was stolen. And so he called in and he said, two officers actually came out. He said I didn't expect to see anybody. They didn't know me from a hole in the wall. But he said I was so impressed with the professionalism that they showed. And not only did they show it, and were very courteous and asking questions and explaining how the process works, but they actually found it! It was in far worse shape than it was the last time my son had seen it, but they were most helpful and really on it. And they did all this within a very short period of time. You know some fabulous skill, and I really, truly appreciate those, as does my son. Thank you.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks, mayor. I'd like to join in the chorus and thank in particular, George Beatty and Jim Unland and the rest of the leadership. It is a real testament to your leadership that you're able to in an extremely difficult time ask your members for sacrifice and they respond resoundingly with support. It certainly is a reflection of the recognition that the members feel, that certainly they don't want to leave any officers behind, and that we want to keep everybody aboard and also obviously a commitment to public safety. Because I think we all know that our officers are working harder and harder with less and less resources per officer. And that is certainly a challenge we all recognize, and one we all want to be able to overcome as we get through this very difficult fiscal time. So I appreciate the membership stepping forward and helping us through.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you. I, too, want to say thank you, especially to George Beatty, Jim unland, John Tenant with the POA for your leadership and for really coming together and making this happen, and also Alex Gurza and his team on the city side for making this work. Saving 62 positions that are the one-time positions for a year and eight ongoing. So it at least buys us some time and gets us to a point where we can avoid having layoff of police officers. I also think like Councilmember Campos mentioned it's National Night Out. I was hoping we could get to go to some of those National Night Out events tonight, I don't know that we will be able to be there, given our big schedule. But I appreciate the fact that our officers will be out there and that this is a wonderful event that will go on throughout the city and a testament to how we work together as a community.

>> Mayor Reed: I'm not going to repeat everything everybody has said but I do want to thank the men and women of the San José police department, their leadership as well, for being willing to share the pain. This year there's plenty of pain to go around. I don't think there's any bargaining unit, any group or any set of people, that aren't feeling some of the pain of the difficult, difficult budget process that we just went through, and I really appreciate the men and women of the department being willing to share that pain in order to ensure that their fellow officers didn't get laid off. I think that was a good thing to do, and I appreciate the fact that the membership overwhelmingly ratified that approach. We will take some public comment at this time. I have two cards from people that wish to speak on this item, George Beatty and Shane Patrick Connolly.

>> Good afternoon, Mayor Reed, members of the council, George Beatty, San José Police Officers Association. First I'd like to start out by thanking Alex Gurza and the City's negotiating team for being professional, during challenging negotiations, no doubt. I'd also like to thank the leaders of the other bargaining groups in the city. They, too, faced a number of challenges, like they'd never faced before. We all worked hard to try to resolve this issue, in a diplomatic fashion, something that worked for the city, something that worked for the bargaining units, and something that worked for the citizens. I'd like to thank my negotiating team, especially John Tenant, Jim Unland, Frank Orvato, and newly retired Jeff Rickarts. They, too, put a lot of time and effort into it. And I'd like to thank our members, many of them here today, for the amount of reasonableness and understanding they demonstrated, during this process. It certainly is a commitment to them. And frankly I'd obviously like to thank the council for working with us, and by working with us when we all work together, we usually come out with a better finished product. And I think that's what you have here today. So I thank you for your time, your commitment, and I know I'll be up here talking later and I certainly hope some of the kind words I heard about our organization continue to be held at that level. Thank you.

>> Mayor Reed: Shane Patrick Connolly.

>> Honorable mayor and city council members. I'd also like to add my voice as a taxpayer and citizen of San José to the chorus here. I think Councilmember Pyle and others have said it very well. We certainly as a taxpayer appreciate the efforts of the Police Officers Association leadership, the efforts of our city negotiators in coming to this agreement, and for the rank and file of the POA for standing up for their fellow officers and preserving an important service, one of the most important services in our community. The only other thing I would say is that ongoing savings represents only .67%, and that's a concern of the taxpayers. As we'll face into the future, tens of millions of dollars in future pension benefits and it underscores the necessity for us to act and for us to begin to reform some of our processes and charter portion in order to stave off future crises. Thank you very much. I appreciate your time.

>> Mayor Reed: That concludes the public testimony on this item. We have a motion on the floor to approve the recommendation of the contract. All in favor? Opposed, none opposed, this happened. Thank you very much. Item 3.5 is our next item, that's a public hearing on sewer service and use charges and storm sewer services.

>> City Manager Figone: No presentation, Mr. Mayor, just responding to questions.

>> Mayor Reed: Is in a script we need to follow on this particularly hearing? I have no requests from the public to speak on this. A motion to approve. All in favor, opposed, none opposed, that's approved. 4.1 is the 2009 development services customer satisfaction survey results. I'm sorry, that was deferred. 4.2, Santa Clara Valley habitat conservation plan status report also was also deferred. 6.1, actions related to the Metropolitan Transportation Commission, to the 2010 Transportation for Livable Communities Program, Hans Larsen is here to talk about that.

>> Hans Larsen: Mr. Mayor, members of council, I'm Hans Larsen, acting director of transportation. We have a presentation on this item, you but given the public interest in other items I'll keep my remarks fairly short and address any questions. The recommended actions allows for the city to obtain \$6.5 million in MTC grant funds from three planned projects along the Alameda, San Fernando street for a bike way development and San Carlos street in the downtown. Normally this would be good news, it's money from other agencies but this comes up with a challenge of needing to come with 20% local matching funds. And as the council is aware, we have essentially zero funding capacity in our traffic capital programs for future grants. What makes this challenging is a recommendation for some creative financing where we would borrow funds from other projects that we have received developer deposits on and which we are not able to spend in the near term and also to use the 101-Tully project as a collateral based on a commitment that we have for the VTA. So with that, with some creative financing we're able to move forward with receiving \$6.5 million for a total of \$8.1 million for these projects and we recommend your approval.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor. Hans, I just had a couple of questions. One is, I understand that the 101-Tully money is essentially being used as a backup of sorts for the obligation to repay. And I have a question about the construction schedule there. I see on page 4 that the CIP schedule for repayment is through 2014. Is the anticipation that -- the anticipated schedule that 101-Tully doesn't get built out until after 2014?

>> Hans Larsen: No that's -- actually there is quite a bit of good news with the 101-Tully project. The CalTrans recently opened bids on that project, they are 30% below estimate, so the commitment of funds we have from the VTA for the 101 Tully will likely get carried over and moved towards developing the 101-Capital-Yerba Buena project. So as it stands right now we expect 101 Tully to be fully funded and to be ready to move into construction later this year.

>> Councilmember Liccardo: Okay, so this is merely a temporary measure within a few months, it will be 101 Yerba Buena that will be in its stead?

>> Hans Larsen: Yes, what we're working with VTA and CalTrans on is a funding strategy for 101 Yerba Buena, 101 capitol and what the staff report indicates is that the budget commitment that we have for the VTA for that \$6 million of funds for what we're calling phase 2A and 2B of the improvements in the 101-Evergreen area.

>> Councilmember Liccardo: Okay, thank you. And then with regard to the developer fees that have been -- that we're essentially borrowing, have we gone to the developers at all to get waivers? I know this issue has come up in the park fee context, and I'm wondering whether or not there are going to be any concerns relating to Quimby act issues about using these fees on other sites.

>> Hans Larsen: We had -- what we've received is a developer deposit of funding for the 101-Blossom Hill project of 1 -- we're using \$1.3 million for this. It's over a \$15 million project, we haven't accumulated all the money needed for that project so we don't think it's likely that we'll be spending any money on that project in the next two, three, four years. In the event that all the money did come together through development activity, we do have a

legal commitment of spending that money for that project. And if that scenario happened which we believe is probably less than a 1% likelihood of that happening, then we're using the 101-Tully project as collateral for that. So the intent is that we will be paying back what we are borrowing from 101 Blossom Hill over the next three years to keep those funds on deposit for that future project.

>> Councilmember Liccardo: And I don't doubt that we'll be able to do that safely begin the fact that we don't expect to go forward with the other project any time soon. I guess my question is whether or not there is any risk for us legally in the meantime.

>> City Attorney Doyle: I think we've been working closely with the transportation folks, and the bottom line is, we do have a source of -- to assure that funding is there when we need it. I think that's what the director is talking about when he talks about a guarantee.

>> Councilmember Liccardo: Okay, thanks.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you. When I first saw this project, the alarms went off for me being in District 8 and Tully 101 being the highest priority project in the district. So Hans was gracious enough to come and we sat and I got a lot of my questions answered. But I just wanted to ask this again, just to clarify, Hans, just for the benefit of anybody in District 8 that might be listening. So the construction funding that is already in place now coming from to start construction on highway 101 Tully, what is that amount?

>> Hans Larsen: What is it --

>> Councilmember Herrera: The amount that is going to be used for construction. Our city matches very small relative to the amount that's already been -- it's available and already for construction.

>> Hans Larsen: Yes, in total project costs including the design and construction it's roughly a \$60 million project. We had originally a \$10 million commitment for that project of which \$4 million we've already provided. The other \$6 million is outstanding. But because construction bids have come in 30% lower than estimated the project is fully funded without the additional \$6 million city funding commitment at this point.

>> Councilmember Herrera: So there's a relatively small portion that we would be contributing to this ultimately anyway?

>> Hans Larsen: That's correct.

>> Councilmember Herrera: The money is already there from VTA to complete the construction, that's moving along thank goodness we're all happy with that.

>> Hans Larsen: There is a significant A state and federal money for the 101 Tully project as well.

>> Councilmember Herrera: And the Blossom Hill, the secondary project that we're actually borrowing the money from is not expected to begin for some years and we are actually using -- the Tully money is not actually being used. It's backing up the loan, basically?

>> Hans Larsen: That's correct. The primary loan is from the developer's deposit of money for the 101-Blossom Hill interchange project.

>> Councilmember Herrera: And so as I suggested to you, if we can have any savings, or any money that might be available out of that \$6 million that doesn't get used at Tully, because that's where that money is going right now, Tully, not capitol, even though it used to be one project, the Capital-Yerba Buena project is not slated right now to receive any of that \$6 million. I was asking if we can have that money potentially go to Capital-Yerba Buena, and I'm very happy to hear that that's being discussed with VTA.

>> Hans Larsen: That's been our strategy to maintain those funds move all those projects forward. 101 Tully is the highest priority, and then with any savings or additional moneys that we have we focus on 101, Yerba Buena, and Capitol.

>> Councilmember Herrera: Great. Do we have a motion on the floor to approve? I forgot. I'd like to make a motion to approve this project.

>> Second.

>> Mayor Reed: All right. Now we have a motion on the floor to approve. Councilmember Kalra.

>> Councilmember Kalra: Thank you. In regards to 101 Blossom Hill interchange, the money that's being used, I know that upon learning more about what the plan is here that there's an incentive to try to get that money repaid as soon as possible. I understand that there may not be a project online in the short term however there's definitely a need for improvements in that interchange. And you know, if money is going to be taken from funds that are dedicate, that are dedicated to that interchange, you certainly want to make sure that they get back there as soon as possible. Nevertheless, the amount we're getting for projects in other parts of the city, I think that are too good to pass it and I'll certainly support the motion. But just wanted to for the record get an indication as to the incentives that are necessary to pay back the Blossom Hill project. And see if you have any comment on that.

>> Hans Larsen: Yes, I mean certainly as we have moneys to cover these grants we don't have them in this year's budget. And so that's the purpose of the creative financing recommendations. But we do have an obligation to pay those moneys back as a first priority so that we have those there to pursue development of the 101-Blossom Hill project. So that continues to be a priority. And we will look at while it's a large project we will look at ways to try to phase the implementation of that as moneys become available.

>> Councilmember Kalra: That is certainly something I'd be interested in seeing, however, just in the interest of getting the moneys back in that project it is my understanding that going into the next fiscal year, prior to

expending money on other capital projects the money here would have to be returned first. So it would be on the top of the list of funding that we have to make sure we make that fund whole before we move forward on other projects?

>> Hans Larsen: That's correct.

>> Councilmember Kalra: Thank you.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor Reed. I just wanted to point out to all our colleagues and everyone watching, that to find \$800,000 for free money on a grant, it's a real challenge. And we're frankly saying that we're borrowing from other projects to do that. There's really no money laying around. And I'm happy that we're getting the grant from TC but it's a real struggle just to come up with less than a million dollars to go do these things so thank you.

>> Mayor Reed: No cards from the public on this. We have a motion on the floor. All in favor? Opposed, none opposed, that is approved. Item 7.1. Public hearing on the grant of franchise to wickland pipelines. Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. I understand this project has many issues over the years and so glad that we have this problem all resolved. This project does provide a lot of benefit as an implementing of the underground fuel pipeline alternative so I'd like to make a motion for your approval.

>> Councilmember Oliverio: Second.

>> Mayor Reed: We have a motion to approve. I have one request from the public to speak, that would be Dan hall representing wickland pipelines.

>> Good afternoon. My name is Dan hall, I'm with wickland pipelines. I really have no presentation, I just wanted to be available if there are any questions.

>> Mayor Reed: Let's see if there are any questions? I think not, thank you very much. We have a motion to approve on the floor. All in favor, opposed none opposed, that's approved. We'll now take up an item on the joint city council-joint financing authority board agenda, and that's actions related to the issuance of qualified energy conservation bonds.

>> City Manager Figone: I don't think we have a presentation, mayor, but we're here to respond to questions.

>> Mayor Reed: We have a motion to approve. All in favor? Opposed, none opposed, those are approved. We'll now move back in order on the agenda to item 3.3, which includes half a dozen different matters all dealing with potential ballot measures for the November ballot. This was noticed to be not before 2:30 so we've successfully gotten past that time. We'll take it up now. I think in terms of the way we'll do the presentation, the discussion, staff will have some comments and overview that applies to more than one of these measures. We'll take that, such as the presentation on the polling data and any comments that the City Attorney or the City Manager might have sort of in the aggregate and then we will take up each of the items individually for public testimony debate and the council decision-making. So I think we will start, Ed Shikada is going to lead us.

>> Ed Shikada: Thank you, Mr. Mayor, members of the city council, Ed Shikada, assistant City Manager. I think we'll lead off by having Dave metz from our polling consultant firm of FM 3 provide an overview of the polling results.

>> Thank you very much, Mr. Mayor, members of the council, and members of the public, my name is David Metz. I'm a partner with FM3 Research based in Oakland, and I'm here to report on the highlights of a survey of likely voters that we recently conducted on behalf of the city to assess support for two potential ballot measures before you today that would raise additional revenue for city services. I'll walk quickly through a series of

highlights of the survey and then be happy to answer any questions you all might have. You should have a copy of the detailed report that we have already submitted on the survey findings. Briefly, the methodology of the survey involved 800 interviews with voters citywide who were considered likely to vote in this November's election based on their past voting behavior. And it was conducted shortly after Independence Day weekend in the early part of July. There's a number of questions in the survey where we repeated some questions that we had asked in prior surveys that we had done on city budget issues which allows us to look at some changes on public opinion on a few relevant issues over time. The first of the two ballot measures we looked at in the survey dealt with a marijuana business tax. We also looked at a potential city sales tax increase. These were the two measures that the bulk of the survey was focused on, and we rotated the order in which they were presented to the survey respondents in order to be able to detect and minimize any bias that might result from the sequence in which the respondents heard them. I'll talk about the marijuana business tax measure first and then move on and talk about the sale tax measure. What you'll see here is the draft ballot language that we tested in the survey. It's fairly straightforward. The one variable that was included in this language was the tax rate. For half of our interviews we asked about a 3% tax rate, for the other half we asked about a 10%. There was no significant difference in the reaction to the two tax rates and so for the balance of the results I'm going to show you we've combined both versions of the question. There was a very strong level of initial support for this ballot measure with 65% indicating that they would vote yes, 27% indicating that they would vote no. For a measure that requires simple majority approval, this is a very strong initial level of support both in terms of its overall breadth and also in terms of the proportion who say they would definitely vote yes. That is the dark blue bar at the top and one which we keep a particularly close eye on. Here 40%, nearly half of all voters say they would definitely be in favor. We had a couple of follow up questions that were designed to understand how other actions that the city might take or other actions that voters statewide I might take over the next few months might impact residents willingness to support a marijuana emphasis contaminate. Regarding marijuana businesses in the city and asked the respondents if such regulations were adopted whether they would be more likely or less likely to support the ballot measure. And you'll see here that by nearly a three to one margin they said that such regulations would make them more inclined to support it. This was true not just of the electorate as a whole but also of the subset of voters who had not already firmly made up their minds about the measure. So for those who were potential swing voters this was also a relatively positive idea. We also asked about the context of proposition 19, and informed the

voters that if a statewide ballot measure to legalize the sale of recreational marijuana was approved this November, that the business tax approved by the city council would apply to those sales as well, both medicinal and recreational use. And again, by about a two-to-one margin, voters said that the passage of prop 19 would make them more likely to be supportive of the city measure. The margin here was not as wide as what we saw when we talked about the council adopting additional regulation, but overall it was a net positive. We also walked through a variety of pro and con arguments that might be offered by supporters and opponents of this type of measure in order to understand how they might impact voters' level of support. And what we saw was very little shift in support at all over the course of the survey. It stayed consistently at around two-thirds of those polled after arguments in favor and arguments against. This is also fairly consistent with a number of other cities in Northern California where we've polled similar measures in recent months. So that was the first of the two measures we looked at. The second was a potential sales tax increase. You'll see the ballot language that we tested for this measure and again relatively straightforward. We did vary one aspect of it for the two halves of our sample. For half we described the measure as being open ended with no time limit on it. And for the other half we specified that it would only be in place for a 15-year period. In order to see whether that made a difference to the respondents. Overall, the level of support we saw across all 800 interviews was 42% in favor of the sales tax, 52% against. However, these overall results need to be viewed with some caution. Because we saw a major difference in responses when voters were presented with the sales tax as the first option in the survey and when it was presented as the second option. For those who heard about the sales tax first they actually supported it by a slim plurality within the survey's margin of error, 46 to 45. But for those who first heard about the marijuana business tax they opposed it. Only 39 in favor and 56 against, a margin of 17 points in opposition. This suggests that potentially the presence of both measures on the ballot at the same time, given the popularity of the marijuana business tax, might lessen voters' willingness to support a sales tax simultaneously. Now, when we simply look at the responses among those who heard the sales tax first, which is probably the cleanest way of looking at voters' level of support, it nevertheless is lower than what we've seen in prior polling for the city. Our January budget poll, where we asked first about a .5% sales tax and then about a .25% sales tax we had 54% support. And if we go back about 18 months ago in January of 2009, 62% support for a similar although not identical concept. So over time there does seem to have been a little bit of erosion in voters willingness to support a sales tax increase. I mentioned before that we, for half of our sample many we described this as a measure that

would be open ended, for the other half we talked about a 15 year time limit. In terms of the initial language it made no difference in the way voters reacted. They were just as supportive of one with no time limit as they were for one that had 15 year time limit. We asked them whether they would be more likely or less likely to support it if it was open-ended or if it had that 15 year sunset in place. And you'll see, when voters are asked to focus on that issue, the presence of a sunset does make them more inclined to say that they would vote for the sales tax measure although not by a wide margin. Finally, we also, as we did with the marijuana business tax measure, we presented the respondents with pro and con arguments to understand the fluidity of support for a sales tax. And here those messages did make a difference. After hearing a set of arguments in favor of the idea, support did rise to a simple majority, 52% to 43%. Although it dropped back down after voters heard some of the arguments in opposition, there was still a plurality in favor at 48 to 46, but less than half of those polled. So the bottom line, looking at the responses for both of these measures, is the marijuana business tax appears to be clearly viable in terms of having voter support, no matter how it's structured and no matter how it's described to voters. Support for a sales tax appears to have dropped a bit over the last few months, and while it's possible with the right structure and framing to achieve majority support, the chances of doing that do seem more tenuous, especially if it were on the ballot simultaneously with the marijuana business tax. With that I would be happy to answer any questions that you have.

>> Mayor Reed: I see no questions at this time from the council. Thank you very much.

>> Thank you.

>> Ed Shikada: Mr. Mayor, with that taking them in order as you indicated we would have the quarter-cent sales tax up first. And we have no presentation for that, so simply be ready to respond to any questions.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. I'm not sure the proper wording but I'd make a motion to deny putting an increase of sales tax on the ballot, considering we have to get our own house in order.

>> Section.

>> Mayor Reed: Motion is not to put it on the ballot. Discussion on the motion, Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I agree, I think those numbers are so close, and particularly, given the numbers that we're seeing from the marijuana ordinance, they don't seem consistent with each other to be on at the same time. I do have a question concerning the costs of putting a ballot measure on, one versus every subsequent measure we put on at one time. So I don't know if you have forecast of what the cost would be for a single one and then if there's any reduction in cost going forward or is it the same cost for each one?

>> Ed Shikada: Lee would you like to take that?

>> Lee Price: I'd be happy to, Lee Price, City Clerk. Thank you. The registrar of voters as you know, conducts the city's elections for us and so they prepare estimates of the elections cost. And generally speaking it's always more expensive for the first measure, because we have those kinds of fixed expenses, polling places and polling workers, et cetera. So the estimate for the first ballot measure is approximately \$758,000. Then second and subsequent measures are \$366,000. And those again are estimates based on printing civil pages of information, regarding the particular ballots. And you know we can save some money if we don't print the full text, if we don't print the rebut arguments, et cetera. But to answer your question specifically, 758 for the first, 366 for each thereafter.

>> Councilmember Kalra: And is this the class for November or is it the same? What's the distinction between having a November ballot when you already know there are going to be items there as opposed to a general election?

>> Lee Price: Excellent question, councilmember. We always see our costs cheaper in November because we're ability to consolidated with different districts within the county as well as the state and other elections that the

registrar will be conducting. So any time we go to a special election if we were to move and do something later in March or June we are going to see higher cost to conduct a special election and I do have numbers for you if you are interested in that as well.

>> Councilmember Kalra: Yeah, what would those be?

>> Lee Price: For instance if we went to conduct an election March 8, 2011 which would be our next opportunity after November, the registrar estimates that the election would cost \$3.6 million. And that's essentially whether we do one, two or three measures. With each measure we might have some incremental cost to the tune of about \$118,000. But it is really only for the additional printing of information that goes into the voters' sample ballots. So to actually conduct the special election for us, the estimate is \$3.6 million

>> Councilmember Kalra: And that's for up to three measures, approximately?

>> Lee Price: About, approximately.

>> Councilmember Kalra: About, with nominal increased cost for each additional?

>> Lee Price: Right, we can count on that for at least one ballot measure.

>> Councilmember Kalra: Yeah, so thank you. And I don't know how we're going to go on the other matters. I know we have the marijuana one we just heard about now, but given the costs, whether it's the sole item we're putting on there or an additional item for the quarter-cent sales tax and given the polling results and the environment we're in, I don't think that we should go forward with it, and I second the motion.

>> Mayor Reed: We have one request from the philanthropic speak on this item, at least that's all the cards that have been submitted on this. We'll take that now. That's on the quarter-cent sales tax. Pat Saucedo.

>> Pat Saucedo: Mayor and council, on behalf of the San José Silicon Valley chamber of commerce, Pat Saucedo. We appreciate the motion on the floor. We feel this is a very bad time for increasing the sales tax for the city of San José in this economy. So we strongly encourage a vote to support the motion to not place this on the ballot. Thank you.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you. I'm going to support the motion. And I did, you know, I've thought about the idea of an increase in sales tax. I'm not entirely opposed to it but I definitely think if we ever consider this again and I do think getting our house in order was the first step, I've said that publicly before, that it would need to have a sunset provision in it. So I just think if we had a specific time frame in mind, we had specific use of the funds, a little more specific so that the public could get behind it. But sometime in the future I think we do need to look at revenue increases too. That's a reality. So I don't think now is the right time but I think in the future we need to go back and look at it again. Thank you.

>> Mayor Reed: I'm going to support the motion. I don't think what I have a sales tax measure on the November ballot, I think we have to do some fiscal reforms of our own. We need to get control over our expenses so they're not increasing faster than revenues. We need to get control over our exploding pension costs, and until we've done that I don't think the voters are likely to give us more money and we shouldn't ask until we've done those steps, some of those items will be discussed later in the agenda. But I don't think we ought to put a sales tax or any other kind of a general tax like that in front of the voters until we have made more progress on the things we need to do, as difficult as they are. I don't have any other public testimony on that. I think that concludes council discussion. We have no other requests for speak. We have a motion to not put this on the ballot. All in favor, opposed, none opposed, that motion is approved. Next item, I believe, is the medicinal marijuana or just marijuana and the general tax.

>> Deanna Santana: I'm waiting for the presentation to come up here. Good afternoon. As background on June 22nd, the city council directed staff to develop a marijuana tax ballot measure and to conduct polling during the

month of July to inform city council's discussion and decision making today. Before you is a ballot measure that is consistent with that direction and supported by the blood measure polling results. The ballot measure also provides the maximum flexibility for the city council for future decision making regarding marijuana. As noted during our June 22nd discussion staff expressed a desire to develop a ballot measure that is sufficiently broad to address the unknown outcomes of the statewide ballot measure which would legalize to an extent recreational marijuana which is known as prop 19. Staff's recommendation of a single tax rate set at 10% of gross receipts does just that. There are other alternatives to consider such as a lower single tax rate or a tier tax rate as noted in the slide or as detailed extensively in staff's report. However given the absence of the voter outcome of prop 19 and the city council's actions on a regulatory program for medical marijuana or recreational marijuana at a later date the city council, by ordinance, could implement these alternatives presented in the report by accepting staff's recommendation today. Staff's recommendation keeps the City's options open and essentially creates an up to tax rate amount or sets a ceiling so that adjustments or tiered tax rates could be set at a later date following the November statewide election and any upcoming study session that the city council has on marijuana. If the city council would like to explore other alternatives beyond staff's recommendation there are three policy questions that the city council would need to address today to formulate a ballot measure. I will pass the presentation over to Scott Johnson, our Director of Finance, to go through those policy questions and some of the key factors for you to consider today. And I just want to mention that separately and at an appropriate time our City Clerk, Lee Price, could go over our ballot schedules on all of the items today. Go ahead.

>> Scott Johnson: Thank you, Deanna. As Deanna mentioned, if the council chooses to move forward with the ballot measure for marijuana business tax, there are three key policy decisions that the council should consider. So I'd like to spend a little bit of time of going over those policy decisions and the issues involved in each one. The first one if marijuana business tax is approved should it apply to all marijuana businesses operating in this city whether or not they are legally operating. I do want to point out that the city's existing business tax ordinance is strictly a revenue-generating ordinance, not a regulatory ordinance. Therefore under the city's existing business tax structure, the collection of the tax does not make the business legal from a land use or regulatory standpoint. For example, the city collects the current business tax from marijuana businesses regardless of their legal operating status in the City of San José. This practice, it is similar to the state board of

equalization, where they have issued some guidelines for the sale of marijuana within the state of California. And they require marijuana businesses to apply for a seller's permit and pay sales tax regardless if the businesses are operating legally or illegally. Our current business tax and the proposed marijuana business tax, they are revenue-generating taxes as staff has proposed in the staff report. The receipt of the payment of the business taxes by the city does not in any way authorizes illegal activity. Therefore, illegal operation will continue to be subject to criminal and civil enforcement actions within existing resources. If the tax is limited to legal issues, then any medical marijuana business operating in San José outside of state law requirements and/or the City's proposed regulatory and zoning ordinance they would not be subjects to the marijuana tax. This is inconsistent as I mentioned earlier with our existing business tax ordinance. Currently our businesses conducting business in the City of San José they're all subject to the existing business tax regardless of their legal status. So to change this methodology would require additional resources in the finance department to make a legally operating determination would require the finance department to coordinate with multiple departments within the city to determine if a business is operating legally within the city prior to issuing a business tax certificate. In addition that requirement would cause a delay of the marijuana business from operating within the city prior to the issuance of a business tax certificate until we receive clearance on the determination of the legal status. So if the city were to only tax marijuana businesses, the revenue generating potential of the new tax would be limited and the city may miss out on the opportunity to generate significant new revenue to provide funding for essential city services. The finance department and the city attorney's office, we've drafted a proposed ordinance that is included in your packet to comport with staff's recommendation which is to implement a business tax on all marijuana businesses in this city at a rate to be determined by the city council based on the marijuana business's gross receipts. Therefore consistent with the city's current business tax imposed under our existing business tax ordinance the new marijuana business tax would apply to all marijuana businesses operating legally or illegally in the cities. The second major policy issue is, should medical marijuana establishments be taxed at the same rate at nonmedical marijuana businesses. A alternative that was presented in the staff report that council may consider would be for the council to create two separate tax rates. One for medical marijuana and the other for nonmedical marijuana businesses. This two tiered approach would tax medical marijuana at a lower rate and nonmedical marijuana businesses at a higher rate. Inherent in this approach is a recognition of the compassionate use aspect of medicinal marijuana. This two tiered tax structure currently being developed have been approved in the cities of

Oakland, Berkeley, Sacramento, Richmond, Long Beach and Stockton. However, in most cases, the proposed taxes on these businesses are limited to only legally operated marijuana businesses. Therefore they're missing out on that additional potential revenue for illegal businesses operating within their city. Staff is not recommending a two-tiered system at this time, given the many unknown factors related to revenue forecasting, the election results regarding the statewide ballot measure, the lack of consistent analysis regarding the overall impact to medical marijuana proposition 19 passes, and the overall desire to have clarity around applying a tax to a business. So as was noted in the supplemental staff report, staff's recommendation provides the council with the maximum flexibility, given the unknown factors I just described, and this approach would grant the council options where more complete information is available for its public policy development following the November elections. If a majority of the voters in San José approve the medical -- or excuse me approve the marijuana business tax at the rate of 10% of gross receipts, the council can subsequently reduce the tax rate, or you can or create a tiered rate for medical marijuana businesses at any time, at any council meeting. So it's important to note that the council has previously lowered taxes in the recent past. For example in November of 2008 the city broadened its telephone users tax, known as TUT, while modernizing and broadening the tax, the council chose to reduce the rate from 5% to 4.5%. In addition, the council also eliminated the former emergency communications system support fee and replaced it with a 10% reduced telephone line tax. So council does have the prerogative if the voters approve a tax at a certain rate in the future, council can choose to lower that tax, if the council so chooses. So finally, the third policy issue is what should the tax rate be? As I mentioned the council has full discretion at setting the tax rate that's set, put forward for the ballot measure. And staff is recommending the application of a 10% single tax rate of gross receipts on marijuana businesses given the desire to create a streamlined implementation and tax collection methodology. The single rate removes the added administrative layer of auditing businesses for the application of the correct tax rate based on the use of the marijuana, whether medicinally or recreationally. The single rate would be applied to all businesses engaged in the sale or distribution of marijuana whether the activity is legal or illegal. Staff's recommendation this 10% single rate is supported by the community polling that you just heard, however at this time, it has polled favorably among most likely voters the tax rate said of a range of up to 10% would likely do well also. So the legal documents necessary to advance a ballot measure will be drafted if council so chooses to reflect any tax rate determined by the city council for voter approval. And currently as I mentioned, the existing draft documents that you have in front of you are anticipating

a single tax rate of 10% as recommended by staff. So as noted earlier given the unknowns, including the outcome of prop 19, staff is not recommending the two tiered approach at this time. However, as previously noted, if the voters approve a tax rate of 10% the council has an option at a later date with more information available to either implement a two-tiered tax system, if the council desired to do so, or to reduce the tax rate. So finally, as noted in the staff report although staff recommends a single 10% tax rate for legal and illegal marijuana businesses, given the unknown volume of transaction that would generate revenue to the city, we are not forecasting revenue resulting from the staff recommendation nor are we able to forecast the revenue for any other tax rate recommended by the city council for voter approval. I will share with you that we did contact the state board of equalization. And we are aware that there are 73 collectives identified within the City of San José. 40 of those have applied for a sales tax permit with the State Board of Equalization and year to date for fiscal year '9-10, the gross receipts that have been reported to the state for collectives that have reported sales tax to that are doing business in the City of San José, the gross sales are about \$1.5 million. If we had a 10% tax rate on those businesses, that would generate approximately \$150,000 of tax revenue, in addition to the 1% tax that the city receives from the sales tax. Oh, I did want to note that of the 40 that have applied for a sales tax permit, only 18 of the businesses have actually reported sales to the State Board of Equalization. So clearly there's some follow up that the finance department will be working with the state board of equalization and with our collectives to make sure they are properly reporting sales tax to the state board of equalization. That completes our staff report and we are available for any questions that the council may have.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. I think when you have these dates like August 3rd when you have to get something on the ballot it sort of draws a line what you have to do. And clearly having the option to do things later by ordinance allows the council flexibility for whatever that might be, a charter change or raising a tax. I think staff covered it pretty well that we would have the flexibility to lower the tax. I'm in support of taxing medical cannabis. There's really as Scott Johnson our finance director said, really no way to predict revenue because we don't have a true running rate. We know if we increase the utility tax it's something, something like this is unknown so it's good to have the flexibility of what that number might be. You have spoken to how other

cities in California are doing that this day. Other states in the country, there are now 14 states that have medical cannabis. We do know that there's a lot of sales going on, because the state franchise tax board is collecting somewhere in the neighborhood of \$100 million. So there is some level of money going on, and certainly San José as a share of population would have some share of that. For those who are concerned about those that are truly needy and may not be able to afford what they are procuring for their needs certainly the collective can set up a sliding scale to pay for these items, and the collective can manage that. You don't need the city to tell you to do that. The collective can be compassionate and manage a sliding scale. There is the notion, if you tax it, that then those people will turn to the suburban drug dealer. In my questions to those, the reality is the suburban drug dealer does not have the variety, quality or security that a medical collective provides plus the legal aspect of being in the medical collective versus going to the suburban drug dealer. I also don't think that someone is inclined to spend two hours in their car driving back and forth to another city that may have a slightly lower tax. Between the time and the cost of transportation, I don't think that's going to be a variable. I think we know clearly from the results of the poll, of the likely voters, that the residents support taxation. Money can obviously go to things we might not want to spend here. We do know today that over the counter drugs are taxed. So when you go buy cough syrup, cold medicine, allergy medication, you are paying sales tax. The variable of other cities in our vicinity, we are looking at Oakland with 5% and then possibly this 8% cultivation tax, so it is not necessarily terribly off. Then in the other respect that regulation that we're looking to do on medical cannabis, November-December, is allowing, based on feedback from the San José police department to allow onsite cultivation. Onsite cultivation allows a collective to have a better control of cost. So if it's really a concern on making it affordable, onsite cultivation will allow that. That's not a question before us today. It's purely do we support putting a tax measure on the ballot. I do. I would only say that I'd like to perhaps hear from speakers or from my colleagues on what that rate might be.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: I had a question for the City Attorney. I know we've had discussions in the past, especially in the area when we were talking about the land use and the enforcement from code enforcement, about the difference between collectives and dispensaries. I seem to always be hazy, not drug induced haze, just

hazy, on the difference between the two. And why if we go clearly by the term collective, where there are no sales that are allowed under the proposition in state law, how then are we taxing the income from sales? So I'd like to have that revisited.

>> City Attorney Doyle: Councilmember, the short answer on the dispensary versus collective is really, the dispensary model contemplates the real sales to third parties, not members of the cooperatives. To members of the cooperatives there are transactions within the respective collective, let's use the word collective, because in my mind they are synonymous, collective and cooperative. There is value, I think the value of the transactions is what we're looking at gross receipts, in terms of the what the value is for purposes of this business tax. And I think it's something that we would have to work through. But clearly the intention of what we came back with this clearly proposed, clearly it is not an ordinance at this point, is that collectives and cooperatives would be allowed but not dispensaries. Come November 2nd if proposition 19 passes, the world could change. If this went on the ballot and was approved, you would then be in the position to tax any, and let's go back, and the city allowed retail sales within its jurisdiction, prop 19 still gives power to locals to allow that, you could capture those transactions as well.

>> Councilmember Constant: So how do we ensure that these businesses are operating as true collectives and not dispensaries?

>> City Attorney Doyle: That's where we would again, go -- let's go back to what we propose again, not yet adopted, we'd be coming back in November. We had two sides of this. We had the land use provisions which really dealt with zoning or where these could be located and then independent of that, the police would -- we had contemplated a regulatory scheme where the police would have a -- what amounts to a permitting system although we didn't call it a permitting system, where you would have to come in and there would be regulations which would apply and there would be strict oversight. So through the oversight regulatory process we would -- we would determine whether or not you're legitimate.

>> Councilmember Constant: My concern is, we're all familiar with blockbuster. You have to fill out a form to rent. You fill out a form and you're a member. Blockbuster is really no difference than the red box dispensary that rents movies in front of grocery stores that don't have dispensaries. I just worry that that line there is going to be a very difficult line, it would be a line that is not very easily seen or distinguished. And so I have concerns there. My other concern, quite frankly, is we are almost sanctioning illegal sales by saying well, if you sell me legally, that's okay, we'll just keep taxing you. Maybe as our police officers are out, and they bust a coke or crank dealer, they can give them a citation for not having a business license at the same time, because that's basically what we're saying here. So I just kind of have a problem with the whole thing. I just think that we're pretty much just putting it out there, right here in the public meeting, that you can go ahead and operate a marijuana dispensary legally, and as long as you pay your tax, we're okay with it. And I'm not okay with that. I think you could easily start saying, okay, let's start taxing heroin and crank and coke and whatever else people might want to be doing. I still think there's a lot of questions and I know part of this is trying to guess what the voters will do in November. But even if the voters do approve the proposition, we still have that thing called the federal law. And the classification of marijuana in the federal controlled substances, that is still going to be a major hurdle, that the state as a whole has to clear before we can even consider going along with what the voters happen to vote in. So I still think there's a lot of questions and I think that if we go forward with this, especially if the motion contemplates just being as blunt as saying, you know, illegal stuff we're just going to tax it too. Where does that end up? I mean we have a card room tax but we don't tell people, if you have to have illegal gambling in the garage, we're going to come collect a table fee from you. I think we have to be really clear on the messaging that we're putting out.

>> City Attorney Doyle: Councilmember, I just want to clarify. Currently, even an illegal marijuana business is subject to the existing business staff. That rate is significantly less than what is being proposed but Scott maybe you can --

>> Deanna Santana: One way to clarify, let me jump in and I'll use an everyday example in terms of what is illegal and legal. An example would be our taxi industry where we regulate and permit taxis within the city and they are subject to business tax. But we also know or are aware and I don't mean to pick on this industry that there are nonpermitted taxi cab companies operating that are still subject, they would be deemed illegal or

nonpermitted but they are still subject to the City's business tax. So in this case if the city were to pass a regulatory program and authorize a certain amount of collectives to operate within the city, those are the operations that are deemed legal and subject to the tax. Any cooperative, dispensary or cooperative that is not permitted would still be subject to the tax, but would be deemed illegal. So that's the distinction here, is whether they fall within the permitted status of the city. Scott you may have more to add.

>> Scott Johnson: Yes, to Rick's point, let me clarify a few points. First of all we do coordinate very closely to the police department in regards to our business tax ordinance. If -- just want to reiterate, if any business is conducting business in the City of San José illegally, we report that to code enforcement, or the police department, as appropriate. So simply, by holding a business tax certificate, does not tell the business that they're legally operating within the City of San José. It's strictly a revenue generating ordinance. You know, and I -- I just kind of hesitate to use this as an example, where I was talking to our group about this. Very historical, we all know who Al capone is. He was an American gang sister, he led a probation era crime syndicate that did bootlegging liquor. And authorities were not able to pin the charges against him. However, Frank Wilson who was an agent for the Treasury Department's abuser revenue went after him for tax evasion. So although a person is conducting an illegal business in this country if they're generating revenue and income they are subject to federal and state income taxes. Long story short, I'm sure everyone knows, Al capone was indicted for tax evasion, he went to jail for tax evasion not for the illegal activity, unfortunately. I thought taxes were another way of collecting revenue where somebody is doing business illegally in our city, they're really at a disadvantage to those that are doing it illegally. The other point is, I just want to reiterate, the state board of equalization has come out with a ruling in regards to marijuana business, and all businesses throughout the state that sell cultivate marijuana in state of California required to pay sales tax to the state.

>> Councilmember Constant: And I think that's one of the areas that I have a problem. We're looking at this purely from a revenue perspective and not a quality-of-life perspective for the residents. The vast majority of the residents in San José that we, as councilmembers, continually to get complaints from the residents and businesses, as well as schools and preschools and all these other establishments within our city, that are adversely impacted by these outlets. And we hear that we are looking at this purely from a revenue standpoint. I

know there are two different discussions going on and I'm not blind to that. I think we have to keep this in perspective when we are taking this vote and the later votes in November.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: I appreciate Councilmember Constant's concerns. I -- particularly since my office we spend a lot of time chasing various dispensaries from residential areas, in my district. And we will continue doing so. Obviously, that's another conversation we're going to continue to have, particularly about land use and location. It seems to me the horse has left the barn with regard to marijuana use in the state, whether it's by the ballot measure that's already passed or the one that we face in November. I don't pretend to know whether prop 19 will pass or not. But a big concern in my mind is really whether or not we're going to get a significant amount of revenue on this. I saw that the Rand institute came out with a study that if the marijuana initiative passes price of marijuana will drop by 80% or more. I don't expect huge spikes in consumption but I don't pretend to know. As we look at this now at the 18 dispensaries or collectives depending how you define them that reported sales, you know I heard the figures that you cite, I'm not sure if it's Deanna or Scott, the \$1.5 million, is that a complete year?

>> Scott Johnson: It's 18 cannabis clubs unaudited for the year.

>> Councilmember Liccardo: For a full year.

>> Scott Johnson: Yeah, and this is you know as the collectives have continued to operate and grow in the city, you know, this is really preliminary information.

>> Councilmember Liccardo: Right.

>> Scott Johnson: And obviously it requires a lot of follow-up with the state board and the cannabis clubs.

>> Councilmember Liccardo: So that's a snapshot of a very fluid situation. We expect this to grow as the clubs get established and we know the advertising is ubiquitous. I guess you know I'm supportive of seeing the staff recommendation and staff suggested language go forward because I think it does give us the flexibility of being able to impose a tiered approach down the road, reduce the taxing or increase it up to 10%. That's certainly fine. I know that there are folks who are concerned about what the impacts might be of us taxing what for many people is medicine. It's not obvious to me that an increase in the tax will necessarily result in a higher price. I think economists will say, it depends on the elasticity of the demand for the drug, the relationship between the changes in the price of the drug to the changes in demand. And certainly, if collectives believe that there are something recreational users out there that are taking advantage of cards, and I think we suspect that there are many folks who are taking advantage of the law, even though there are many legitimate users, as well, there's good reason to believe that collectives themselves will swallow the price -- will swallow the tax in the form of a lower price. All that remains to be seen, we'll work that over time and we need flexibilities as we go forward. I'm willing to support the language as proposed, I have concerns whether we're going to get much in terms of revenue out of this. And I guess the only thing that gives me some solace is knowing that it's a lot cheaper for us to go forward now than if we are to go forward in 2011. I guess we won't have an affordable opportunity to go to the ballot until the next presidential election in November of 2012.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you. This issue troubles me a lot and Councilmember Constant outlined a lot of my concerns. I appreciate a lot Councilmember Oliverio's outlining of all of this great job in really letting us understand all these issues. It was hard for me to wrap my mind around separating taxing us from, should we have -- where should we locate it and all the other community issues and quality of life issues frankly associated with it. It's been hard for me to separate it. And I've had debates with my staff on it over that, too. Because I tend to go right back to quality of life and where is it going to be used and all these kinds of things. I've moved from that position to a position where I do think to a certain extent the horse has left the barn or the cow or whatever. And that should we not put this on the ballot, we're missing an opportunity to have maximum flexibility to tax. And even though I'm very concerned about really the amount of money we'd get in a tax like this, one of the reasons I'm

concerned is because I fully expect there is going to be legal challenges to whatever we do. It would make me feel more comfortable if I understood that we would actually get more revenue than we would be spending fighting legal challenges, for example, and I'm not at all comfortable that that is the case. In my mind I sit and think about how much marijuana has to be used for us to make any money on this? Ultimately I'm thinking, how many need to be smoking? When I take that and think about an apartment situation and somebody's living in an apartment let's say and your neighbor happens to have a prescription of medical marijuana. They use that and the smoke is not going to stay in the environment where where the prescription is. What about the landlord, are they going to be able to tell the person not to smoke, even though we have these regulations prohibiting smoking, and we're trying very hard to reduce and reduce, nonsmokers being -- having to deal with smoke? All these things are going through my mind, as I'm looking at it, but I'm going to separate this today. I'm going to separate this today and I'm going to say yes, I'm in support of the staff recommendation on the taxation but I really think we need to have some outreach to our community. We need to have -- we absolutely need to form some very significant outreach to educate the community and to really understand what this is going to mean. Whether or not the proposition passes in November, right now we've got a federal government saying no to medical marijuana and no to recreational marijuana. We've got the state saying yes to medical and we're trying to figure out how to deal with all of this. And it's -- we do need to have our citizens input, because frankly in all these discussions and in the sessions we have had in here. I see very few average citizens weighing in on this. Then I get the frantic call from somebody who sees a collective locating in an area where they weren't expecting it and having issues. And it just troubles me that I don't think we've had enough discussion on this and understanding of how this is going to impact our community. So all of these things, I'm going to support this. I expected Pierluigi to make the motion when you were outlining it so perfectly so I'm not going to make the motion. So I will support it, I will support a motion to support the staff recommendation on this with all of those concerns that I have.

>> Mayor Reed: Councilmember Pyle. Any other councilmembers have questions? Do I have requests from the public to speak on this item. I'll take that now, given the hour and the number of matters on our agenda and the fact that this is National Night Out don't want to go too late so my objective is to get done with all this by 7:00. In order to do that, I'm going to limit public testimony at this time to one minute per speaker. Please come on down,

when I call your name. James Anthony, Tiele Ayala, Lauren Vasquez. Councilmember Pyle do you have something you want to say before we do public testimony?

>> Councilmember Pyle: Thank you, player, I appreciate your indulgence for me. I really don't think this is ready for prime time and I don't see the advantage of putting this on before the state measure is completed. I've spent a lot of time talking to a judge, talking to fellow teachers that I've known from before. There are a lot of people that are not too crazy about this getting out there before it's been fully vetted. I don't see an advantage of getting on the ballot before we get definite consistent input from the state. In November, we will know whether it passed or not. That's -- and five months later we're going to be going out for -- for the baseball again. So why would we put something on the ballot that, number one, is going to cost a lot of money, and two, has empty results? So because of that I -- I just -- I am going to work against getting this on the ballot at this time. I think we have plenty of time to do the homework that's needed in order to make it work. But right now we're not ready for prime time. Thank you.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. I just wanted to state that I'm opposing prop 19. I think the marijuana issue is actually a federal issue but I'll be supporting this measure because I'm concerned that if we don't start charging the sink tax, other cities around us start imposing the tax, we maybe flooded William of those dispensaries, so I'll be supporting a 10% or even higher tax. Thank you.

>> Mayor Reed: All right, back to the public testimony. James Anthony, Tiele Ayala, Lauren Vasquez.

>> It's unfortunate that Councilmember Pyle has stepped away from the dais. I think her remarks this afternoon are well taken. You may want to regulate first and then consider what legal environment you're in before proceeding with this somewhat rushed and ill-informed tax measure. You do have prop 19 coming up. It's from what I heard from staff, there has been no economic study, no needs assessment. Fuzz are to move ahead with this 10% on adult use is perhaps sustainable in the event that 19 passes which it may not. Right now we're

probably looking at a medical tax rate sustainable at somewhere between 1.8 and 2.5% which is where Berkeley Stockton will be going. If those measures pass, Oakland is at 1.8, San Francisco has committed to no tax. Patients are already paying sales tax of 9.25, dispensaries in Oakland are struggling to pay 1.8.

>> Mayor Reed: Sorry your time is up.

>> It will drive the activity underground and 10% of nothing is nothing.

>> Mayor Reed: Your time is up. Tiele Ayala, Lauren Vasquez, followed by Dave Hodges.

>> Mr. Mayor, and members of the council, I believe that you were chosen by God to be our leaders. And I expect you to live up to your leadership. Thank you. As a single mother and founder of justice for families, I am thank you, Mr. Mayor, and members of the council, for closing illegal pot clubs. I take my activism and my protest very serious. Due to the fact that a woman holding a cannabis card sold pot to my 12-year-old niece at a hotel, and along with other 15 teens. This woman that I'm talking about purchased the pot from one of those illegal pot clubs here in San José. Pot leads to heavier drugs, cocaine, heroin and other drugs. I have seen that happen in one of my family members. So please, keep our police and fire departments open, and close the pot clubs.

>> Mayor Reed: Thank you, sorry, your time is up. Lauren Vasquez, Dave Hodges, Paul Stewart.

>> Hello, Lauren Vasquez, resident, patient, attorney, leader of Silicon Valley Americans for safe access. Just to clarify, after the November election if prop 19 passes there will be no marijuana businesses in San José. It's taken over ten years to implement the medical marijuana laws. All the marijuana businesses will be a medical marijuana business. This is a medical marijuana tax. Of course the polling shows that people are willing to tax others not themselves and of course this will pass so that means this is in your hands. Just so you know it currently cost me \$500 to \$600 per month to purchase my medicine at a dispensary and I am an average user. That means I'll pay \$50 to the city, \$50 to the state, \$1200 per month in taxes just to have my medicine. I've heard the same questions asked here tonight as I have the last 12 months. I would like the sit down and answer those questions

not with your staff, with you. Pierluigi, with awe due respect, you need to meet with us because you are misstating the facts and you are not correct on some of these issues. Thank you.

>> Mayor Reed: Your time is up. Dave Hodges, Paul Stewart, Michael Hoveland.

>> Hello councilmembers, Dave Hodges, founder of SJPVC. I have some real concerns with the tax initiative as presented. It potentially deems patient caregivers and anybody doing business more than five days a year in San José as criminals. It also sets an outrageous tax that I understand you could lower, but initial starting rate of something lower would be much better for a prescription medication. Recommendation, but prescription medications are taxable and this is definitely the closest thing to it. I definitely advise you to vote no on this measure and send it back to the community to review and give some better input before putting it forward to the voters. Thank you.

>> Mayor Reed: Paul Stewart, Michael Hoveland, Daniel Hoveland.

>> Mayor Reed, members of the council, my name is Paul Stewart. I represent MC 3, I'm a patient and an advocate on this issue. As I see it you have three options. Number one if you are unsure of the outcome or the impact on patient cost for medicine, you should continue this and place it on the March 2011 ballot. Number two, if you opt to adopt this today, our recommendation is not to adopt 10% across the board, it is to adopt a two tiered program with a cap of 2% on medicinal cooperatives and a cap on whatever you choose on nonmedical sales. It is a balancing act. You are looking at both sides, if you do 3% you can do 17%, if you do 5% you could do 15%, you have got the math. The third option is to remember separate the discussion on this issue from the regulatory ordinance. Some of the things play into this but we're talking two different things right now. Lastly I would ask you to make sure that you get clarification on the sales definition in the regulatory ordinance of the sales of medicinal cannabis because it will be attached by the measure.

>> Mayor Reed: Your time is up.

>> Thank you.

>> Mayor Reed: Michael Hoveland, John Hoveland, John Lustig.

>> It would be hundreds of thousands of dollars to put this on there the possibility of maybe \$100,000. We're talking maybe eight years before we get the money back to put the issue on the ballot. Also as a collective we run at about a 75% expense ratio. The security to grow and do all these things in those collectives and provide those services and then you're going to put a 10% tax on top of that, most of these places will go out of business. You put a 10% tax to tax those businesses you are putting out of business. This is something we're talking about today that should be pushed over to a later time when something else more appropriate would be provided. Thank you.

>> Mayor Reed: Daniel Hoveland, John Lustig, Bob Sippell.

>> Good afternoon, my name is Daniel Hoveland. I'm the president of Medic Collective and Deliveries. I was recently elected president of MC3 and I'm also communications chair for the Silicon Valley Americans for safe access chapter. I'm really disheartened on what's happened right now because I've been to every single city council meeting, Rules Committee meeting, input meeting and every single time the people have spoken they have said no tax on medicine should be taken into consideration and yet all of a sudden staff puts on your table 10% tax and now we want to move forward with this. I think this discussion needs to take place more with the people and we need to get community input back in and don't kill the goose that lays the golden egg before we can even get it here, thank you.

>> Mayor Reed: John Lustig, Bob Sipple, James Roland.

>> John Lustig, a fourth generation Santa Clara County resident. You lead some of the most intellectual minds in the world. Along with brilliance, it's always accompanied by compassion. This is absurd. I want to ask, how many fire -- individuals who work at the fire department actually want to tax cancer patients to pay for their salaries? How many individuals work at the police department want to tax multiple stroke patients to pay for their

families? How many families in the City of San José want to tax people with depression, soldiers coming back with PTSD, that utilize cannabis, to pay for their parks. This is absurd. Discriminating against the medically disabled is blatantly wrong and disgusting. We all have an ethical responsibility to help individuals when we're capable of doing so. Instead you're defecating and urinating all over the sick and suffering patients within your community. God bless you.

>> Mayor Reed: Bob Sipple -- [applause]

>> Mayor Reed: -- James Rowan, Jeremy Pieri, Brian David.

>> James Rowan, I live in Santa Clara, California. I come here today as a concern that if you put this on the ballot in a sense you're going to be affecting other cities like my own, which currently has a moratorium on these establishments. In one sense if you call marijuana medicinal use then how can you tax something being used as a medicine. You might as well tax a meta form and other medicinal uses. If you are taxing this as a quality of life issue, then I strongly suggest you tax firearms and handguns and other ways to regulate it or perhaps in anonymous political mailers. The fact of the matter is that it is simply a bad idea to use the your ability to revenue to tax something that frankly is in a gray area. I would remind you that your ability and duty as a city council is to promote economic activity and economic revenue generating businesses, perhaps later on in the spring.

>> Mayor Reed: Sorry your time is up.

>> Thank you.

>> Mayor Reed: Jeremy Pieri, Brian David.

>> Thank you, members of the council, and Mayor Reed. I'd just like to say that as a dispensary owner, well, operator, that this tax would be, you know, really difficult for us to compete with some of the other counties that are right near us. And it's going to drive the patients that normally would be getting their cannabis here in San

José elsewhere. And so while, you know, we would prefer not to have a tax at all if there is a tax that is going to be needed to have in San José it needs to be lower. 10% is just way too high. Somewhere in the area of you know 2 to 3% I think that's something that most collectives could live with and the probe is that this tax is just going to get pushed off to the patients. A lot of dispensaries now distribute their medicine with their price plus the tax on top of that. So you're looking at having people that now, like Lauren had said, you know 5, 600 a month, that could go substancially up to \$700. That is just going to tax people unnecessarily. Thank you.

>> Mayor Reed: Brian David is the last speaker I have.

>> Good afternoon, mayor, council. My name is Brian David. I'm a fifth generation Californian, I'm a member of the Americans for safe access and also the operator of a collective. Certain problems you have, I'll tell enthuse. I'm a Republican and I voted for every Republican president since Ronald Reagan. I understand, taxes are part bit the amount is way out of control. 10% is even more than our sales tax here in the county and you're doubling the price of medicine for sick patients, that can't be tolerated. If these collectives are run as a closed loop system, they are not for profit and all profits need to be distributed back into the community if there are any. I think you guys are in the right direction, you just need firm things a little bit before August. Thank you.

>> Mayor Reed: That concludes our public testimony on this item. We do have a motion on the floor made by Councilmember Oliverio. I don't know who had the second on that but I know he made the motion. No? No motion yet? I thought you said you were going to make a motion. Now's the time.

>> Councilmember Oliverio: Thank you, mayor, I wanted to hear the feedback from the public and my councilmembers. It comes down to the rate. I want to remind everyone why we're here. The Obama administration reversed the bush administration on medical cannabis in 2009. I wrote a memo three to four days later, knowing that that opened up the payload doors to this in California and San José. I wanted to tackle this back then because I thought it would be a lot easier to manage it. We are where we're so that's where we're at. Important thing to note, you know, Scott Johnson is coming over with some financial data. And he said the key words, unaudited. With this ballot measure comes audits. And when we talked about regulatory on this council we

talked about audits. And why do we talk about audits? Because collectives have to operate as nonprofits. I could understand why somebody might not want to pay tax but at the end of the day you have to operate as a nonprofit. There is a difference between a pharmacy when they're paying shareholders and a difference with a nonprofit collective that's not paying shareholders. In the end that taxation shouldn't increase the cost of the collective product. And that's what we have here before us on medical cannabis. Not everyone smokes it, it is taken in the form edibles and teas and all that other type of stuff, so that apartment discussion. But I know we're all over the place between regulatory and taxation but at the end of the day I'm making a motion to support staff recommendation but I'm saying publicly right now that come November and we have this in place I will personally support a second tier lower taxation by ordinance for medical cannabis. But at the end of the day we need some travel record seeing what's going on and some audited financials from these collectives operating in San José. Again the motion is to support the staff recommendation.

>> Mayor Reed: All right, we have a motion on the floor to support staff recommendation. I'm going to support the motion. We'll peg it at 10% and I'll see what happens in November. If that regulation passes, we'll go into the new phase, and I'll have a difference of opinion I think depending how that election comes out. Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. And I certainly have on the regulatory side there's plenty of questions come up as far as the taxation side. I do have concerns with setting a 10% rate. I understand that we have the ballot measure coming in November and I take Councilmember Pyle's comments -- I thought her comments were quite appropriate, in that we don't know what's going to happen in November. And we're going forward with the 10% tax rate, not knowing you know what the future holds, we're still going to have hearings on the regulatory side which we haven't had yet. We have had some good opportunities from the public to comment on this issue. We have had this before council so we have had lengthy discussions on this issue as a whole. As it comes, as far as the tax iron is concerned right now we're dealing with medical cannabis. We're not dealing with what may happen in November. And so all I have right now is what's before me. And what's before me is the potential of putting on the ballot a 10% tax on medical cannabis. And I think that's excessive. I think that in November, if we -- if recreational use is passed, a tax 10%, even more potentially, I have no problem with that. I

think that is a totally different ballgame and that's where we can look for revenue generation. As I said in the past, the only reason there is a tax at all on medical cannabis is that given its unique nature, there are additional costs beyond the fees we are allowed to apply for the strict regulation of the cannabis clubs that are operating illegally. We know there are going to be some that are operating illegally, we know there are going to be some potential for impact to neighborhoods and public safety that may exist and I think that justifies a 2 or 3% tax in order to make sure we have our Planning Department, code enforcement and police department fully compensated for whatever additional costs come from the operation of medicinal cannabis clubs as well as closing down those that are operating illegally. I don't think 10% is justifiable. I do appreciate the comments from Councilmember Oliverio that, come November, if there is a passage of the recreational use, that he would certainly entertain a two-tier. I would entertain that right now and I don't see why we have to wait for November to do that. If it doesn't pass November it makes the second higher tier for recreational use moot but at the very least, we are making a statement that we're not going to treat medical cannabis in the same class and category as recreational cannabis.

>> Mayor Reed: I have another question with regard to the motion on the floor, in addition to the motion of substance, we have some process issues to deal with and I would suggest that, if the maker of the motion would include in the motion an authorization from the council to have Councilmember Oliverio be the principal author of the ballot argument, because somehow that has got to be drafted and we have a week to get that to the City Clerk and somebody has to take the lead on getting that done. I would suggest that's how we do that. If Councilmember Oliverio is willing to take the lead, it would not be a statement by the city council, it would be a ballot argument signed by Councilmember Oliverio and whoever else.

>> Councilmember Oliverio: Mayor if that's acceptable to council that's fine.

>> Mayor Reed: Somehow we've got to get this done in only a week. That would be included in the motion. Is that okay with the seconder? Okay. Back to the motion, Councilmember Pyle.

>> Councilmember Pyle: I can't -- I can't believe some of what I'm hearing and I want to just double-check on a couple of things. If we put this on the ballot, where's the money coming from to finance that? Because we're looking at about \$268,000 to put it on the ballot. So where does that come from?

>> Mayor Reed: We budgeted money for elections. It comes from us.

>> Councilmember Pyle: But it's questionable as to whether this even needs to be on the ballot because of all the unknowns. Anyway, we can just go ahead and have the vote. And I'll --

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. The question for Councilmember Kalra, I appreciate your concern. I assumed that you're aware that this gives, it is my understanding that the City Attorney and the staff have interpreted the language we currently have, we actually have the flexibility to go up to 10%. We have the ability to impose tiered tax rates. I assume you are aware of that. Would it give you any more consolation if we were to add the words up to between the words of and 10%, that there is flexibility for both voters and the council, that we are essentially setting a maximum tax rate that we're authorized to impose?

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: My -- I'd think that would certainly add some comfort. The discomfort is not knowing what rate that is going to be, and to allow the discretion to tax up to 10% for medical cannabis is where the discomfort comes.

>> Councilmember Liccardo: Well, the authority of course comes from the same council you're sitting on. So I can understand if you don't have confidence in us. But -- I've heard that before. But [Laughter]

>> Councilmember Liccardo: But fair to say it's going to be a pretty public process and I imagine one that will be fairly well vetted with a lot of public participation.

>> Councilmember Kalra: Well, you know, if there's -- I would certainly -- I would certainly feel more comfortable if it did say up to the rate of 10% and I have a couple of other follow-up questions once Councilmember Liccardo is done as well.

>> Councilmember Liccardo: I have a question for Rick whether or not that language gets us into any trouble.

>> City Attorney Doyle: No on the ballot measure it's fine. Your point that, and the legal issue is that prop 218 requires voter approval of a new tax or an extension of a tax but it doesn't require voter approval of a reduction of a tax.

>> Mayor Reed: Okay, so that was acceptable to the maker of the motion to add the new language, and seconder?

>> Councilmember Liccardo: That is fine. My question is whether that is acceptable to the maker.

>> Mayor Reed: It is, so the motion is amended. Councilmember Kalra, you had some other questions.

>> Councilmember Kalra: Thank you, mayor. The cost of putting it on the ballot was 758,000 not 258,000 as Councilmember Pyle indicated.

>> Lee Price: Yes, the first ballot measure is 758,000.

>> Councilmember Kalra: What do we have budgeted for ballot measures?

>> Lee Price: We have \$1.89 million budgeted for the fiscal year 10-11. That includes about \$91,000 for the runoff elections in Districts 5, 7 and 9.

>> Councilmember Kalra: How much is that?

>> Lee Price: 91,000. So the bulk of that 1.89 million is set aside for ballot measures.

>> Councilmember Kalra: Thank you. And what would the process be post November, let's say the language is up to 10% and we wait until November, either way whatever happens to the statewide ballot what would the process be subsequent to that?

>> Deanna Santana: Very good question. While Lee can speak to the schedule of getting the arguments in, what we had envisioned was going into study session in late November, early December, to assess where we're at with the state wide election results as well as the local marijuana business tax measure. Somewhere in our lengthy report we noticed that we would impose the tax beginning March 1st. So in that time from November or even beginning now as we start collecting input from the public on the tax rate we would begin to formulate what the policy input is for the council to consider, go into study session, share that public input, continue to have meetings, continue to collect information so the council can make a decision and then we still have sufficient time to put the tax in place by March 1st.

>> Councilmember Kalra: Okay, and so thank you for clarifying the process and I appreciate the amendment and with the amendment will support the motion but with a very clear I think it's very clear where I stand in terms of the taxation of medical cannabis versus recreational cannabis and come November I hope that the consensus of the council agrees with me in terms of the rates.

>> Mayor Reed: I think that concludes the council discussion. We have a motion on the floor.

>> Lee Price: Mr. Mayor.

>> Mayor Reed: We do -- City Clerk.

>> Lee Price: Mr. Mayor, can I raise two points? If I could get the friendly amendment repeated for the record?

>> Sure.

>> Lee Price: And also we'd like to get direction from the council about whether or not you want the full text of the measure printed in the sample many ballot as well, we will allow rebuttal arguments. The motion made by the motion America.

>> Councilmember Liccardo: After the words programs it will read, shall an ordinance be adopted to impose a tax at the rate of up to 10% of gross receipts, so the words of "up to" are inserted.

>> Lee Price: Thank you very much.

>> Mayor Reed: Before we discuss rebuttals, why don't we see if we have a council majority to move ahead.

>> Lee Price: Thank you.

>> Mayor Reed: We have a motion as amended just described by Councilmember Liccardo, on that motion, all in favor, opposed, I have opposed constant, Campos, Pyle and Nguyen. Four opposed, seven in favor, that goes on the ballot. The printing of the full text and allowing rebuttal arguments. What do you recommend, City Clerk? We'll start --

>> Lee Price: Well, you can save money if you give us direction to not print the full text and that's consistent with past practice where we do make it available on the Website. We will provide it to voters on request and many,

many years, the city has not accepted rebuttal arguments. It's a quick time frame. Arguments for and against are due next Monday, August the 8th. Rebuttal arguments would be due the following week, on August the 16th.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Considering in June we just decided to not do full text and rebuttals, I would make a motion to follow as we did in June.

>> Mayor Reed: Motion to not have full text and rebuttals. Discussion on that? Councilmember Liccardo had the second. All in favor, opposed, none opposed, okay.

>> Lee Price: Thank you.

>> Mayor Reed: I think that passes and we are done with that item, is that correct? All right. Moving right along. Couple more items on the agenda. Our next item is, item 3.3D, the recommendation to put a matter changing binding arbitration on the November ballot. Take just a minute for our staff to change places. Let me start with this one. I brought this forward, a couple of things I'd like to say before we get into staff presentation and public discussion. For someone to talk about the process of how it got here and why it didn't go through a meet-and-confer process, because I think people have raised some questions about that. Everybody got a letter from the Police Officers Association asserting that this was subject to meet-and-confer. That has been a concern for me in trying to get this in front of the council, because if it is subject to meet-and-confer, then it is also subject to binding arbitration before the council could do anything. So that would mean that we would have to go through a meet-and-confer process and then binding arbitration to talk about whether or not we could put a change to binding arbitration. So I wanted to avoid the meet-and-confer process, and I don't believe it's subject to meet-and-confer process, that is our lawyer's opinion. But to go down and start in a meet-and-confer process, would essentially eliminate the ability not to meet and confer and eliminate the ability having to go to binding arbitration in order to change arbitration. I only recently learned about the possibility of doing what's called meeting and consulting, which I guess has come into use as a result of some recent court decision. I have met and consulted

with our Police Officers Association and our firefighters association, and I have made some changes, based on their comments and their suggestions, their requests, not that they are necessarily going to be supportive of this, but at least in terms of the text, I've met and consulted and have made some modifications, and I published a memorandum on Friday with changes after meeting with police and fire unions and getting comments on City Attorney on how to clarify some of the sections. So that memorandum is out, and there's a red-lined version, et cetera. I have one more change that I think we should make in regard to the request from the Police Officers Association. When I met with them, they were concerned about several things. One of those was, they did not want to be bound, did not want to have the arbitrators bound to a comparison of what other bargaining units had been granted or awarded or agreed to by the city council. And after thinking about that I understand it's public safety and we have traditionally dealt with public safety differently and they have not been treated like other bargaining units. And so rather than make that a specific limitation on the arbitrator I'm suggesting that we move that from that section into another section that would require the arbitrators to give serious consideration to what's happened with other bargaining units but not be constrained by that. In addition, they were concerned about the language prohibiting the arbitrators from giving retroactive increases. And one of the reasons I've got that in there is I'm trying to encourage everybody to get it done. Get negotiations done, or get the arbitration done, but get it done quickly. And the retroactivity is a risk to the city and it's a problem in terms of incentives to get into arbitration. And the comment was, well, if that should be retroactive it should be retroactive on the city side so it wouldn't be retroactive increases or decreases. We don't want to provides an incentive for the city to drag its feet either. This is a new thing that's not in my memo but I'm going to recommend that we change it when we get around to make a motion. And that is the language about retroactive compensation, and that is to change a language where it says, the board of negotiators shall not render a decision that retroactively increases or decreases compensation and change that so it says, shall not render a decision that retroactively increases or decreases compensation other than base wages, so that, and I continue on with the sentence. So that if folks are really entitled to a general wage increase, there's no incentive from -- on the city side to drag its feet in order to avoid paying that general wage increase so an arbitrator could grant a base wage increase but would not be able to grant retroactive pension benefits, health care benefits or any other type benefits. The language would insert in this the City Attorney who is trying to keep track of this, that is the retroactively increases or decreases compensation, other than base wages, including but not limited to enhancements of pension retiree health

benefits for services already rendered. And that is an effort to try to accommodate the interests of the police union. I did not get specific requests or comments from the fire union. And I'm going to talk a little bit about why this is here. Everybody knows we had a very tough budget, very difficult year. We just finished the process of laying off hundreds of city employees, including some very good firefighters. We shrank our workforce from 6600 people to 5800 people. That's down from 7400 people in year 2000. We've been shrinking for the last decade and reducing services for the last decade as a result, because our expenses have been growing faster than revenues over this past decade. The average cost per employee has gone up 64%, while revenues went up 18%. Retirement benefits now cost us three times what we paid in 2000. Even though our employee count has fallen dramatically. So we have a lot less people but we're paying a huge amount more for retirement benefits. So if we didn't have expenses growing up faster than revenues we wouldn't have a long term structural deficit. And increases in pay and benefits for city employees have greatly outpaced increases in revenues, and police and fire have increased dramatically. More than the other employees. In 2010-11, that's the fiscal year we've just started, the average price for a police officer and firefighter will be over \$180,000 a year, wages and benefits and cost to the city. That's a 99% increase over what it was in 2000-21. The ability of arbitrators to issue orders that can't be appealed but are binding on the city without regard to our financial condition or what's happening in the city, and the threat of arbitration, has been an impediment to good faith bargaining as well. Not just with police and fire, but with the other bargaining units who don't want to give on an issue because they believe that Police and Fire will just go to arbitration and get it and take all the money as I've heard many, many times. So over the ten years that I've been here I've heard many, many comments from our bargaining units, I've seen it in action, I know that binding arbitration is an impediment to negotiations and it is a cost driver. A dramatic cost-driver as we've seen in the costs. So that's why modifying binding interest arbitration was a cost-saving strategy identified then years ago or so in our General Fund industrial deficit elimination plan. It was recommended by the budget commission in their budget recommendations this year. Outright appealing binding arbitration has been recommended by the Santa Clara County civil grand jury in their report that cities must rein in unsustainable employee costs. I'm not recommending that we repeal arbitration, although that would be a simpler concept for many people. I am recommending changes to try to help us gain control over our ever increasing costs of wages and benefits, and the presence of arbitration, the acts of arbitration and the threats of arbitration have driven those costs dramatically, and this is a first step I believe in gaining control of our fiscal problems. It is not the end of the

process by any means, because we still have to negotiate contracts, because no matter what constraints we put on binding arbitrators, the city council can and should negotiate the contracts and can do more. If the city council wants to close the libraries to avoid laying off police and firefighters, the city council can choose to do that but an arbitrator shouldn't be making those decisions. Arbitrators should not be making the decisions that could vastly affect the people of San José, they're not accountable to the people of San José, they don't know anything about San José necessarily, it is the elected officials who should be doing the negotiating and making the decisions about the scarce resources. While I'm not proposing to eliminate binding arbitration, I'm proposing to curtail the power of arbitrators to spend money we don't have to create unfunded liabilities and to spend money much faster than is appropriate based on our revenues. So that's why this is here. It is here on August 3rd because this is the last chance we have to put it on the November ballot. If we don't go in November this year, I believe it will be June of 2012 before we can put it on the ballot given the cost of a special election and unless somebody is willing to front the cost of a special election it's just not likely to happen. So I think this is the time to do it. We just went through the worst budget cycle in the history of San José and we need to get ahead of these approximate and that is why I am bringing this forward, why I'm making this recommendation. With that I think maybe the City Attorney or the City Manager might have something additional to say. I know there's -- okay, then any comments or questions from the council, I do have a lot of people who want to speak on that item. Happy to take the testimony at this time. Why don't we do that. We'll start in order to get out of here by 7:00 tonight, I'm limiting testimony to 1 minute per speaker. Please come on down. Jerry Mungai, Nina Seth, Carey Hargrove.

>> Thank you, mayor. I'm Jerry Mungai and I'm president of the Almaden valley community association. And I just want to say that at our July meeting, our association board of directors voted unanimously to support a ballot measure for the November election it would eliminate totally binding arbitration for sworn safety officers. We believe if you don't like your job you're free to leave for another job. The mayor's plan for modified binding arbitration is better than no plan. The proposal by Councilmembers Kalra and Pyle to study the issue for four months will only delay the inevitable. Binding arbitration must go. Palo Alto is eliminating binding arbitration. We should do likewise. I also want to say that what assurance do we have that by the end of November we will have a better deal than what is being proposed by the taxpayers who pay these bills anyway? This reminds me of the health care bill that just dilly dallied and dilly dallied in congress for the longest time and then there were all these

deals that were made and nobody knew what the heck was going on in the whole bill. So there's no assurance we have that there won't be any delays --

>> Mayor Reed: Sorry your time is up.

>> Delays in coming up with our proposals.

>> Mayor Reed: Our next speaker will be Seth, Carey Hargrove followed by Fred Hirsh.

>> Hello, my name is Carey Hargrove and I'm an intern with the interfaith council on economics and justice. As the daughter and granddaughter of police officers and niece of firefighters I grew up knowing the importance of public service. With these values of service I found my way to Providence College, a Catholic university where I'm a student of public and community service. There is study and debate what makes for a just and moral society. Beyond lectures, reading, papers and exams my education teaches me to put my faith in action and that is why I am speaking here today. Pope Paul VI said if you want peace, work for justice. What is just about rushing to amend the charter? Never mind the lasting and unforeseen consequences of the amendment, but what does this hurried nature say about process? The process is just as important as the result itself and by Hayesily make changes without examining the effects it will have on the empire community, not just families such as my own, we are headed down an unknown and scary path. Take the time to let all the stakeholders justly be part of the process. Because what does this reflect about the morality and justice of our city if we do not? Thank you. [applause]

>> Mayor Reed: Fred Hirsh then Larry Pegram and Ann Webb.

>> Good afternoon, mayor and councilmembers. I believe that rushing a charter amendment to the ballot, as you are, is a violation of any reasonable notion of open government, especially after all the time and discussion that was put on marijuana. I don't think any of you know what the effect of this measure will be on public safety, in San José neighborhoods. In 2006, Mr. Mayor, you told the metro that sunshine reforms are really the key to fiscal

responsibility. The key is not wasting money, and the key to not make big mistakes. Well, with this lack of sunshine, in one week, you're ready to make the big mistake.

>> Mayor Reed: Sorry your time is up.

>> -- of altering the charter.

>> Mayor Reed: Your time is up. Larry Pegram is our next speaker, followed by Ann Webb. [applause]

>> Mayor Reed: And your time is up, sir. We have other speakers, we have a lot of other speakers who want to speak. Rick Wortle is following Ann.

>> Mr. Mayor, members of council, I urge you to place this measure on the ballot. It is a very integral part of the whole process of restructuring the financial health and well-being of the city, I think it is something that the time has come and I urge you to vote yes to place this on the ballot. Thank you.

>> Mayor Reed: Ann Webb, Rick Wortle, Bart Fernandez.

>> Mr. Mayor, councilmembers, I totally agree with the mayor's proposal to rein in the city budget by introducing a ballot measure to amend the city charter to place limits on outside arbitration. I applaud you for introducing a ballot measure to change the minimum benefits and contribution form that's for employee unions. The city with its current fiscal problems cannot sustain the current system with police and firefighters whom I really admire retiring with the 90% salary. I wish I could have that sweet deal! I'm all in favor having talented city workers, but they're compensation and benefits should be in line with what the rest of the Silicon Valley is receiving. Even the venerable IBM with its lofty goal of full employment since phased out, introduced a two tier pension system in the 1990s where older workers retain their pension benefits and newer employees did not receive a pension but received a 401K and contribution --

>> Mayor Reed: Sorry your time is up.

>> Thank you.

>> Mayor Reed: Art Wortle, Ali sa Koff Ginsberg.

>> Good afternoon, mayor. You accepted the police contract which is essentially the same contract that the fire department offered you and the fire department offered you a two-tier retirement system. By denying that, you are force this to go to arbitration. We are not allowed to strike. Arbitration is our only means of controlling the city. The city can make an offer to us without arbitration and we have no choice. I moved here in 1976. There was 28 fire stations and 400,000 people. Now 30 years later you've only added six stations and we have triple the population. Now you have closed six of those stations. We are back to 1990 standards as far as the fire department goes in response. The national standard is 1.8 firefighters per thousand residents. We have less than seven. We are not even half what the national average is yet you lay off 53 of our brothers and sisters. You have decided --

>> Mayor Reed: Sorry your time is up.

>> You decided --

>> Mayor Reed: Next speaker is Art Fernandez. [applause]

>> Good afternoon, Mayor Reed and city council. My name is Art Fernandez, and I'm the president of United local 19 here in San José. As earlier speakers said we think that it's a rush to make changes to the charter without further discussion. As our brother said from the fire department, they gave up the right to strike, and arbitration is their only recourse. And we think that you're making a playing field unequal by trying to make these amendments to the charter. So we support the fire department and we don't think that there should be any changes to binding arbitration as it currently is. Thank you.

>> Mayor Reed: Alisa Koff Ginsburg, Alisa will be followed by Bill Baron and Bill Leninge reservation.

>> I'm Alisa Koff Ginsburg from working partnerships. The accessibility of that input is an indication of the importance of that issue. It appears that our council place east much higher value on land use decision and medical marijuana than it does in changing our charter, that's the local equivalent of the U.S. constitution. A formal task force which you appointed will be meeting nine more times to gather public input and then there was the million marijuana ordinance first raised in October 30th. In March you directed staff to get public input, you hired a paid facilitator to do that. Changes to the charter, though, came in the form of a last-minute rush. The charter is our city's constitution --

>> Mayor Reed: Sorry your time is up.

>> Thank you.

>> Mayor Reed: Bill baron.

>> Mayor members of the council, Bill baron. The City of San José is in a fiscal crisis and has been for several years. The paradigm of raising taxes and fees while decreasing services to citizens no longer works. San José structural budget deficit remains intact and without your positive action today may remain so for years. I support both the pension reform as well as the binding arbitration reform before you. These are very important issues, can't be trivialized as some has as business versus labor nor should they be characterized as some sort of anti-public employee police or fire crusade. The macro issue at hand is about the well-being of our community and its fiscal sustainable. Some have called for more time to study the issues and I can only ask why. Our structural troubles were identified years ago during much better economic times. Under the watch of many of you our city has experienced nearly a decade of operating deficits, coupled with reduction of services. During the same period there have been no meaningful fiscal reforms and I suggest enough is enough. The time to act is now. While not perfect solutions I urge you to move forward with placing binding arbitration and pension reform on the ballot.

>> Mayor Reed: Your time is up. Bill Leninger, followed by Pat Saucedo and Steven Kline. Bill Leninger, I don't see him moving, come on down Pat Saucedo and Rachel.

>> Pat Saucedo: Pat Saucedo San José chamber of commerce. The measure before you is the step in the right direction. The chamber believes there will be challenges in implementing this and we want to be part of the group that carries the message forward. But a ballot measure that will begin to limit outside arbitrators from creating unfunded liabilities for the city, from putting the city in the position of having to reduce existing service levels in order to maintain retirement benefits, is absolutely essential in our long term fiscal stability for the City of San José. It is for these reasons that we do endorse and support placing this ballot measure on the November ballot. Thank you.

>> Mayor Reed: I see Bill Leninger made it down, Steven Kline and Bill Leninger and Rachel.

>> Good afternoon. While there is a need for reform we need reasonable solutions for real problems. We should take the time to have a reasoned approach. Councilmembers Kalra and Pyle wrote a memo that should be adopted. In hockey if you have a goalie that is not stopping the puck, you don't change the rules of the game. You get a better goalie. Look carefully as to why your negotiations are not working. Don't blame the rules. Change the players. Thank you. [applause]

>> It would seem obvious to me that, given all the interplay and all the people here, that there has not been enough discussion of this whole thing. To put it on the ballot in November. When you do that, it always comes down to somebody is imposing something from the outside. From a personal point of view, I've been working in the religious community for a long time. To get anybody in the church to even think about being responsible for the government, responsible for anything is a moral miracle. I would like to say some way in this to convey this to the community, to pact and all the other organizations that they will be heard, and that something won't be imposed on them from the outside and take over the whole thing. So in that light I would encourage that the

recommendation that came from Nancy Pyle and Ash Kalra that that be taken serious look at before we go to put it on the ballot. Thank you. [applause]

>> Mayor Reed: Rachel, followed by Michael Randolph, Dan Rodriguez, Jim Kelly.

>> Hello, mayor, councilpeople, my name is Rachel, I'm a hazardous material inspector for the City of San José for 13 years. I was a victim of sexual battery by a San José firefighter. The firefighter was terminated 50 city. Despite the horrible acts committed against myself and others, local 230 chose to defend this employee and bring it to an arbitrator. The inept decision of an arbitrator in conjunction with the support of local 230 devastated me and the other employees, one who quit and the other who is on stress leave. Despite almost 20 witnesses a criminal charge and other victims the arbitrator awarded the employee his job back. So my point is do we want to continue to trust the city's financial negotiations to arbitration as well? In addition, I'm extremely concerned with the moral integrity of the local 230 leadership, not its members, who chose to support an employee who engaged in such egregious sexual acts instead of protecting the public the employees. I strongly encourage the council to consider enacting an even playing field of negotiations for all unions, equal protection, equal representation, no binding arbitration. Thank you.

>> Mayor Reed: Sorry your time is up. Michael Randolph. Dan Rodriguez, Jim Kelly.

>> Yes my name is Mike Randolph. I'm a haz-mat inspector and chemist. I've been with the San José fire department for a little over 25 years. I'm here to ask the council to strengthen the ability to go to arbitration. As Rachel just said one of my co-workers, there are a number of co-workers that have been assaulted verbally by local 230 right here, at least one member in particular, local 230 chose to defend this person and convinced an arbitrator to keep his job, that member later pled guilty to battery against my co-worker. I've lost good co-workers due either stress leave or being compelled to quit because of the trauma they went through by this member, San José firefighter local 230 and more needs to be done to protect the citizens and the employees of the City of San José from firefighters that assault verbally and physically the members of the public and from crazy arbitrators

that allow such employees to keep their jobs. I want to urge the council again to strengthen this amendment and let them go on strike if they don't want arbitration. Thank you.

>> Mayor Reed: Your time is up. Dan Rodriguez, Jim Kelly, Randy Sakani.

>> Hello, my name is Dan Rodriguez, I'm with the communications workers of America, also a resident of San José. There have been things thrown out, how much a firefighter gets paid, how much a policeman gets paid. They deserve every penny of it. Every day they get up to put their uniform on, they are here to protect reply back. I'm here to protect your back for binding arbitration. What you're doing is taking away a voice for the working man. Everybody has to have a voice. What happens here is when people want to take away money and stuff they take away the voice and the arbitration from the working man. What I say to you as our leaders is you should be trying to create jobs trying to create that revenue not take away the voice from the working man. Thank you. [applause]

>> My name's Jim Kelly and I'm here to oppose the change to binding arbitration for one simple reason. Binding arbitration works. I've been a letter carrier for 27 years. We've never had a strike but we've had several arbitration and it works. Nobody walks off the job and the public still gets served, and that's your job to make sure our public gets served. These people who risk their lives deserve to be taken seriously. The problem is the negotiation process. You need to come to agreement. If you are unable to come to agreement and you go to impasse, this is a means to justice. To be against binding arbitration is unjust, I support the workers, we need to stick together because with solidarity we win.

>> Mayor Reed: Randy Sakani. [applause] Followed by --

>> I'm Randy Sakani, San José firefighters.

>> Mayor Reed: Let me call out the a few more people. Sorry to interrupt there, I'll make sure your time starts. Randy Sakani will be followed by Ann Sandoval, Rick Palmer and James Gonzales.

>> Thank you, Mr. Mayor. I rise to speak against bringing this to an initiative ballot in November. A decision this important demands an open and inclusive evaluation process and on that point of process much has been said about firefighters not participating. I can tell you here and now, I'll look at each and every one of you that if you commit to putting this to open process the San José firefighters will be there 100% of the time and if you need evidence of that Mr. Mayor and council simply look back at when you appointed San José firefighters to your structural deficit reform committee. We were there virtually every night Sans 2. We were there in the restructuring of the retirement boards, brought value to that most as well. Lastly if you simply look at OER director's web page about these negotiation you'll see nothing but page after page after page of our efforts to negotiate. Arbitration is a process that protects and provides public safety first and foremost, not about economics, it's about public safety. We cannot afford to make mistakes with this issue.

>> Mayor Reed: Sorry your time is up.

>> I urge you on behalf of firefighters citizens and police officers that you put this process to arbitration. Thank you.

>> Mayor Reed: Ann Sandoval.

>> Hi, my name is Ann Sandoval, lifelong resident of San José speaking in opposition for moving the issue of binding arbitration to the November ballot. Proposing this charter amendment is the city acting in bad faith with San José Police Officers Association as well as the firefighters. Arbitration has worked for San José. It's neutral and fair. Most contracts are actually not resolved, but negotiated through arbitration. I think this is an all too sudden issue to spring especially on the POA, looking at how they have been in negotiation for months over the union's contract, and this issue was not brought up by the city. I think the residents also require more time to be educated on this matter as well. Something the public may be concerned about are pay raises. What -- from what I know since the inception of arbitration, these raises have actually been lower than through voluntary

agreements. Also arbitrators awarded these pay and benefits based on feasibility to pay for any awarded benefits by considering the city's fiscal conditions. Thank you.

>> Mayor Reed: Sorry your time is up. Rick palmer, Rick Gonzales, followed by Anna Schultz.

>> Rick Palmer, San José fire. I was here several weeks ago and I talked to you about safety. If you get rid of binding arbitration you get rid of safety in our department. It's not all dollars and cents here, it's talking about human lives. It's talking about safe work environments, it's talking about getting to the call and allowing us to do our job. The woman that talked about they wanted the 90% return, last time I was here I mentioned a dozen names of people that have died in our Fire Department, seven of which committed suicide. I wonder if each and every one of you know of the gentleman, the firefighter that committed suicide a week ago Monday. When you make your decision, you think about that. [applause]

>> Mayor Reed: Rick palmer [applause]

>> Mayor Reed: After Mr. Palmer, James Gonzales, Anna Schlots and Kevin conant.

>> James Gonzales with San José Police Officers Association. This council's asked for its employees to give back, and work on reform. Our membership overwhelmingly has worked which and done that. Evident in our contract code. We are bewildered and shocked that 11 days ago, you know we received what is essentially an attack without any collaboration. I think there's a credibility issue that if this is the way the council will do business, it's going to be hard to work forward on reforms. If binding arbitration is an urgent need for change then there should have been more than 11 days' notice. Four days ago, it was changed. I don't think four days is enough for anybody to make a decision of this magnitude. So I urge that we do not go forward with this. Thank you.

>> Mayor Reed: Anna Schlutz. [applause]

>> Good afternoon, my name is Anna Schlutz, I'm with the South Bay labor council. It's pretty clear there's some disagreement around binding arbitration. There are folks that have problems with it, others in this auditorium is a crucial part of keeping our city safe. When there's a disagreement like the obviously there is a problem. But the best way to deal with that problem is good old fashioned hard thinking and creative thinking. We rely on you and the residents rely on you as leaders to approach decisions in a clear, deliberate, and thoughtful fashion. We need you to look at the problem. Identify its elements, put together a full list of possible solution and then evaluate each of those on its merits. So instead of rushing forward, with an untested proposal, like the measure on binding arbitration that has no track record whatsoever, and could have huge unintended consequences, on the public safety of San José citizens, we need you to instead evaluate the facts. Councilmembers Pyle and Kalra have --

>> Mayor Reed: Sorry your timing is up.

>> Thank you for your time.

>> Mayor Reed: Kevin conant. [applause]

>> Mayor Reed: Following Kevin we'll have Bob Sipple, Clark Williams and Originis Will.

>> Thank you for the opportunity to talk. I'm confused with some deliberations that occurred in this chamber. On one day we cut a fire station and then the next day there's a public hearing of a draft EIR for a ballpark that requires the fire station that was just cut to be able to build the ballpark. There is more going on here. And I think folks need to really study why things, as dramatic as this proposal, would occur during council recess buy body that touts sunshine. I really hope that we hear from Councilmember Oliverio, on all the negotiations in all matters of business in everything in San José be done publicly, openly, televised and streamed. Thank you.

>> Mayor Reed: Bob Sipple.

>> Mr. Mayor, members of council, Kevin fish. I oppose the two-tier system. If you're going to have a wage and benefit scale for one employee, you have the same scale for every employee in that particular job. You don't say, these people will have one scale, later, there is going to be a different scale for older people, older versus younger employees. That's discriminatory and unfair. Now we've had racial discrimination due to economic conditions before, in our history. Let's not do it again. This is absolutely wrong. Thank you. [applause]

>> Mayor Reed: Bob Sipple followed by Clark Williams, Reginald Swilley and Neil Struthers.

>> Bob Sipple president of the rose garden neighborhood preservation association. I do not support a bill changing binding arbitration and I hope the council will not, also. The reason for this is very simple. Binding arbitration was voted in by the citizens 30 years ago and contrary to the image that's being presented today that that this tool is used constantly, it is not. As a matter of fact in its 30 year history PD has used it twice, fire has used it three times. That means 90% of the time or more the City has agreed with everything that's been talked about. In addition we and I include myself as a paramedic PD and fire cannot by law strike or do any form of disruptive action that harms the 911 system for obvious reasons. That means we have no recourse at all if the city refuses to agree with the terms. Having spent eight years as a human rights commissioner for the city would I have to say that stripping the right of arbitration put public safety on an unequal bargain claim. Thank you. [applause]

>> Yes, Clark Williams. Good ideas for fixing our nation's and state's problems often get lost in finger pointing, scapegoating, constant chest play and abuse of a ballot measure process. And that's why I'm asking you to avoid making the same mistakes, the same pitfalls that often distract our state and federal elected officials. There is a consensus that San José does need budget reform. Multiple stakeholders have appealed to our city's leaders to address this issue. Now is the time to bring these constituencies together. It is not the time to roll out a hastily drafted ballot measure that has failed to be thoroughly vetted and could make matters worse. If we allow this issue to be addressed through dueling council memos and a rush to the ballot box rather than through deliberative thoughtful policy make residents will not see the comprehensive budget reform we need to solve the problem. Please don't let San José end up looking like Washington, D.C. or Sacramento. We can do better.

>> Mayor Reed: Reginald swilly, followed by Neil Struthers Pat Dando and George Beatty.

>> Thanks for your time. I brought a friend of mine here that was working on the sunshine task force. She developed cancer when she was working on the sunshine task force. She came as her hair was falling out, after she had taken chemo, she would work for hours and hours. This city has had a spirit of openness and sunshine. We don't want and we don't need and we look to you to protect us from closed shady deals, hastily prepared. And I think that we need to look at, is this a play on unions? Is there something else going on here? This is not a play on business, if it is, you are going to destroy San José. There is some cohesiveness here that we have been living with. The divide is lapping in San José the same way as it is about to happen around the country. I hope we don't do that. I hope we can have openness and sunshine and let's protect this city.

>> Mayor Reed: Neil Struthers. [applause]

>> Good evening, councilmembers, mayor, Neil Struthers head of the building trades council. The building trades would urge this council not to put this last-minute proposal on the ballot. Even the Mercury News in today's editorial, not known as a friend of labor by any stretch of the imagination, has serious concerns of the process on how we got here. They have been and are one of the biggest proponents of getting rid of binding arbitration, and they have concerns about the process or more likely the process not taken. We suggest that you support the memo authored by councilmembers Pyle and Kalra that allows the entire city council and the entire city to participate and allows for the A sunshine that this city prides itself in. We just witnessed earlier today the successful completion of a collective bargaining agreement with the police union without binding arbitration. What message are we sending to them and to other bargaining units if we take away or modify binding arbitration? This city is already suffering from much tension within the bargaining units and its public employees. This is not the time for that.

>> Mayor Reed: Sorry your time is up.

>> Thank you.

>> Mayor Reed: Pat Dando.

>> Good afternoon, mayor and council. Let me just say for all of those that have talked about this rush to ballot, this is not been a rush. This has been over a decade of decline. As a matter of fact for the last nine years we've had budget deficits. There have been numerous task forces that have been set up to look at ways of saving money through the budget structural task force, through outsourcing, numerous numerous things have been discussed without any avail. Without any resolution. One thing is for sure, mayor, over the past decade, we've lost many good employees. We've cut vital community services. We can't continue to do this. As hard as these decisions are we know we have shrinking revenue and our expenses are growing. It is simply common sense that we can no longer afford to spend more money that we are taking in. Let me say if you want to have the ultimate community discussion let the voters have the chance to have that discussion with good education. I want to also say that there are a lot of friends in this audience today. And we have put ourselves at odds, a very uncomfortable odds over a city that we all love and we all care about. It's time for us to find a resolution to this. Thank you.

>> Mayor Reed: Sorry your time is up. George Beatty. Followed by Jim unland and John tenant.

>> Mayor Reed, members of the council, good evening. I think what bothers us more, other than the process you've chosen to put this thing on the initiative, is the amount of irony on display here today. Earlier we heard you today thank our membership our men and women for ratifying a contract. You praised them for their reasonableness their willingness to collaborate and willingness to work with the city on important issues. Yet on this complicated issue you didn't even ask us to be involved in the process. Today I've heard a lot about baseball. A game of rules. I've heard about sunshine and I've heard about stakeholders. Yet we are the stakeholders here in the city, one of the stakeholders on this issue, but nobody ever came to us. Council expects our men and women to obey the law, to play by the rules, and to treat our citizens fairly. I don't know how you expect our men and women that sit up here to foul under your leadership, if you do not set the example for them. I

hope when you make this vote for those of you that decides that's what we're looking at, our men and women are going to lose faith. Thank you. [applause]

>> Mayor, councilmembers, good evening. My name is Jim unland with the POA. We delivered a message to all of you this past week that a change of this magnitude deserves more than one week of study. The process you are engaged in now is how bad law is made. You have a responsibility to make good law. Good law requires time, collaboration, stakeholders input and a thoughtful debate of the issues. We have had none of this. Perhaps if we had a working model that we could point to, but we don't have this either. The last time the voters weighed in on this issue was 30 years ago. In all likelihood we will have to live with any changes for another 30 years. Please take the time to get this right. Thank you. [applause]

>> Mr. Mayor, councilmembers, I'm John Tenant. I've had the honor to serve the San José POA for about 20 years now and I think I've negotiated more contracts than anybody in this room. And I can tell you I know you know that the police officers union has been more than reasonable. We have not been to arbitration in over 14 years. Arbitration has not created the problems that you think you're addressing by this measure. This 3% at 50, 90% benefit that many have invayed against, the majority of agencies that have that, got that through the political process. They don't have binding arbitration. We have not abused the process. And I must say from a purely personal standpoint this feels almost like watching a Greek tragedy to me. I have advised my clients to be reasonable over the years. I know many of you know that but yet to see them now punished as it were to punish the level of the terrain without even talking to us, when we just emerged from painful concessionary bargaining with you, I mean, forget the law for a second. It is not morally right to do that. Mr. Mayor, we appreciate the meeting we had with you, and we appreciate those modifications. We could get there with you, we can work with you, you've heard the POA president. You've heard the president of the firefighters, a chance to work with you to resolve the differences could create a model that would work for both the unions and the citizens. We urge you to take us up on this approach. We've always been reasonable. Thank you.

>> Mayor Reed: Sorry your time is up. [applause]

>> Mayor Reed: Shane Patrick Connolly is the last card I have.

>> Honorable mayor, city council, it takes leadership to tackle these difficult issues, and I applaud the mayor, and other councilmembers, who propose reforms for their leadership. I don't know where people have been the past year year but we've discussed these things at length. These meetings have gone on and on and a lot of ideas have been raised and concerns and we've heard a lot from special interests and not much from ordinary citizens and talk about sunshine. Who is oppose being a move to open up union negotiation and whatnot. So we've had that. If you don't think we've had discussions it would require in the words of our Secretary of State, willful suspension of disbelief. So these great reforms have been proposed, they have been implemented by other cities, and I encourage the members of the city council to put this before the voters, let us have a chance to give you some flexibility in your negotiations, and to provide some sunshine to the process. Now is the time for leadership in action. Please get these on the ballot so we can fix our broken system. Thank you. [applause]

>> Mayor Reed: That concludes the public testimony on this item. We'll bring it back noun for council discussion and action. I'd just like to again note that I'm not proposing that we eliminate binding arbitration. That is not what I recommended. And I do want to comment, yes, the voters have spoken on this. 30 years ago. It's something that was put into the charter by the voters and only the voters can change it. The decision we make here today does not -- is not the outcome. It's an opportunity for the voters to tell us what they think we need to be doing. It's their charter and they can change it. There are a million people in the city that are not in these chambers and the vast majority of them are greatly concerned about our fiscal condition. They have seen their services cut year after year after year. We're 1600 employees less than we have and that's 1600 employees that are not delivering services to our people. Our people understand that we've lost control of our cost, we've had to cut services and lay people off as a result of losing control. This binding arbitration has driven that cost. The threat of binding arbitration is almost as powerful as going to binding arbitration. The complete has driven the cost as well as the actual arbitration awards. Dozens of times over the years I've been here binding arbitration has been either a threat or a factor in decisions that are driving our costs up. And that's why we need to start here with this change, give the voters a chance to change it, I'm proposing we put it on the ballot and let the voters tell us what we should do. Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I would like to move the memo for myself and Councilmember Kalra and would I like to make some talking points. Thank you. Binding arbitration --

>> Mayor Reed: We have a motion on the floor, I'm sorry, motion on the floor based on the memorandum. And we have a second from Councilmember Kalra.

>> Councilmember Pyle: Binding arbitration affects how we bargain with our public safety employees. I agree wholeheartedly that there must be changes to our current bargaining process. And I asked for discussions on ways to improve both the bargain process and options for a two-tier program in the budget document I submitted to the mayor on May 21st. However, before council decides to propose changes to the city charter, there must be a process that includes a review of the proposed changes from city staff and a public discussion of the proposed changes. Before we ask our residents to support charter changes we need to be sure that the proposed changes are legal and binding. The memo I submitted with Councilmember Kalra would allow the time for a full evaluation of the proposed charter changes in time for a spring election. A mere five months from now. If this item is placed on the November ballot and fails, the city would be out of the cost of placing it on the ballot, and scrambling to put something else on in time for spring election. If we do go to the ballot there will be a fight. We all know that. Let's not ignore that. Money will be spent on both sides. And there will be a questionable ending. But I think that with the confidence that I've seen in the bargaining this year, and the last year, I think we have the ability to get together and make things work. I would like to point out, too, that doing away with binding arbitration by itself or changing it is not a panacea. Disappointment regarding binding arbitration would reign supreme, people would say, oh, I thought this was going to solve that, I thought this was the answer. We have had cuts for at least the last four to five years. There have been no raises and there have been no need for this exceptional arbitration. In fact, there will continue to be cuts. So the need to rush into this before five months passes is absolutely questionable. So I'm very hopeful that we have the ability to reach, as one person said, a balanced, clear, deliberate, and thoughtful, fashionable process together, with the result that is very, very meaningful. And with that I would like to get some input from Councilmember Kalra.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. And thank you, Councilmember Pyle for putting forward the memo we co-authored. You know I think that clearly I think that all of us have routinely agreed and stated repeatedly that we are in challenging times, challenging fiscal times. I think that's been recognized by bargain units over the past few months in terms of many of them coming forward and obviously today seeing the Police Officers Association coming forward with significant give-backs. The reason why I put forward with Councilmember Pyle the memo and am supporting it and speaking on it is because of a couple of factors. One certainly, and the most important I think is process. There's been no stakeholder process with this at all. It certainly flies in the spirit of sunshine. It is true that the one guide that we have is that today is the last day to put an item, to make a decision to put something on the ballot for November. Unfortunately today is the first day we're having public hearings in front of the full council on this item, as opposed to the medicinal marijuana issue which was first raised in October public hearings and the issue was commenced in February, the tax that was passed in 2008 also had several months of discussion in stakeholder input, public hearings, public meetings, we've had zero of that, zero of that in this case. Not one or two hearings, nothing. We had a Rules Committee meeting and this, and that's it. And so the process is paramount, especially when we are making a charter change. What Councilmember Pyle and I propose is make sure that we have an opportunity to actually have a study session on the item. We're not suggesting delay. We actually in the memo state November 30th, 2010 date as a final date that we have to have some return and some results by. And what that will allow is the opportunity for all of us to understand, you know, we've had up until right here on the dais Mr. Mayor, you've added some further amendments. So this is not an item that I certainly feel comfortable voting on. And without any due process given to the community of the stakeholders, I can't see how we can proceed forward in good conscience. The other point is working together. We all hailed the Police Officers Association for coming forward, preventing layoffs, looking out for the safety of the community by make sacrifices themselves. If we get out of here on time we'll make the National Night Out, and again, celebrate an event that celebrates public safety in our community and working together to combat crime, and yet, here we are moments later, pushing something without taking the input of these then and women we just very recently praised. I think it's very damaging to our credibility. I think it's damaging to our ability to work going forward. Even although we haven't come to an agreement with fire, we already know that fire has

put forth millions of dollars. We're not there yet but we're working with them to come to an agreement to hopefully get back some of the firefighters we laid off. Ultimately we have to decide what city we want to become. There certainly are many people in this room who care about this city and unfortunately we're at odds on some of these issues. However, that division that we do have right now is not solved by further division. We cannot make peace and begin to heal as a city and as a community by applying unwarranted force and aggression in a way that flies in the face of sunshine, that does not allow for public input exempt for one afternoon at 5:24 on a date the only day we have to put this on the November ballot, we have an opportunity to evaluate together as a council with our staff to bring outside experts in to bring in the comments from the community, the neighborhood groups, bring in comments from police and fire and other bargaining units as to what -- as to making a very significant charter change. So I would urge my council colleagues to support the motion on the table which does not take away our ability to effectuate or to affect binding arbitration, it gives us the opportunity to analyze it carefully if we are as hopeful as we are that we'll have a ballot measure for the A's that is going to be privately funded in the spring, it will cost us merely \$118,000 to add this to it. Thank you. [applause]

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. First I want to acknowledge something that Pat Dando said. And it's always difficult to make decisions when you're making decisions that affect people you know. I look up there and I see dozens of people that I know personally, and I know that we sometimes agree and sometimes we don't agree. But it's things that we have to do. Now, before we get to the meat, I want to correct the record for something Councilmember Pyle said. Because she made a comment that there's been cuts for the last four or five years and no raises. And that is absolutely untrue.

>> Councilmember Pyle: You're right.

>> Councilmember Constant: And you know, we have to be sure that when we're talking, that we get the record straight. And I know it was probably just a mistake but I want to make sure everyone understands that that's not true. Now, when I listened to the arguments of all the people who came up here, you would think that we were

completely repealing binding arbitration. That's not what this memo says. In fact, the memo and the proposed ballot measure simply does three things. One is, it constrains the arbitrator's rulings to the City's ability to pay. And I think any objective person would look and say, that should be a basic requirement. Nobody should be ordered to pay something that they don't have the ability to pay. The second is, it says that an arbitrator cannot create unfunded liabilities. We hear much to do at the federal and state level about unfunded mandates that come down and everybody grouches about that, about how terrible these mandates come and you aren't given the money to fund those mandates. And that's essentially what we're saying, is an arbitrate, you can't give away something we don't have. You can't create a mortgage for the taxpayers and the residents of the City of San José. And then it says, the third item, is you cannot raise pay higher than revenues are increasing, or higher than the rate of revenues increase in the City of San José. You have heard over the last, at least four years that I've been here, the problem with our structural budget deficit. And we've had dozens and hours and hours and hours of conversations about that structural deficit. And it always comes down to one final point, and that is, our expenses as a city continue to rise at a rate that's greater than our increase in revenues. And it becomes unsustainable. And if you don't believe that, simply chart it out. Because you can see it very clearly in the chart. The slope of the two lines are not equal. One slope is significantly greater. And it makes the deficit larger and larger. If you don't want to look at a graph you can simply look at each year's deficit and watch how that number mounts. It's every single year for nine years straight. We also know going forward, we have four more years of deficits. So I bring these up to say that there's -- we're not eliminating binding arbitration. If this measure were to get to the voters, and ultimately pass, it is taking and setting constraints on binding arbitration that keeps the arbitrator's ruling within the City's ability to pay and within the revenue that the city has coming in. We've heard a lot about process, and sunshine, and rush to judgment. I would agree with that, if the council were making the final vote today, and we were changing this charter amendment ourselves. But that's not what the council is doing today. What the council is doing is making a determination of whether or not the voters can revisit an issue that they voted on 30 years ago which was pointed out to us by a couple of speakers. But the fact of the matter is, we are at the beginning of a process, not at the end of a process. We have over 90 days until the election and there's 90 days for people to make their case on both sides and to educate the voters and to let the voters decide. And I think this is something that we need to do. And it should be no surprise to many of you, especially the unions, the three public safety unions are here, the firefighters, the police officers, and the retirees, because I

clearly put that in the endorsement questionnaires, that I feel that arbitration has been used as a tool to not negotiate, and it's been used as a tool to avoid negotiation. And as much as I would like to agree with what Randy Sakani said up here, I can't, because I don't believe that it has been true that the firefighters have -- that local 230, not necessarily firefighters, but the union, has always negotiated in good faith. And I think if you look and you look at our OER Website, you can see very clearly how many times negotiations have been cancelled, how many times things have been put off. All the things. It's all there for anybody to see. If you don't believe me log onto the Website yourself and check it out. I do think it's unfortunate that it is coming at the same time, the same day, that we were able to approve the agreement that we had with the POA. I think if all of the negotiations in the past couple of years progressed in the same manner that the current negotiation with the POA did that we wouldn't be having this discussion. So with all that, I think that it is important that this goes forward to the voters, and I would like to offer a substitute motion that moves the mayor's memo, the revised memorandum, with the change that was presented by the mayor today, at this time, and hopefully there's a second.

>> Mayor Reed: We do have a second by Councilmember Liccardo.

>> Councilmember Constant: Thank you.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. I won't repeat all the points made by Pete. They were well expressed and I do agree with everything he said. I will address this process about not being fair bought I think it's a compelling point one that I'm sympathetic to, particularly after we just emerged from a difficult negotiation with POA and concession bargaining. I don't think any of us disagree with the notion that POA very much played fair and that the leadership and membership of POA recognize the extreme constraints that we're all in fiscally. So I share concerns about the fact this wasn't negotiated, this wasn't extensive stakeholder outreach. But I don't think anybody is saying that the process isn't lawful, or that somebody skirted the rules. Because that hasn't happened. It's in fact been presented in a way that's completely lawful. We're having a full public hearing now, and we're having the ultimate in open government, that is, we're having a vote of the people. I don't quite

understand the concerns around sunshine. When every man, woman and child in the city is going to understand exactly what this proposal calls for, and actually, those who are voters will actually be able to have a say in it. And I can tell you I've been in through a lot of stakeholder processes in the city, far more than I'm sure many of us would prefer to be in and I can tell you, nine times out of ten the residents, the taxpayers are completely underrepresented in those stakeholder processes, completely underrepresented. So I very much share the concern how this was rushed. But to me, this is the ultimate stakeholder process, we are going to the residents. I appreciate that some believe this is not fair to unions. But this negotiating process with binding arbitration and the extraordinary leverage that is held with those unions that have the ability to rely on the decision by an unelected, unaccountable arbitrator, that process has not been fair to the residents and it hasn't been fair to the taxpayers. As the mayor said, 99% cost increase over ten years, we've seen dwindling services as a result, our informs in this city are staff that has been reduced from 7400 to 5800. There are neighborhoods in my district where I'm certain the unemployment rate is probably in excess of 20%. People are really suffering right now. Suffering incredibly. And they cannot comprehend how we can spend \$185,000 for police or firefighter. Let me say, I think a police or firefighter deserve every cent, there is no question in my mind that they deserve every cent for taking the risks that they do, for the commitment to service. But the question isn't whether or not people deserve what they are paid, the question is whether we can afford it. That question isn't asked often enough. I think folks seem to be wedded to the notion, arbitration is not enough, no big deal that we have created some false bogeyman here. But the reality is that binding arbitration is the elephant in the room in every single negotiation. What's Exhibit A? Well, the one we just concluded. We had, if I'm not mistaken, either five or six of our bargaining units agree to 10% compensation concession, roughly 14% of their salary, very substantial cuts to their own salaries. We just approved a negotiation with POA with 4% compensation cuts. 4%. And why do we say to every other employee in the city that was before us, that you have to give up 10% of compensation, 14% of salary, but it's okay for Police and Fire have to give up less? Certainly we all have a certain predisposition the extraordinary value of public safety. There is no question about that. And certainly, nobody doubts that public safety unions have more political power when it comes to elections, fine. But the reality is, the reality is, we agreed to something less because we knew because of binding arbitration, we couldn't get any better. It was a complete constraint on what the council was able to even ask for. So we took 4% and I'm grateful for it and I'm glad that we're able to keep those 70 officers on board. But let's be clear. We got a lot of folks making a whole lot

less money they're taking much, much bigger pay cuts and they're getting far less in terms of pay increases over the years relative to public safety. Now, I don't doubt, as several speakers have mentioned, that the safety of our residents is in peril, to the extent that we're cutting services. There's no question in my mind that smaller police forces and fire forces will reduce the ability of those hard-workmen and women to be able to protect our residents. But we have to ask ourselves, what is the cost of those cuts? We just endured a \$116 million deficit. And by my recollection about half of that deficit was entirely composed by increases in retirement costs. Just in one year's increase in retirement cost. And we're going to see retirement costs increase at roughly that rate or a similar rate every year until roughly 2014. And so we'll be back, of course for more cuts, all of us. And that may mean pay and it may mean the numbers. But one way or another, our city government is going to continue to get smaller. And so we're in real fiscal crisis, and we have to step up. And this is our opportunity to do that. I look forward to engaging in honest dialogue about this measure and other efforts we need to engage in order to make this city fiscally sustainable for our residents, for our taxpayers and yes for our employees. Because I don't think it's fair to employees when we pull the rug out from under you, hire you one year, fire you the next. Folks are in limbo from one month to the next depending on whether or not their particular union leadership agreed to a deal or not. That's no way to work. That's no way to go through life when you have to pay a mortgage or you have to pay rent. I'd like fiscal responsibility, I think we all would. So let's take a responsible step, let's go forward here, and let's continue this conversation.

>> Mayor Reed: I have one thing to add to the -- or ask the maker of the motion when he gets back, and that's a grammatical change that we need to note before we vote on this, but we still have some other conversation. Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. Rick, I had a couple questions. One is, I know that Councilmember Constant was indicating some of the -- what the language is of the motion what it's going to do. But my question for you is are you aware of a situation in which a charter change comes before council for its very first public hearing before a council on the same day that it has to be voted on?

>> City Attorney Doyle: We have proposed measures before that the council didn't put on the ballot only because of cost concerns. You weren't on the city council a couple of years ago. We did come forward with a number of measures that were rejected only because of the cost of the election. So yes, we proposed things. But off the top of my head I can't -- I don't have an answer to that.

>> Councilmember Kalra: The measure that's being put forward today, are you aware of any type of arbitration arrangement that has those kinds of restriction on it?

>> City Attorney Doyle: No, I'm not and I know there are provisions in some cities where they have voter approval requirements and they vary. But you know these specific provisions, no.

>> Councilmember Kalra: So it's certainly uncharter territory in that regard?

>> City Attorney Doyle: I don't know if it's uncharter. I'm not aware of any.

>> Councilmember Kalra: So there's no legal precedent one way or the other to say what kind of liability we are potentially facing by going forward with this language?

>> City Attorney Doyle: Again, I'm not -- I don't know of any so I can't really comment on the legal liability.

>> Councilmember Kalra: Is it fair to say more time would help you to find out if there is legal precedent? [applause]

>> City Attorney Doyle: Councilmember, I think the language is one that we understand the intent, and can interpret. That being said, will there be questions about language or potential challenges about language, it's possible. And I think that's true of any time you put anything on the ballot, that changes the language.

>> Councilmember Kalra: And is there any estimate as to legal costs in challenging the challenges in rebutting the challenges?

>> City Attorney Doyle: Again you're speculating and I can't really answer that question.

>> Councilmember Kalra: Thank you. In regards to you know we already know that there is a distinction between the public safety bargaining units and the others or that we like it or not, one part of it is they can't strike. We know that is a clear distinction. Additionally, our residents routinely rank public safety as their number one priority. We can't mistake it, that's what the community wants. When we talk about the ultimate stakeholder process it's going to the electorate, that is being disingenuous. Before we put a matter on the ballot, just like the medical marijuana matter we just voted on a few moments ago, it really benefits all of us, including the alternate product that goes on the ballot from having that lengthy discussion. The reality is, it's hard to have an honest dialogue about any of this amidst a disingenuous process. If this was a sincere effort to really tackle a problem that is clearly an issue, it should have been brought up in the spring just like the same time the marijuana issue came up. We should have had public hearings on it and we could have been here today with months of dialogue, agree or not agree with police or fire. We could put something we're comfortable with after getting expert analysis of. But now we don't have that opportunity. We're being asked to put something forward where we just got amendments while sitting here today and I think that's something that's really unfortunate and it is certainly not going to help us create an honest dialogue by going forward and doing something that we've never done before like this.

>> Mayor Reed: City Attorney.

>> City Attorney Doyle: Councilmember, I've just been reminded by my staff, one measure, measure D, which was a design-build authorization measure a few years back, that came to the council and was voted on and put on the ballot that day.

>> Councilmember Kalra: Thanks for the clarification.

>> Mayor Reed: Councilmember Constant had a suggestion from the city attorney on grammar, on the one amendment I asked to be included in the motion regarding retroactive increases or decreases in compensation, I wanted to exclude the base wages. Instead of putting that in the middle of the sentence it should be at the end of the sentence if that's okay with the maker of the motion and seconder.

>> Councilmember Constant: I'm not very good with grammar so if he says it's right grammatically I'll believe him.

>> Mayor Reed: All right, that's a modest change accepted by the maker of the motion. Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. First of all I think one question that we need to be asking ourselves because I'm hearing two dialogues that we need to do this. We need to move forward, I'm hearing about is this about political power, is this about having a thoughtful discussion? I am not sure what the rush is to put it on the ballot for November. If we are truly sincere about having a thoughtful process and having dialogue and working with the stakeholders, then five months shouldn't make a difference. If there's another reason why we need to move it forward, then let's state it on the table. And let's be completely honest, why it needs to go on the ballot today. I think that my colleagues have stated and I'm not going to repeat it, we're having a dialogue today. I looked at the mayor's memo and there's been so many changes, there's marks coming through it. If we really believe that we need to be open, and we need to be thoughtful, then we need to give ourselves the opportunity as a governing body to create that space so that we can have that conversation with our stakeholders. I think it's very clear that they're not saying, they're not saying, we don't want to move forward with this. What they're asking is to come to the table. And I think I heard that very clear. We want to be a part of the process. We just went through negotiations with our police department. And it wasn't easy but we got through it. And I think all they're asking is let's have a thoughtful discussion in public. I didn't hear that it has to be behind closed doors, in public and put the different options on the floor. I think there's an underline on why we need to push it through today. If people have the courage to ask why we need to push it through today, great. I think my colleague mentioned if we can't get the A's on the ballot, city clerk when would that come forward?

>> Lee Price: That would be March 8, 2011. So the council would need to call that election no later than December the 7th.

>> Councilmember Campos: And what would that cost us to put this item on the ballot with the A's?

>> Lee Price: The election as I previously indicated is estimated at costing \$3.6 million as a stand alone special election for the City of San José. Incremental cost to add another ballot measure, assuming that baseball was the first measure that was put on the table for the special election, would be \$118,000.

>> Councilmember Campos: And there is political will for the A's to go on the ballot. We clearly see that, that everybody wants the A's to go on the ballot. So I don't see why we can't hold off until March to put this on the ballot with that. Unless there's something else and I think those are the questions that we should be asking each other. [applause]

>> Mayor Reed: Respond to the why now, why not wait? First our problems are legion. We have been at this for years. We know our fiscal problems and we just had to lay off a bunch of people. We need to take action. We need to move ahead. This is an issue that has been revealed for years as a problem, it is not a surprise that we need to deal with it. If we don't do this in November and we want to have a special election it is \$3.6 million for the special election. I'd be surprised if anybody wanted to pay for a special election, and let this go on as a rider, that if we don't put it on in November, we have the funds budgeted, we can do it this November. It is likely to be June of 2012, which would be the next regular election, and which we could get this on for a reasonable price. So either we do it now or we wait until June 2012. It needs to be done, it has to be addressed. And we're in a crisis. We need to act. Our people want us to act. And delay is not -- is not helpful. Delay is not something that I can support. We need to move forward with this. Councilmember Constant.

>> Councilmember Constant: If I can add to that, mayor, on why now, I'll tell you I know I have and I know many of my colleagues have heard loud and clear, over and over from constituents about binding arbitration. And it has

been clearly told to me that if the council doesn't take some action, that there are groups out there that are willing to take action, and they want a full repeal. And you've heard that from a number of people who spoke today. And we all know that the pendulum swings much further when it's in the hands of initiatives that are citizen-generated. And I'll tell you, there are a lot of people who have told me that they will oppose this ballot measure but not for the reasons all of you told me you would oppose it. They told me they would oppose it because they would settle for no less than a full repeal. And I can tell you very confidently, that if we don't take measures to do something like this, that is fairly moderate, and is a constraining action, and as I mentioned earlier, it's just three areas, and they're all, if you look at them and you try and remove yourself from the emotions of being the person who is being affected by it and look at them, each of them is very clear, just a reasonable thing to do, that the voters will respond with an initiative that is much worse. And I think that, we have no control over, when an issue like that is brought. The initiative qualifies, signatures come in, and we have a very strict time line of when we have to hold an election and we bear the entire cost of that election at that time as well. So I think that is one other significant reason that has to be considered.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you. The question -- the question is to make changes to interest arbitration. Not to eliminate it. I'm not in favor eliminating arbitration as a tool. I think it is very important to have it as a tool in our tool box to be able to utilize. But I think it is clear that this issue has been raised and has been discussed in the community at least since I've been on this council at least for the past year. The mayor's been outspoken on his desire to make these changes in the public in the press and blogs. Other cities are facing the same question and many of them are putting arbitration on the ballot to eliminate it. When I was asked to be part of this, the memo which I did sign on, I was relieved that it was not to eliminate it. And I had a conversation with the mayor about his commitment to arbitration. Because I didn't want to sign onto something that was in effect another way to really just get rid of arbitration. And I'm convinced that the mayor, like I, share the belief that arbitration is important to keep available to be used when it's necessary. The problem is that arbitration, and the threat of arbitration, is part of a big problem, a piece of the puzzle in terms of our industrial budget deficit. Solving the arbitration is not going to solve the budget deficit but it is a piece of it. And ultimately we are the leaders up

here that have to make the decisions and sometimes they are very tough and I'm telling you this one is one of those. I have done a lot of thinking about this. I've done a lot of discussing with the folks that are signed on to this memo, I've had extensive discussions with the POA leadership and sometimes there's not a perfect -- there is not a perfect solution. Sometimes it's said you can't let the perfect be the enemy of the good. And I think there's more good moving forward in this in terms of solving the problems that our city faces and that is something that I ultimately at the end of the day have to look at. As much as I respect the work that you all do in here, the leadership of especially the POA and the members in this room. And the fact that you put your lives in risk for us, I do respect all of that. At the end of the day, I have to look at a bigger picture and what's best for this city, what's best for the residents of this city and you are a part of this city. And I feel it is the best decision at this point to vote yes on putting this on the ballot and let the voters ultimately decide. I'm concerned that arbitrators just don't have accountability to our residents. That even though statistically there haven't been huge numbers of awards, the impact to our budget and the impact of the decisions that have been made and the threat of having those decisions has created -- has helped to create significant problems in our city. And it's already been -- they've been listed and I'm not going to list them all again. You know, in an ideal world, and this is not an ideal world, I regard us in a crisis right now, in a financial crisis. We just had a \$118 million deficit if you count the portion that we inherited from the previous budget to close and we've got another \$45 million facing us next year. So we're not out of the woods on this at all and I consider us in a financial crisis. And my duty as a leader of this city is to take action. It is not find ways to avoid taking action. Although that might be easier. It's making the tough decisions to take action, to solve the problem. Because you know what's worse than going through a tough decision now? It's not doing enough and having to repeat this process over and over again, every budget session. And having to keep asking your employees to take less and keep cutting services. That, to me, is untenable. If we can find ways to really solve this structural problem and get some fiscal stability so that we can really move forward. As is pointed out and has been expressed here many times, the process, folks would have liked the process to be different. I would, too. Ideally, I would have liked to have some stakeholder meetings and some more community input and have a much more relaxed process. But I don't always get to control the situation where I'm facing making a decision. And even though this one is on a pretty short time frame, I think that the essence, the three points that Councilmember Constant laid out, and what is laid out in here is pretty basic. And ultimately again the voters are going to make this decision. It's clear to me, too, that if we don't make the decision, if we don't stand up

as leaders and listen to what's been said by the public loudly and look at the issues that we're facing and we don't do this as leaders we're going to run the risk, and I think what will happen, that an outside group will take the lead and do this for us if we can't do it ourselves. And I think we can look at the state and see how well outside initiative processes are working in terms of how that governance is working. And I think that's partly due to the state legislature not taking action. So I think we -- you know we need to do that. So weighing all of these issues in an imperfect situation, I'm going to be voting to place this issue on the ballot, let our voters decide. Again I wish there could have been a different kind of process but the patient is bleeding on the table and our time to operate is now.

>> Mayor Reed: Councilmember Nguyen.

>> Councilmember Nguyen: Thank you, mayor Reed. First of all I just wanted to say that I really appreciate the revised language that you incorporate in your memo dated July 30th, 2010, and I believe that this happened after consultation with both the POA and the firefighters, as well as conversations with some of us. There's no doubt that this is a heart wrenching issue and it's a very complex issue for not just the public safety unions but for some of us. But I think that this is something that needs to be addressed given the current economic conditions that our city is facing. We need to recognize that the paradigm is changing. The current fiscal reality is just unsustainable, that requires us to reevaluate our fiscal options and look at ways we can gain control of our financial options. Some of the factors that have been addressed by my council colleagues, so I'm not going to go over them. But throughout this process I've heard from the public safety unions, I have heard from representatives that represent different organizations, I've heard from representatives from the neighborhood commissions, I've heard from my residents who live in my council district, and the constant message that I'm hearing is that the city needs to gain back the control over its expenses and revenues and that services should not be cut year after year. That's the constant message. Now, I'm hear to represent specifically about 100,000 people in my council district, out of billion a million people in the City of San José. I'm held accountable for the decisions I make every day or at least every Tuesday. And I think that what we're proposing here is to take that accountability from the hands of the arbitrator and put it in our hands. Because we are directly accountable towards our residents. This is not a vote to implement changes to binding arbitration today. It's a vote to allow a resident to get involved in the

process and give them the ability to vote on this issue. And that's all we're doing. We have the next couple months to go out there and educate our residents in regards to binding arbitration and let them know if this is the right thing to do or not. And I encourage all of you to do that. And for me, it's, again, it's not to implement changes to binding arbitration. It's giving our residents the ability to get in involving the process and to vote on this on November 2nd and that's why I'm going to support the motion. Thank you.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. I believe that good law is collaborative. And I believe that we should really take the appellee's and the local 230's offer to ensure a thoughtful consideration of this serious and very complicated issue. I understand that we're not really voting to repealing the binding arbitration. But since the POE and the local 230 may see an offer to collaborate, to sit down with us, we can address the three things that Councilmember Constant mentioned regarding to the fiscal impact. And with that, will also give us an opportunity to address one of the issues, the ladies brought up, about sexual harassment. So I would really like to take this opportunity, take the offer from the POA as well as the local 230, to really make a very well thought out proposal that will hold water for the next 30 years. I know that we're not making the ultimate decision of repealing the binding arbitration. But whenever we put it on the ballot I want to make sure that we have a good chance of passing. And I believe with collaboration of the POA and the local 230, if we can come up with some common language and put it on the ballot for next spring, that would increase the success rate. I'm just a person that doesn't like to fail. So I will be -- I will not supporting the substitute motion. I will be supporting the memo authored by Councilmember Pyle and Kalra, and I believe come next spring we will have an opportunity to go back to the voter, because of the baseball issue, and I'm hoping that somebody, the private party will come up with the funding for the baseball ballot and then we can just tag in at a much lower price tag than putting it on ballot for November. Thank you.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. You've changed your memo to the point where I really don't think it's that egregious. I mean, I don't see it's that much of a problem. But I do want to make a plea that you know, when you act in haste you always repent in leisure. And we are blaming all of our employees for the situation that we're in. We've been on a slippery slope for some time, and we finally had the world's second worst economic crisis in United States history. At least the United States. And we're now getting the ripple effect of a European backlash. They're having their own recession. And that has affected marketplaces here and all the rest. The state has been no help whatsoever, either. They've taken over redevelopment moneys, they haven't come forward with money as they should. So I do want to emphasize the triple -- the double-triple whammies that all of us have had to suffer with. And I just -- it is a moral compunction with me. We do not have the right to blame individuals for what has been a catastrophic economic situation at least for the United States and the world. I just wanted to make a late appeal though. What I'm asking for is not the end of the world. I'm asking for five months for cooler heads to prevail and for us to do a more thorough job of finding what we need to find in order to have a more stable environment with our bargaining situation. Thank you.

>> Mayor Reed: Vice Mayor Chirco. [applause]

>> Councilmember Chirco: I've heard many times before that the city is balancing the budget on the backs of the employees and that previous councils and previous administrations' decisions that have put us in the situation we are now. And I find both arguments totally flawed. Previous councils and previous administrations made decisions based on the economic realities of the times in which they had to make them. And when money was plentiful and we were able to give, and that was -- and maintain the City's services and expand them, it was appropriate that that be shared with our employees, as well as with our community. And so our community, as well as our employees, benefited by favorable economic times. And I think everyone in this room, as well as everyone who is listening, is totally cognizant of the fact theories not favorable economic times. It is no one's fault that we are in this position. But it is everyone's responsibility to deal with the situation we're in. My hope is that this would not be something that is personally -- a personal attack on anyone. Because I don't see it that way. What I see it as, and believe me, I will always plead guilty to simplistic thinking -- I see it as dealing with the economic realities that we have to deal with today. Just as previous councils and previous administrations dealt with the economic realities

they had, my husband and I have been in business for over 30 years. And there have been times where we have almost lost the business because of the economic realities that we had to deal with. And just as in more favorable times we have been able to profit a bit. I would truly hope that this is not felt to be a personal attack on anyone. It is an adjustment that deals with what is being given to us on a greater platform than just here in San José. We are dealing with the realities. I do not see laying blame on anyone, but dealing with what is in front of us to be dealt with. We are always stronger together, collectively, than we can ever be individually. I'm proud to be associated with each and every one of you. I like to say that disagreement is appropriate and disrespect is not. And I don't think I've ever met anyone that I felt was worthy of disrespect. I have talked to people I didn't agree with. But that didn't mean we wouldn't agree on the next subject that we talked about. I will be supporting this motion. Because I think it is appropriate, at this time, that we deal with realities that we are having to deal with. It will go to our community, which is also appropriate, to make the decisions that both we as a council, you as employees, and they as citizens, and also, you as citizens, because I know many of you live in our community, will deal with in this very tough economic time. I would ask for your continued support. You have all been people that have lifted the load, carried it forward, agreed and disagreed. But I also think you have also always respected the process and each other. So let's continue in that tradition because that is what has made San José such a wonderful place for me to live, hopefully for you to live and work in and for our community to be part of. Thank you.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. I know battalion chief Conan has gone but he alluded to what I've spoken to several times on this dais and that is having union negotiation held as public meetings where we can see everything that's going on. I always believe that would provide so much value, I come as an outsider to this organization, I look at as Councilmember Herrera said, the constant repetition of the same meeting again and again and again and often it comes from misunderstanding. I think we need to be candid as many councilmembers have said, this is the money we have and this is what we can spend. Without that said, we did have a vote on this dais, and unfortunately that motion lost, a motion I made. But I look forward to the future, because maybe eventually it will get hammered through it will make everyone's life a lot easier. Mayor Reed, this is not my first priority. I believe pension reform is real cost savings, provide more value not just affects public

safety but it affects all nonsworn, it affects redevelopment agency, it affects management and it also affects us. And I think that's the most important thing we can do but you asked for my support and I've been there before and I'll give it to you today and I'd like to call the question.

>> Mayor Reed: We have request to call the question that, if we want -- that basically is to shut off the debate at this point. We got a vote on the question whether debating the calling of the question. So that is the -- call the question, we need a two-thirds vote to shut off debate. It's kind of like the senate, right? Two-thirds vote. So if it's time to stop debating, then that's the issue here. And we don't debate this motion. So the question has been called. So all in favor of stopping the debate, and taking the vote, signify by saying aye. Opposed, how many opposed? One opposed, two opposed, so that passes on a 9-2 vote, that is more than two-thirds. So the question has been called, debate is over. We have a motion on the floor made by Councilmember Constant with some modifications that we've discussed earlier. No further debate. All in favor? Opposed, Kalra opposed Chu opposed, Campos opposed, Pyle opposed. That motion passes on a 7-4 vote. That concludes the debate on the substance. We still have to deal with the ballot issue, whether or not we have rebuttals, print the full text, and then I would request to be designated as the principal author of the argument.

>> Councilmember Oliverio: Most to do as you just said, mayor.

>> Mayor Reed: Okay, so -- the motion is, to not print the full text, not allow rebuttals, and to designate me as the principal author to submit the argument, not on behalf of the council, but to do the ballot argument, that's the motion. It's the same thing we did on the other motion. Yeah, it was the same thing as we did on whatever that one was a long time ago we did. The marijuana tax. Okay, all in favor, opposed, none opposed, two opposed on that Kalra and Campos opposed on that so that passes. That completes the work unless the clerk and the City Attorney tell me there's something else to do on that item. We have one more item. The next item will be just as easy. That is, I'm not sure what item number that is, I think item number D on the agenda and it has to do with pensions. And I'm going to let item E, okay, item E, so those of you who came to talk about that now is the time. We're getting to that. Councilmember Oliverio asked this matter be brought forward.

>> Councilmember Oliverio: Thank you, Mayor Reed. The agenda item is whether or not we should allow the voters of San José to vote on amending the charter to enable the council to negotiate new pension for new employees that would not affect current employees or retirees. For cordiality and respect I would like to have the speakers go, and Mayor Reed, I just was just approached by a lady named Betty who took the entire day off, and I'd like her to be the first speaker, if that's okay. Betty Sakai, and then we can just continue on. And then I'd like to come back and make comment.

>> Mayor Reed: Okay, I'm happy to start with the public testimony. We do have a lot of people left here, most of whom want to speak. Betty Sakai, Kevin Fish, Yolanda Cruz.

>> Mayor, councilmembers, members of the public. I am a resident of San José for 46 years. It's important to me that we have maintenance in our parks, our streets, our libraries are open, we have police services, fire stations aren't closed. I understand that a majority of this money, pension money gets paid first. And I think for new hires we need to consider a different system and I support as a resident, speaking as a resident, the blood system when you're hear.

>> Mr. Mayor, and council my early remarks I just want to ditto them, right now, thank you.

>> Mayor Reed: Okay, appreciate the brevity at this late hour. Yolanda Cruz, LaVerne Washington, Tom brim. We may have outlasted their ability to stay. Bill Leninger, Sandy Perry, Rebecca Keiken. Come on down, I'll call more names until I can get more speakers.

>> I'm going to go open forum.

>> Mayor Reed: We'll get to that later. We're not there yet, open forum is later. Okay, I see Rebecca Keiken here. So we'll let her go, and then take one of the Leningers. Whichever one of them gets here first.

>> I'm Rebecca, and tonight you can call me the trinity, because Sandy Perry and Bill Leninger and a whole host of religious leaders -- well, two left a couple of hours ago, and 90% are on vacation, and tonight I wish you would all go on vacation too.

>> Mayor Reed: We just got back.

>> Well, would it be impolite for me to say you could stay longer?

>> Mayor Reed: No, not impolite.

>> I come from the Presbyterian tradition, where the constitution is a three-volume -- this is one of the three volumes. We take process very seriously and we have as our watch word, in decent and good order. I know that regarding all of the blood measures, today there has been a deep concern about process. And I believe that representative democracy is something that each of you need to hold dear. And that your credibility as political leaders depends upon decisions that you make today. I'm really concerned that --

>> Mayor Reed: I'm sorry your time is up.

>> Talk with you all later.

>> Mayor Reed: Bob Leninger, Sandy Perry, Greg Miller.

>> I think my brother Bill had it for the day. But he authorized me to hear confession, so if anybody has anything they'd like to say there. Bob Leninger, I'm here for the retirement association, but I'm really kind of here to speak more as a retired senior manager. Spent a lot of years working on a lot of complicated projects managing supervising hundreds of people very competently. I used to get all the credit for it but these are complicated difficult diverse city. You need the best workforce. You need to go into this with your eyes open, well thought out lots of input. You got to have the brightest and the best and I think that's what it takes to make projects in a city

like this work. You don't have the same rush you thought you might have had on the binding arbitration. You have already admitted you are not really going to be hiring anybody in the next couple of years or longer any appreciable numbers. There is not going to be any real financial impact but there could be an impact on performance in this city. Take your time look at that memorandum from Ash and Nancy. Give this a little bit more time, get some input let's keep and maintain the quality that we have.

>> Mayor Reed: Sorry your time is up.

>> Craig Miller, Harvey Kay Denise McKenzie.

>> I'd like to echo what he just said, this is not something that we have to deal with right just today. That it is something that should be considered more carefully and also I don't go along with the idea of having two-tier pensions and also, you know, again putting blame on city employees for today's problems. I think this is a very wealthy area. You should consider other revenue options, not just way to cut expense. Thank you.

>> Mayor Reed: Rebecca Harvey, Kay Denise McKenzie, Nancy Ostrowsky.

>> Hi, my name is Becca Harvey, and I'm a college student and an intern at the Interfaith Council for Economics and Justice. And I stands before you today as a person of faith and as a young person who cares. I've been told over and over that my generation, the youth, are powerful. It is our political awareness and our willingness to stabbed up for what we believe in that will shape the future and that's why I'm speaking to you today. As a Catholic and an internist at the interfaith council my actions and view of what this city should be come from a place of faith. The rush proposal for pension reform is not in good faith. Coleman Pierluigi's proposal has only been in for two weeks. This is not enough time or change of this magnitude. Rush proposed creates flawed laws and the city will suffer consequences for years to come. This proposal creates unknown pension benefits for new employees mainly youth and my peers. I don't want my peers to live in fear of what their future holds.

>> Mayor Reed: Sorry your time is up. Kay Denise McKenzie, Nancy Ostrowsky, Larry Pegram, Pat Saucedo.

>> Good evening, honorable mayor and city council. My name is Kay Denise McKenzie, president of CAMP IFPTE Local 21. I'm speaking tonight in support of Councilmember Kalra and Pyle's memo regarding forming a work group to create to explore options for pension reform rather than approving the addition of a ballot measure to prematurely amend the city charter in November. My concerns include, based on my read of the proposed ballot measure language, and if that measure should be approved by the electorate, every new hire after the amendment would become effective would not be covered by any retirement program. The city also does not deduct Social Security from employees' salaries, so no new employee would earn Social Security credits for work while at the City of San José. The city has no other type of alternative in place for new employees, either. Consequently no new hire could be assured of any retirement income if she or he achieved retirement age while an employee at San José. So I ask --

>> Mayor Reed: Sorry your time is up.

>> Please do not add this to the ballot.

>> Mayor Reed: Nancy Ostrowsky, Larry Pegram, Pat Saucedo.

>> Nancy Ostrowsky, IFPTE's Local 21 representing and AEA and CAMP. All of you today, going into early evening, you're talking about facts, we've been smeared we've had a councilmember charge another union with bad faith bargaining. We stand in front of you to support Councilmember Pyle and Ash Kalra's memo. Give us time, don't rush into this. You see what we've already proven we can do. You need to include us as options, there are several that we circulate talk to you about. City Attorney Doyle's document is incorrect and this one mini need to you to draw attention to his page 2. Where he's not, he has given you some of the information. San Francisco approved a charter amendment, June 2010. You know how they did that? Through a coalition. They did it with extensive talk that only took a few months. Worked with the actual bargaining units at IFPTE's local 21, Bob Muscat chaired the coalition. I ask City Attorney Doyle to really give the full story.

>> Mayor Reed: Sorry, your time is up. Larry Pegram, followed by Pat Saucedo and Sue Bradford Moore.

>> The city is in the business of providing service. That is your product. That's what you do. The equation is very simple. It's a zero-sum game. Expenses, revenue. So we have a choice, the choice is, maintaining service levels, or -- and reducing the cost of our employee -- our employee costs or maintaining our employee costs and reducing service levels to neighborhoods. My suggestion is that Councilmember Oliverio's recommendation reduces for future employees, those costs, and I urge you to vote yes on the councilmember's proposal. Thank you.

>> Mayor Reed: Pat Saucedo, Sue Bradford Moore, Jim Eller.

>> Pat Saucedo: Pat Saucedo, San José chamber of commerce. While we would prefer more specific language for this particular ballot measure, we do understand that because of meet and confer that this is what we must deal with today. We do support this measure going to the ballot and you are plagues it on the November ballot of this year. If approved by the voters, and we believe it will be, because we have heard from hundreds of our businesses, which are families that live in our neighborhood, that pension and benefits must be addressed in the San José must be contained that with a fully transparent process following the approval of this ballot measure, that the process be conducted in a very timely manner, and that hopefully, there will be a prohibition or a reticence to do new-hires until a two-tier system is in place, except for critical employees. We think this is the right step to begin to gain control of our costs of running the City of San José.

>> Mayor Reed: Sorry your time is up.

>> Pat Saucedo: And I just want to point out we presented position papers on this over a year ago.

>> Mayor Reed: Your time is up. Sue Bradford Moore, Jim Eller, Pat Dando, Steve Kline. I see Pat and Steve. Carol Garvey. Jim Kelly. Randy Sakani. Go ahead, Pat.

>> Mayor and council again, my remarks are going to be almost the same as they were on the last subject. There has not been a rush to this decision. For the past ten years we know that we are spending more than we have. It's time that we have to bring our system with our pensions in line with what the public sector did many years ago. As Councilmember Chirco said, this isn't blame. It's just the hand that we have been dealt and we need to deal with it. I also want to say that we can no longer continue cutting services, losing good employees. Now is absolutely the time to deal with it, as the baby boom population retires we need to be prepared for those new employees so they know exactly what they get in pensions and benefits with the City of San José. I hope you will support putting this on the ballot.

>> Mayor Reed: Steve Kline, Carol Garvey, Jim Kelly, Randy Sakani.

>> Good evening, mayor and councilmembers. Mr. Oliverio's proposal and his e-mails that he has sent to us indicates that voters are asking him why the libraries can't be open. I trust that he's talking about the soon to be completed Bascom library which is not currently scheduled to be open at all. His proposal is misguided as an answer to that question as he knows and every one of you know that there is the savings of this if any at all won't occur for several years. The cost of this election, which now is excessive, would be better used to pay for the upcoming soon to be completed Bascom and Seven Trees library. Further this is a complicated issue that demands full study. Councilmember Kalra and Pyle have taken that reasoned approach. We need a full and complete discussion. Government by initiative is the wrong approach. As legislators we ask you to use your good offices to study the issue and work through the legal bunk. Thank you.

>> Mayor Reed: Your time is up. Jim Kelly, Randy Sakani, Linda Didis.

>> As a retiree, I know how hard it is to get by on a retirement. And what you're about to do is eliminate the retirement as a future. You're going to cut off the future. You're going to cut off your nose to spite your face. I guess what it should have been called is the Arnie-Reagan initiative. Because that's all that's talking about. It's taking working peep like you just did and say, we're going to cut you. A lot of work people are hard to make it in this town. You can't live here on a retirement salary. And these figures, there are no figures that say how much

these savings are going to be. This is just an ideological thing you're putting on the ballot to serve some specific interest. And if your friends are working people, and the people who work in this town and live in this town, they deserve your support. And to cut off their benefits, cut off their retirement, that's wrongheadedness and I think this last minute Charlie initiative should be stopped. Thank you.

>> Mayor Reed: Randy Sakani, Linda Didis, Elisa Koff Ginsburg.

>> Randy Sakani, firefighters. I won't take a lot of your time. This issue just like the previous one is about process. No stakeholder involvement. Frankly I can tell you that I think all the bargaining units could bring substantial and real information to the table not only from their own experiences but from the resources they have. The reality is there, this is even a more complex issue than the one you just dealt with on arbitration. It's just unfortunate you're not going to avail yourself of that opportunity. Once again the idea of putting it to the public and just letting them speak to the issue I don't think it's the legit way to show leadership. You need to draw on the resources of the employees and the experience and knowledge they have, and the resources they could bring to it, so that then we could go forward collectively and put something on the ballot one time, and have it all done then. That would likely serve the public without making mistakes. Thank you.

>> Mayor Reed: Linda Didis, Elisa Koff Ginsburg, followed by Bob Sippell and Joan Gallo.

>> Hi, I'm Linda Didis, I'm a business agent for AFSCME, and I represent MEF and CEO bargaining units here in the city. We also are very concerned about the timing. It's been talked about so much tonight, I don't think I need to reiterate about it. We did meet with Mr. Gurza about this issue and Mr. Gurza from employee relations explained to us that if we remove this language that there will no longer be minimums but there also won't be maximums. There won't be anything in the charter for the citizens to vote on so the decision goes back to the city council members. He did explain to us that it was also in the code, also. I think Mr. Doyle also said that you know removing this language doesn't enable us or prevent us from meeting and conferring on this issue. So I'm not sure again what the rush is for this. I'm not sure why we can't sit down as a task force or a group with the citizens

and work on this issue. None of us have refused to do that. None of the unions I work with have refused to do that.

>> Mayor Reed: Sorry your time is up. Elisa Koff Ginsburg, Bob Sipple, Joan Gallo, Jerome Krenock.

>> Thank you, Elisa Koff Ginsburg from working partnerships. We've all seen crisis-driven policy before. At the national level, risky decision making with limited information has taken us into costly wars. In Chicago, in budget crisis they sold off their assets and where are they a year later, they've burned through almost all that money, and they still have huge budget deficits. Sometimes call for decisions made in crisis, thankfully this is not one of them. The proposed measure brings great financial risk and uncertainty, and yet it produces minute savings in the short term. Perhaps less than the cost of putting it on the ballot. How many new hires will we have in what Councilmember Constant said are four more years of deficits? Why the rush? Changes to the charter that are rushed and risky can't be fixed at future council meetings. They will haunt the city for years. Is that how you want to govern?

>> Mayor Reed: Your time is up.

>> Thank you.

>> Mayor Reed: Bob Sipple, John Gallo, Jerome Krenok.

>> Good evening, for the last time tonight, my name is Bob Sipple. You know who I am. It is probably a large horse-type pill that we're going to have to swallow one day. What I'm upset about is the process. I've heard my neighbors and I've heard it myself and whether it was intentional or not it made it look like the employees of this city were the ones that bankrupted the city. I personally take offense to that since both of us have worked for the city for many, many years. So when you look at the whole process at least fess up to some of the things that the city itself has done. This building was over budget. The building that used to be isn't sold. We're all in this together we've all made mistakes. But I don't hear this side fessing up to those things and that's the thing that bothers me

the most. Doesn't mean I'm not going to support a two-tier system because I don't see anything else but I don't like the way this pill was shoved down our throats.

>> Mayor Reed: Joan Gallo, followed by Gerome Kreneck, Spencer Horowitz and Neil Struthers.

>> Joan Gallo. I'm here at the request of working partnerships. They asked me to give you my views, and these are my views, not theirs. The proposal enables. It doesn't mandate and it doesn't implement a two-tier system. What it does is allows you to draft an ordinance. We all know that an ordinance can be changed on any given Tuesday. And we all know that retirement issues are going to be worked up in negotiations. There are certain things in a retirement plan that you're going to want to have stable and permanent. Both for the sake of the city and the employees. So that rushing to put this on would gain you nothing, when others have said you're not going to do much hiring in the next two years anyway. I want to point out the language of the ballot measure which concerns me. As written it says that the council can exclude any officer or employee. I'm sure it isn't necessarily the intent, but you're going to have a system where different groups, if it doesn't give you a two tier system it can give you a multitier system. It can give you a discriminatory system. It can give you a system where you have equal protection challenges. So that particular writing against the language hasn't been vetted. Before you do an implementing ordinance you're going to have to have a study. It's going to be the same kind of study which Nancy and Ash have recommended.

>> Mayor Reed: Sorry your time is up.

>> I just wanted to say that during that study you're bound to find that you need to lock things in with a second ordinance.

>> Mayor Reed: Jerome Kreneck, Spencer Horowitz, Neil Struthers, Nancy Garrison.

>> I'd just like to respond to that comment. It seems to me that this is not gutting any pensions, there's still going to be negotiations. It's just saying that we're not locked into these numbers that are in the charter. And when I just

read the charter myself, section 1504 and 1505 and I said why is this in the city charter? These percentages and numbers, these are things that should be negotiated and maybe all the employees don't -- would rather have higher salaries or something than you know the high pensions. So it should -- should never be in the charter to begin with. Thank you.

>> Mayor Reed: Spencer Horowitz, Neil Struthers, Nancy Garrison, Anna Schultz.

>> I'm a 20 year resident of the City of San José and first of all I want to say that we love our firefighters and our police officers. I've seen the city find itself in the position of so many studies and states in the country and we are in a deep deep fiscal hole. It is time, probably past time that we look at innovative ideas like pension reform, that will affect no current city employee, only future employees. Let the sunshine in, let the voters of San José consider this, hear all the facts and decide. Thank you.

>> Mayor Reed: Nancy Garrison, Anna Schultz, Michael Orado, George Beatty.

>> Yeah, I appreciate the opportunity to just stand with Pierluigi Oliverio in saying, it is -- we have to look at the pensions, and look at how they can be sustainable over time. I've lived here in San José, for 30 years. I hope to live here for another 20, 30 years. And I don't like seeing parks closed, libraries closed, maintenance stopped or reduced, appreciably. Tree service changed to where, now, residents have to do everything themselves. I mean, it's just eating us up. And so if we can reduce and make sustainable, future pensions, I am all for it. And I hope that we can see a positive move in this direction.

>> Mayor Reed: Anna Schultz, Mike Alvarado, George Beatty, Shane Patrick Connolly.

>> Good evening, my name is Anna Schultz, South Bay labor council. What's most important is we recognize the economic realities of our time and that we give voters the ultimate say. My concern is that the current proposal going to voters would actually result in a policy that doesn't save money. And doesn't actually create a good pension reform for the city. As former City Attorney Joan Gallo just described, there could be numerous financial

unintended consequences, and what we really need is to evaluate all the different options. Councilmember Pyle and Kalra's memo gives us the opportunity to evaluate those options and actually figure out a ballot measure that meets your desired outcomes for the city. So I hope you'll move forward in a way that respects the employees who work here and respects the future of San José citizens and making good police for them.

>> Mayor Reed: Mike Alvarado, George Beatty, Shane Patrick Connolly.

>> Honorable honorable mayor and council, I indicated on my card I was approaching as neutral and the reason I came to speak is, in my business, which is in the technology business, constantly you face change, you've got to redefine how you do business. And I think that's the real challenge. I believe it's overstated although it's common knowledge or it's common thought that the recession is defining our present circumstance. I don't think so. I would request two things from the council. Leadership and a strategy. I think the pension reform and the other ideas might be valid ideas. But I don't see a strategy. I don't see a long term view and I don't see the mechanism to get there. And I think the leadership to bring the city together around a common view is what we need. Thank you very much.

>> Mayor Reed: George Beatty Shane Patrick Connell Loy.

>> Mayor Reed, members of the council, it's me again. We oppose Councilmember Oliverio's proposal for the same reason we proposed the ballot initiative proposal. Once again this is something that does not meet the spirit of the City of San José. Sunshine reform, stakeholder involvement. And what's really more disappointing this one than the last one is the PAO has been on record with the City Manager's office, the chamber of commerce office, that we get it, that pension reform needs to be had. As a matter of fact, the contract that we just negotiated that you applauded us for at the end it was never brought up. So once again, we just feel this is disingenuous for folks that are reasonable, have a demonstrated track record of being reasonable and once again not being brought to the table on some. Thank you.

>> Mayor Reed: Shane Patrick Connolly and I think there's another card, Scott Knies.

>> Hello again Mr. Mayor and council. City Manager attorney as well. I just like to say as a consistent advocate for reform of our pensions in the city I appreciate Pierluigi Oliverio bringing this forward. Councilmember Oliverio I think has proposed something that's broad that will open up the process for these things to be deliberated and negotiated and whatnot as opposed to locked into the charter. I think that's a good thing. I have a concern that there's no hard cap necessarily here on the taxpayer commitment. But I think this is a good start and a move in the right direction and I appreciate your bringing it forward. Thank you.

>> Mayor Reed: Scott Knies and if anybody else submitted a card, I called a bunch of names of people that didn't come down now is the time.

>> Good evening, mayor and councilmembers, thank you for your leadership today for allowing the citizens of San José to weigh in at the ballot. We advertised an admin position for our 12 person office last week. We got 624 resumes. There are a lot of people out of work. It is brutal out there right now. I can tell you that a job with a 401 K match looked really good to people coming through there. If you are able to put this on the ballot and it goes through it's going to do a long way towards make some corrections on the balance sheet. And it will also make it more amenable if it is passed by the voters to consider revenue enhancements tax increases and other things that we also need as a city.

>> Mayor Reed: I think that concludes the public testimony. That's the end of the cards. Coming back for some council discussion. Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor Reed. Thank you to all the speakers. I know its for some their first meeting ever and I know there's some residents they come here but they don't know what to say, but they don't put in a card. I know on the public record there's about 124 original e-mails from people supporting pension reform on the ballot. Some of the speakers are actually speaking from a different set of information. On July 19th, well before the limit on sunshine needed to be, for submitting a memo to council, I submitted a memo on this pension reform proposal. And we went to the Rules Committee, and you know there are critics of pension reform

and I really appreciate that criticism. Because you made my supplemental memo so much better. There were the issues brought up of meet-and-confer. And we've -- and if Lee Price, if you can put up the correct language, I appreciate City Attorney Rick Doyle and Councilmember Liccardo's collaboration on the language. But the idea was to take what we heard at Rules from the various groups and to make it so that those problems went away. And this language makes that happen. Because as one person said, it wouldn't be excluding from anything. It's actually no, you'd only be excluded as a new employee from the current effective plan. So I appreciate those comments from our former City Attorney Joan Gallo now representing the labor council, those were good because I think they eliminated a lot of problems. So as we went on that's that process, through a lot of questions asked of our City Attorney Rick Doyle and Rick was very firm on his answer, only one election is needed to change the charter. A second election is not necessary. Because we have our benefits today in the municipal code, not in the charter and we as councilmembers an elected democracy vote all the time on salary and benefits as elected officials. And we don't have the hand-tie that we have in the charter from having it in there. The questions came up, you know, hey, is anyone else doing this? Well, actually, yeah. Quite a few cities locally that Rick Doyle responded to. But in the Los Angeles Times article last week, 70 cities are considering second tier. Why would they be doing this? Well, it is the reality of a defined benefit pension plan, it's really unsustainable. Because you have only so many -- as the actuarial studies will tell you, if you have more people age more people pay for it and at the end of the day there is assumption of internal expansion in the economy and somehow this was going to pay for everything but in the end it hasn't and as alluded by others this year alone the \$62 million pension loss was three times the equivalent of the citywide library budget. So yeah when residents ask me why can't you open my library, the sheer fact is that I took three times the total city amount and was not able to spend it on the libraries. Or, why am I laying off city employees or even asking concessions? Because this pension cookie monster continues to grow. So clearly, we can do nothing. Sit this one out. Do our events, do our ribbon cuttings, go to meetings. Nod when people ask us about serious questions in this city and be done with it. And lo and behold every budget cycle we're going to have the repetition of labor negotiation and we're going to have gee whiz, there's less cash. So either the employees are going to be asked to give more concession on your wages or I unfortunately won't be able to keep X amount of you so that will be a tragedy for your own family life and it will be a tragedy for the residents of San José. When you look at the numbers and you find gee, I collected \$200 million last year in property tax revenue of the city. My golly that's the same amount as pensioned! So if you

own a house and you pay your property taxes and wonder where did my portion of the taxes go to, it went to paying the pensions. That's a serious issue. So on the supplemental memo that I put out which had refined language and again we have come up with other language that makes sure that this is not a violation of meet-and-confer, that people have the ability, that council will then have the discretion of determining a second tier. Let's talk this out. The council votes to put this on the ballot, it goes to the voters in November, the residents of San José say, yes, that makes sense to me. You should have the flexibility to go negotiate, again not -- this memo doesn't mandate, it doesn't say an implement date, it just says we should work towards that goal and clearly at the end of that time when we've reached that goal then we would pass an ordinance. An ordinance that was with mutually collaboration with all the bargaining units. With that said then we'd be able to then sort of stop the bleeding. So if I go through just some of the pure numbers on this thing, again, whether we do anything or not how can you fight the reality that last year we spent \$138 million on pensions and this year it's \$200 million? It's a fact. And that doesn't stop there. Because the year after, the actuarial study says we're going to be at between 240 and 250 million. And we throw numbers around all the time and yet most people hear about the federal government, trillions and billions. When somebody cares about that community center that all those people pleaded to us to keep that open, that's real money. So at the end when I have to find \$40 or \$50 million next year, that's problematic, it's 40 or 50% of the police budget. So let's go forward because of the growth. So by 2015 the number will expand to \$350 million. Well, now not only that I am spending all my property tax revenues on the problem, I'm spending all the sales tax revenue on the problem. We've -- you know, we have this defined benefit pension system and we know the majority of citizens in the United States don't. They have a 401K, they have an IRA, they have a SEP Ira, self-employment IRA. And when you look at the totality of how benefits are done, I've worked for five different companies and never received a dollar match on my 401K. But there are others, and people love to point out, like google. But guess what, not everyone works at google. And when you're looking at a match like that, maybe you'd be talking something generous like 20% or something like that. But really, a lot of people only get a 3% match. So when you look at our system, at a 3-to-8 benefit match, it's very generous. And darn it, it's an incredible benefit. But how do you pay for it? That's my question. And if we really want to recruit those young people to work for the city, by golly maybe they would want a hire salary to go afford the housing they might want or whatever they want at the beginning of their career versus having a pension that is quite large. We're really just asking for the opportunity for the voters to do this thing and I really really -- and I'm not

saying this to humor my councilmembers Kalra and Pyle. The memo you put out is great. And I'll tell you why I like it so much. I'm not a fan of delay. That's fine. But you lay out a process, and I would have liked to put in my memo, but because I'm meeting with Rick Doyle said that was going to be part of the process anyway, I left it out. But I like the idea of having a task force and having a public view on what this is going to be. And I really want to support that. And I think you know we've had the three-year structural deficit committee which is a group that was appointed by the council, so all those members were approved. Councilmember Constant chaired it, I actually attended every meeting and what did I see there? Labor and chamber on the same committee, and guess what? People actually agreed, Bob Brownstein, a labor icon, Pat Dando, a chamber president, they agreed, they said, let's raise card room taxes. Guess what, this council passed it and did it. And it's not just Bob Brownstein from the labor union, it's an MEF union, it's the police union, it's the fire union but it also has chamber, it actually has San José residents on it, the taxpayers task force and I think that's an excellent model to develop into my motion because I want to make a motion to move this language with my supplemental memo, but also incorporate philosophy and spirit of Councilmember Pyle answer Kalra, into it, so that as this would pass in November, then we would rekindle the three year structural deficit committee and have those task forces and those meetings and going through the actuarial studies to be a component of the meet-and-confer process, I think that would be viable. If I could get a second on that, that would be great. Thank you very much.

>> Mayor Reed: We have a motion on the floor, and the second was Councilmember Liccardo.

>> Councilmember Oliverio: So my memo doesn't say my way or the highway. There are residents out there that would just say, you know what, blow up that pension system, get rid of it, switch them to a 401K. I'm not mandating that. In fact I'm not even mandating a certain amount. We all know it has to be less. Whether that's 1%, 9%, 15%, 20%, we all know it has to be less. Right now I can't get there with the way the charter is written. So it's a very open and fair to allowing -- because you know what how about this? If this is in November and the residents say no, well you know by golly we should be spending our time on other things. But we would need to give that in this chance to allow the residents to tell us that. You know, as Mayor Reed said earlier, there's a million people in this city and there's only a fraction that can actually make a council meeting and actually send those e-mails but in the end this is an important part. This would go a long way towards solving our structural

deficit, because it's going to continue to grow. I'd like at this time to -- the motion's on the floor but I just want to check in with city management and whoever wants to ask the question because I just want to make sure that we understand what's going on. So City Manager whoever you want to have answer this question. What does it mean to have the minimum benefit in the charter when we negotiate a second tier?

>> City Manager Figone: I think councilmember, Alex Gurza is in the best position to answer that question.

>> Councilmember Oliverio: I'll repeat the question again for you again, Alex. What does it mean to have a minimum benefit in the city charter when we negotiate a second tier?

>> Alex Gurza: Good evening, Mayor, members of the city council. Alex Gurza, Director of Employee Relations. Councilmember Oliverio, to have a minimum benefit in the charter would mean that as we would engage in the meet-and-confer process for a second tier for new employees, we would have to ensure that at the very least meets that minimum benefit that's specified in the charter.

>> Councilmember Oliverio: So let's say instead of a 250% pecks match we wanted to do a 249% pension match.

>> Alex Gurza: Yes, could not do that. I think you're referring to the 8 to 3% split of normal cost which is where for every \$3 the employee pays, the city has to paid \$8, we would not be able to vary from that. So for example, if the new tier was going to say anything different than that, like 50-50, could not do that because the charter specifies the ratio of what the city has to pay and employees.

>> Councilmember Oliverio: Or if you wanted to change the retirement age from 55 to 56.

>> Alex Gurza: Yes, another issue, one of the most common things that public agencies are looking at is retirement age and potentially second tier requiring employees not to be eligible No. you are older. The charter

says you can retire at 55. So again that would be a limitation because there's an age issue in the minimum benefits for both public safety and nonpublic safety employees.

>> Councilmember Oliverio: And then when would we actually save money? Because everyone says you're not going to save money for decades.

>> Alex Gurza: Actually it is a long term solution but the savings actually start with the first employee hired. So it starts small. So for every one employee hired they are no longer under the long term liability of the first tier. Their long term liability is now in the second tier so the long term liability change starts with that first employee hired. In terms of contributions, once the contribution rates are established for that new employee, depending again how it's structured the contribution is necessary for that new employee, that first one would be less than if you hired another employee under the old tier so again the savings start with that first employee and then continue to increase the savings as you move forward in the future.

>> Councilmember Oliverio: And if I'm correct in the past I remember we had a study session I think on the retirement plan where we had some -- that was approximately a year ago when we were studying what dire straits we were in the pension?

>> Alex Gurza: I believe so yes.

>> Councilmember Oliverio: So what is the kind of a lot of notice to everyone that this was a topic coming up. And if I remember correctly all the centerings from Santa Clara County, San Mateo county, Alameda County, have all said that second tier has to Hamilton happen.

>> Alex Gurza: Yes, Councilmember Oliverio, I think you're referring to the city managers association both in Southern California and Northern California have issued papers calling for pension reform, our City Manager as part of the Santa Clara County and San Mateo County which issued a joint memo calling for pension reform that we presented to the council last year.

>> Councilmember Oliverio: And then, Alex, how big is unfunded liability, if you can give an approximation?

>> Alex Gurza: I know Mr. Crosby is here, in case you would be able to answer that, but I think I have that here. It is very significant whether you look at just pension or combined pension and retiree health care in under the -- as we looked at maybe we can come back to that as we look up that number for you.

>> Councilmember Oliverio: Okay, we know it's big. Do we plan on the City's contribution rate increasing?

>> Alex Gurza: Again I want to get to the exact number but it is over \$1 billion in both planned and I think as you had mentioned before the City's contribution rate for both of our plans increased significantly from last fiscal year to this. But it is really the first year of several years of significant increases that have been projected by the actuaries in both plans.

>> Councilmember Oliverio: Okay then four or for Russell, what's -- I mean it doesn't have to be -- you know pull the number out of the book but I guess what's that macro, what's the future hold for this city an the contribution rate?

>> Alex Gurza: Again, it's difficult to say for the future but again what we've been advised is that we should expect a continuing increase in the City's contribution rate. You know, just to give you some sense the actuaries have predicted in the Police and Fire plan that by 2014 our contribution rates when you combine pension and retiree health care may be as much as 70% of payroll. So that would mean, for example, that a police officer or firefighter who makes \$100,000, the city would have to pay an additional \$70,000 just for the pension and health care. So those, again, those are are projections, those numbers change but again, everything we're being shown is that there's going to be a continuing escalation of those costs.

>> Councilmember Oliverio: So if I was looking at that as a simpleton, then that would tell me directly that, gee whiz, that's almost the equivalent of another employee. So how could I ever hire enough people to provide

services for the residents? Rick Doyle, does this, what's proposed right now, the charter language, I just want to have you hear, does it mandate a time line or give a specific or mandate a specific lower tier?

>> City Attorney Doyle: No, no, it doesn't. The idea was to provide for the council to have the ability to direct its negotiators to go meet with the bargaining groups and come back with a new program. Both under the Police and Fire and also for federated, what we call federated now. That gives council the flexibility without being subject to the limitations as Mr. Gurza discussed.

>> Councilmember Oliverio: Would this charter change take anything away from a retiree?

>> City Attorney Doyle: No, current retire East are vested and nothing would change.

>> Councilmember Oliverio: How about if I started with the city last month, does it take anything away from them?

>> City Attorney Doyle: No it does not take anything from them until and unless a new system was put in place.

>> Councilmember Oliverio: As far as the concern at the Rules Committee that gee based on the old language that the city would be opening itself up to liability by removing the 8 to 3 match or the 3 to 8 match so based on the new language versus the prior one?

>> City Attorney Doyle: Well, you wouldn't have the -- you wouldn't have anything in the charter that would either have floors or ceilings. There would be no caps or limitations. Right now, the ratio really protects the employee, that the employee's share can't go before 3. So that would be taken out. But that would be subject to negotiation.

>> Councilmember Oliverio: But I guess on the technicality, when you looked at the old ballot language that was at Rules versus the new ballot language, the new ballot language only affects the 3 to 8 on the new employees and a future date?

>> City Attorney Doyle: Right, but that again is subject to meet-and-confer. I think that's getting into the specifics of a plan, and that's what, I think, the city's negotiators are going to have to go and hash out.

>> Councilmember Oliverio: Got it. And Rick, how does this language not make a meet-and-confer process?

>> City Attorney Doyle: This is just generic. This just gives the council the authority to go forward and go and negotiate a plan whether it's a defined benefit defined contribution or some variation. This doesn't change the status quo.

>> Councilmember Oliverio: And Alex Gurza, we hear again and again, the city's not going to hire anybody. But we have a fact of people at a certain age bracket and actually the whole North America has this of people getting older. How many people going to -- what percentage is going to leave in the next couple of years?

>> Alex Gurza: It's a great question. Understandably, because we just went through what we went through with the layoff of employees, it's natural for the people to wonder when we might hire again. But we're also at the baby boomer phase, where we have a significant part of our workforce that is going to become age-eligible to retire in the next five years, and as much as a third of our workforce may turn over. So in any second tier when you start it and then you're five years from now you look backwards, you're now going to see a third of your workforce in the second tier, and in another five years, you may be at 50% of your workforce. So the sooner you implement a second tier and then look backwards, the greater percentage of your workforce will now be in it. Particularly in this era when we do have so many employees that are going to be age-eligible to retire and depending on the employees we will have to fill those positions, public safety positions and et cetera, we will have to replace those in the next five years.

>> Councilmember Oliverio: And I think on the sense of why now, the sense of urgency is this. And the letter from our former City Attorney, now representing the labor council, basically said listen, we're going to need two to four years to figure this out in negotiation. If we do that, we're going to spend two to four years missing out on all

the cost savings from these baby boomers retiring. Very problematic. So by allowing the residents to tell us yea or nay on this thing, we will be now able to negotiate that second tier and try to finish it up in a year instead of a two-to four-year scenario. And I think realistically passing in November taking a year to work it out, you know, maybe we would then get to actually having an employee effective January 1, 2012. And that person's going to know the benefits right from the start. We're not taking anything away from anyone. I know this conversation gets very emotional for people but we have to remind ourselves, we're not taking away from anything anyone that we promised, and two, what is the alternative? Because again, we can do nothing and we're just going to have no ability to pay for these things. So I don't want to be repetitive. I want other councilmembers to speak. I appreciate the ability to serve with you all and the ability to bring this to council but I think it's an important thing that we must do now.

>> Councilmember Chirco: Councilmember Constant.

>> Councilmember Constant: Thank you, Vice Mayor. I had a lot of things to say but you talked a while so I'll cut mine down. Just kidding. Well, you know, I think what's important here is to step back and also look at what we're doing and what we're not doing here. What we're not doing is force-feeding a specific second tier on anybody. What we are doing is opening the door albeit pretty wide-open to have a discussion about second tiers. Because right now our discussion on second tiers is very limited on the fact that we have those minimum languages that are contained in our charter. We have kind of the classic chicken and egg. Nobody wants to change the charter because we haven't talked about the second tier yet but we can't have full discussion about the second tier until we change the charter. And I think we do need to take a step in the right direction. Now, it's no secret to anyone that I've been a big proponent of a second tier. A year ago, everybody said that that would never happen anywhere, let alone in San José. But what the City Attorney has mentioned from the municipalities that have done it but at the state level with the CHP and others we've seen a significant movement to second tier in fact we have even our union leadership who readily admit we are going to go to a second tier. It's just a matter of what will that second tier be? And I think that this action today takes us to that discussion. Now we had some discussion from Pierluigi on you know whether we ever have to have a charter amendment again in the future or whether we can just handle it in the Muni code. My personal opinion is that in the future we will have

again a charter amendment. Because I think when all this is flushed out and we have opened the door and we have negotiated a second tier I think it's going to be important to put language in the charter to add some long term certainty. And I think that's going to be important so that we have maximums so that the residents and businesses, taxpayers of San José have some certainty, in going forward, so that we avoid incrementalism where we have a little blip up in the economy or we have another bubble rise up and benefits continue to creep up and then all of a sudden we're back to this same situation. I do know in the future once we work our way through this it's definitely something that we're going to have to do, at least from my opinion that we need to do that. I think it's important to note that another thing we're not doing, I forgot to mention we're not taking anything away from any current employee. We're not taking anything away from any current retiree. This is truly only for new hires, after the date that a new second tier is negotiated and implemented. I think that you know we've heard some conversation, not as much today, but in the past, about how disastrous a second tier would be on the morale of the workforce, and how it's unconscionable, I think someone said today, to have two people doing the same job at different rates. And I just want to remind people that's not only what happens in the real world, in other words not in government work, but we have people in our own council offices with the same structures, making different rates because they don't have the typical steps and the confined progression in their wages is like the standard employees. Another thing that people fail to recognize is we already have two tiers of pension retirements for new and current employees in the City of San José because the members of our redevelopment agency don't have a defined benefit plan. They have a defined contribution plan. These folks work side by side with the employees of the City of San José, with two different compensation structures and two different pension structures and we have not experienced the problems that I've heard these big fears of the problems that we're going to have in the workforce. So I think it's important that we keep that perspective, that things will be okay with a second tier and we need to go there. The residents expect us to go there and as I think Pierluigi was saying, self preservation on behalf of the city says we must go there. And I think everybody up here on this dais agrees that a second tier is necessary. I think as Pierluigi said it could go from 0% to 100% to anything in between. I do think it's important to stop the chicken and egg game and we make a movement and we take the door to second tier and we throw it wide open. We let the voters make a very public statement on what they expect us to do or not do if the case may be and then make our decision on what the second tier should be. My last comment is on the stakeholder group. I agree with you, the three year industrial deficit elimination task force was a model that worked well. When

I first read the memo from councilmembers Pyle and Kalra, my biggest concern was how long it would take to create, recruit and fulfill this task force that would have a very short window to do quite a bit of work. And I think that we already have the defined group. We have the classification, we have a very good representation there and it would be a very good process when we get to the point of needing it. Thanks.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor. One question about language. Pierluigi, I think when we spoke last, a few hours ago, we had talked about and made reference to language change, minor language change to ensure there wouldn't be anyone misled that somehow or another, this measure would completely eliminate any opportunity for an employee to have a retirement plan. And so I believe the words that were suggested was, where it says "any" before "retirement plan" on the third line and where it says "any" on the -- I'm sorry, the third to last time, any on the retirement plan and then the penultimate plan, I can't remember.

>> Councilmember Oliverio: They were great suggestions and I gave them to the City Attorney and the City Attorney through legal viewpoint changed it so Rick could you speak to that?

>> City Attorney Doyle: Councilmember, we've been trying to keep this as broad as possible that it covers any -- and when you get into what's existing and what's current, there's some room for debate. So this is -- again, the whole intent here is to give as much flexibility to the city council to do this. If your concern is that the term any retirement plan means that there wouldn't have to be a retirement plan --

>> Councilmember Liccardo: Right.

>> City Attorney Doyle: My retirement attorney advises me that that's not the case, that in fact the internal revenue code requires that because we do not play into Social Security, we have to have a retirement plan.

>> Councilmember Liccardo: Rick, I don't doubt you.

>> City Attorney Doyle: You're right the impartial analysis can only go so far, I understand that. I know I think -- looking to my staff here on the terms of the word existing if that is something --

>> The thing is it is possible to put the word existing in. The question is existing as of what date councilmember?

>> Councilmember Liccardo: As of the date of the passage. I see Alex Gurza is motion he might have the idea.

>> Alex Gurza: I haven't heard this before but my initial reaction is as you move forward in decades in the future you may have more than one plan that's changed. The question is what does that mean as far as existing and it could cause complications into the future.

>> Councilmember Liccardo: I'm not married to any particular language, I just know the language we have is very misleading and might lead voters to believe we are eliminating all retirement for employees. And I'd hate to lead anyone along that path.

>> City Attorney Doyle: How about any retirement plan in existence?

>> Councilmember Liccardo: As of --

>> City Attorney Doyle: And that -- well, it wouldn't have to have a date. In existence would cover generically any --

>> My question was going to be what plan was in existence that you're -- what plan are you talking about? In existence the day the council passed the measure, the date of the ordinance, the date the person got hired?

>> City Attorney Doyle: The whole idea here is if you can calculate it in a way that says any retirement plan in existence, in existence as of the date the council establishes a new retirement plan. So the effective date of the ordinance.

>> It is possible do that and that would be simply an limitation on the council's authority and that's fine if that's what the council decides.

>> Councilmember Liccardo: Okay, I'm not sure I understood exactly where we just ended up, Ed.

>> No, that it is possible to put in existence at the time the ordinance is adopted.

>> Councilmember Liccardo: Right, and I recognize that there may be a risk if there's multiple tiers here. I'm assuming that this charter amendment would give the council the authority to be able to deviate from from one plan to another based on a vote of the council.

>> Again, the limitation is the charter limitation, so the words would limit your authority to make any changes by ordinance. So again, you could limit it by saying in existence at the date of the ordinance, which would mean you would look at all of the plans that were in existence at that date, and in the future you would again look at the plans that were in ordinance and you would have to be bound by that particular date with regard to any changes in plans.

>> Councilmember Liccardo: Okay.

>> Councilmember Oliverio: Councilmember Liccardo, the plan does allow the flexibility so that maybe in ten years, because whatever situation that the county may at that time decide to set up a third tier. So instead of a 250% pension match and we say change it to 200, then another council years from now says it my have to be a 175% pension match effective five years from now.

>> Councilmember Liccardo: What I'm hearing from the City Attorney is we in fact need a new charter amendment every time we create a new tier.

>> No I'm not saying that. It's just a reference point councilmember. So it would just ask you to look at the plans that were in place at the time you adopted the ordinance.

>> Councilmember Liccardo: Okay.

>> City Attorney Doyle: Councilmember let me just note, I'm looking at the exact language in the charter the proposed and not just the ballot measure. It says may exclude any officer or employee hired on or after the effective date from any retirement plan or benefit from any retirement plan. You're talking about it only affects those employees on or after that date. We can add any then-existing or to make sure that it's clear that you're not talking about excluding people in their entirety, but just as we've explained to the council before. The council has total power to enact a retirement plan. Subject to the limitations in the charter.

>> Councilmember Liccardo: Right.

>> City Attorney Doyle: The charter limits your power right now that says you have certain minimum age requirements, you have certain minimum benefit requirements and you have the 8-3 split. That takes that out and you again are given the power by ordinance which the current charter says to establish a new retirement plan.

>> Councilmember Liccardo: Okay, so Rick I'm happy to take the language you suggested if you wouldn't mind reading it to me, so I make sure I -- I think we all probably want to understand it, I would be happy to ask for a friendly amendment on it.

>> City Attorney Doyle: I'm going to propose the language that says from any retirement plan in existence and then leave the -- or benefit any plan --

>> It would have to be end, it would be the benefit of any retirement plan or benefit any plan in existence at the date on the date of the ordinance.

>> Councilmember Liccardo: Bump be up against 75 words.

>> City Attorney Doyle: We're what, 68 now?

>> I counted 69.

>> City Attorney Doyle: We're going to have to work with that language but that's the intent.

>> Councilmember Liccardo: Okay.

>> City Attorney Doyle: Give us a moment to work on it.

>> Councilmember Liccardo: Sure, I'm happy to go with that. If the maker of the motion is --

>> Councilmember Oliverio: That's fine Councilmember Liccardo. In addition, we have room at the beginning on the first sentence, those are not legal language needed. I think if you and I were writing it, we would write new pensions for new employees. But because we have a city charter and this has to be law, we have to manage everything.

>> Alex Gurza: If I could add, as the attorneys look at this, one of the things that some agencies are looking at, so you hire a new employee and you have a different tier. And you actually -- the employees have options of which to go through. So you know, had some discussion of keeping a defined benefit or some may choose one or the other. I think you just want to make sure that the charter change still allows that flexibility so that a second tier couldn't just-might not just be one tier. It could provide an option for an employee to go into this plan or that plan. As you draft the language just make sure that might still be an option.

>> City Attorney Doyle: That would be part of the ordinance after you had that negotiation.

>> Councilmember Liccardo: Okay, well thank you. I appreciate -- I know you're work on the verbiage and counting some words right now so I'll just speak while you're work. I agree with what's been said here about the fact that I think we all know, this isn't a sufficient step, it's a necessary step. And we know that what needs to follow is stakeholder outreach and undoubtedly negotiation. And I don't have any particular view about what the appropriate forum is, but certainly the task force reform group is as good as any. I don't know whether or not we'll end up having to go back to the ballot and go -- to amend the charter to somehow or another codify this in the charter. Or simply set it in the Muni code. But I do know we absolutely have to get through this step first no matter what we ultimately choose to do so I appreciate the comments of Ms. Gallo, I certainly respect her knowledge and experience but it seems to me we absolutely know we have to cross this bridge. The future bridges I think are still to be determined and that's really going to engage an awful lot of people in that conversation in that ultimate decision. You know, the one thing I would like to point out, I know Pierluigi made reference before to the \$200 million that we're paying for pensions before. It's actually that the entire retirement cost, that includes health care too. The reason I raised that is because retiree health care is actually driving an enormous amount of that. In pension not to mislead anyone but the unfunded liability on the retiree medical side is probably in the area of \$1.3 billion or somewhere in that area if I've guessing.

>> Alex Gurza: I did take the time to answer Councilmember Oliverio's question, the unfunded liability is 1.12 billion, and you add another approximately billion dollars for glee health care range. So you're in the \$2 billion range.

>> Councilmember Liccardo: Obviously everyone's assumptions will affect that number. But one thing that is true is our increasing contribution rates are driven more by economic and demographic changes than they are in say the loss in the markets last year. So these problems are going to be with us for a long time and they are not going away with a good market.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I think the discussion that we all sat here watching exemplifies the reason why it's problematic, to have the very first public hearing at 7:20 p.m. on the date the final and only date you put something on the ballot and have that be the first public hearing. There's huge problems with that, that there are similar to the problems that were raised that I similarly raised with binding arbitration item that we had a little while ago. And mayor at this time I'd like to propose a substitute motion of the memorandum that Councilmember Pyle and I put forth and ask if I could get a second that I can comment on that.

>> Mayor Reed: There is a second from Councilmember Pyle. So we have a substitute motion on the floor based on the memorandum from Councilmember Kalra and Pyle.

>> Councilmember Kalra: Thank you, mayor. You know, new read the memo that Councilmember Pyle and I put forward, the very first two sentences in the background indicate there's little disagreement the public pension costs affect the ability of the city to continue to provide central services to our residents, something must be done to change the current system. So there's no disagreement. I don't think anyone up here has ever indicated that there's any disagreement on the fact that why need to have some serious pension reforms. And additionally, had Councilmember Constant indicated he raised some issues with the time line. The reason we have a tight time line is we know it's an urgent issue that needs immediate attention and that's why we have a time line which requires that within 119 days there must be some results of a task force put together. And because we're not putting this forward as a delay tactic we're putting this forward in the spirit of sunshine in the spirit of having a collaborative process and in the spirit of making sure that all our questions could be answered we have ballot language being discussed here where we're having legal opinions being given on the spot as to what's appropriate or not and we're having -- we're having worthsmithing done on the spot and we're accounting on the spot when this language has never been seen before by anybody. Yesterday was the first time that ballot language was proposed. Today there is some additional wordage to it that had never been seen before. So we all understand the pension issue is important and we've all discussed it. I think pretty much every one of the bargaining units at one point indicated they understand the need for it. As Councilmember Oliverio said, seven cities are considering pension reform,

and we should too. However there are many cities who have reform through negotiation and through agreement they have come through with reforms and then they go to the ballot. If we're going -- I think we absolutely owe it to our 1 million residents to operate ourselves conduct ourselves in a way that's responsible and that's respectful. Yes, maybe, we're doing by putting this on the ballot it's something that is legal, yes maybe we comply with the sunshine terms. However, having an issue of this magnitude and complexity that by all accounts, we all know has been a major issue for a long time come before us during the July recess to be heard at our first council meeting is absolutely inappropriate. It is disrespectful to the employees and dishonest to our residents. There is a sense of urgency, as Councilmember Oliverio asked why now because we need to do reform now and I agree. It was just the equal sense of urgency, three months ago, six months ago and nine months ago approximately when the first issue of medical marijuana was brought up by Councilmember Oliverio. So we've known this has been an issue and yet we wait until the July recess to put something forward and have the one and only meeting where we can put this on the ballot, have it open for discussion? I think it's absolutely inappropriate. I think we will have a much better result in having real pension reform, total holistic pension reform, by taking quick action, but deliberate and thoughtful action, with all the stakeholders including the neighborhood groups, including the business leaders, including our bargaining units, and taking the time to give this the attention it needs, this complex issue that we're right now wordsmithing on the spot. I think it's absolutely inappropriate, we can talk about how much we respect the employees but what's coming out of our mouth is not being represented by the actions that we're taking here today, if we go forward by putting this on the ballot this November without the opportunity of doing a holistic view of how we can put this on the ballot and do a charter amendment in an appropriate manner that will help us not only sustain our fiscal future but also ensure that we can maintain the relationships with our neighborhoods as well as with our employees.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. It's been my experience over the years -- and I have a few years on almost all of you here -- that if any -- any actions that are put on a ballot or any ballot initiative are at all confusing, unclear, garbled, they don't fail -- I mean they don't pass, because the voters decide, well you know if it takes me longer than five minutes to figure this out I'm just going to say no. It's not worthy of a vote. And I'm concerned

about that, with this. If we're going to do this, we need to do it properly. I truly appreciate your offer, Pierluigi, and I think it's a good idea to just use the same task force that's been put into place, and I truly, truly want do that. I don't know what kind of a job we can do, but we would have August, September, October, that would be pretty much three months. John how quickly it could be assembled, how effective that would be. But it would be worth -- certainly worth a try. If the general sense is that it should be in November that we put this on the ballot. As it is now, I'm sure it won't pass. Because it's just too confusing, and it lacks order and structure. So I would like to make the amendment at least that we would use the same task force. And it is -- and we would use the same task force that's already been put into place. They know the drill, they know basically what to do.

>> Mayor Reed: I think that's a request for a friendly amendment to the maker of the substitute motion.

>> Councilmember Pyle: Mr. Kalra --

>> Councilmember Kalra: I apologize, I was asking Councilmember Oliverio a question, I believe the task force is not currently sitting. If possible if they're willing to serve again certainly I'd be happy to add to the motion and to our memo that we make an effort to reach out to the same people that served so well before.

>> Councilmember Pyle: Sure, okay.

>> Mayor Reed: So that's a friendly amendment to the motion. Councilmember Pyle anything else?

>> Councilmember Pyle: No that would be it for me.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thanks. As far as the task force I think one of the key things is the task force was already structured with membership by position, you know. So this group had this representation so even if individuals weren't able to participate, their class could participate. So just to kind of answer that question, but my

light was on for another reason. You know, we often hear, ever since the sunshine reform issues came up, sunshine gets thrown out all the time as a reason either to do something or not to do something. And one week, and this is not geared to any one particular so don't take personal offense to this. One week some person will say I'm going to amend this motion right now and throw something up on the screen and get a motion and that's okay. Then the next week if it's something you don't agree with, we can't do that because you don't make process on the fly. It's much like sausage, it gets messy and a lot of things get thrown in at the last minute and that's how the process is, it's not that sometime someone comes up with an amendment or a motion, we should start the issue all over denists really the issue that needs sunshine. I think when you look at this, the memos on each of these ballot measures came out within our sunshine time lines and then they were supplementals were put out within our guidelines. And amendments were made at the dais like we do on every other issue. So I just want to remind people we can't have it both ways when it comes to sunshine. We either have it on all issues where there's no amendments and no last minute discussion and no memos after the ten day rule or we have it but it's equal. And I think that in this particular case, amendments are not only appropriate, they're necessary to make sure we get things right because it is a large investment of public money to put things on the ballot and we do need to make sure that things are wordsmithed appropriately so that we have everything done in the right fashion, and it's also important to keep the perspective that I brought up when we were discussing binding arbitration, that this is the beginning of a process, this is not the end. We're not making a final decision today, we're making a decision to make a decision to let the voters make a decision. And I don't know how many days it is between now and the November election but I venture to say it's about 93 or 94 days away something like that. So we do have quite a number of days for sunshine. Thanks. And I'm not supporting the substitute motion.

>> Mayor Reed: City Attorney, did you have a --

>> City Attorney Doyle: Yes, I just -- we do have some language and I know there's a separate motion on the floor but at least let me throw out what the language would be and then you can move forward into the discussion. It's the word then in existence, it really should appear after the benefit of any plan, so it covers both any retirement plan or benefit of any plan then in existence. So that's where the language would show up and it's just three more words and so that gives us a total of 72 words so that is within the limit of 75 words.

>> Mayor Reed: That is not the motion made by Councilmember Kalra. Councilmember Chu. .

>> Councilmember Chu: Thank you, mayor. I agree the two-tier system and I agree with Councilmember Constant that we will eventually have another ballot measure to ensure some long term certainty. And that's why I believe that, the first step and I believe all of us here on the dais and many of the labor leaders also believe, and it's time to do some pension reform, that's what I believe the first step is to negotiate a second tier, as to we have put all the resources together, and come up with a plan that will, again, hold water and then then we pick the carefully crafted language and go to the voters for their approval. That would probably increase our chance of passing the ballot for one thing. And I truly, truly believe that if we take the step of reaching out to the stakeholder, that we will come out with a better product. A better product, a better two-tier system means it's better for the citizen of San José. That's why I will be supporting the substitute motion.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: I also will be supporting the substitute motion. I want to thank my colleagues for their memo that is before us. In reading it, it really is outlined in a very thoughtful way that gives us an opportunity to have a dialogue around an issue that is extremely important, that we know will lead to solving few issues that have been out there in the air for discussion. But this formalizes it and I wasn't a part of the task force that we're talking about, that I believe Councilmember Constant was part of and chaired. But if we can convene a task force that does include all stakeholders, so that we can have this discussion and hopefully, be able to come up with a solution that will benefit not only the city, but also, the workforce, and the residents of the City of San José, I want to once again thank my colleagues for your work. I know that you must have come in on your vacation to make sure that we -- you were presenting something that could work for the council, as well as for the residents in the City of San José.

>> Mayor Reed: I'm not going to support the substitute motion. I think we do need to convene the task force, I think, as people have discussed but I don't think the task force is going to go anywhere. It's not going to make any

progress. We're not going to get to a significant savings on a second tier without some push. And I think that push will have to come from the voters, either in the form of this particular measure in front of us or a citizens ballot initiative or something on a later date. So I think just having a task force is not going to move us towards doing something on second tier. Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I don't know if I would be so pessimistic as to think that a task force wouldn't get different results or make some progress that may not have been achieved in the past. As Councilmember Nguyen stated earlier, there has been a paradigm shift, times have changed, and even before today we have heard other bargaining unit leaders make it clear that they understand that two tier is something that they have to open themselves up to. So I think there is a different situation now. And in terms of sponges to Councilmember Constant, in terms of a sense of inconsistency or what have you, I don't object to amendments being made on the dais, I understand that's how we oftentimes do make the laws that we do up here. I have voted against items in the past because of the changes made or because I didn't have the proper opportunity to vet them or I just didn't agree with the changes, not the fact that there were 11th hour changes. There is a clear distinction, this is a charter change. That's why it's different. It is not a simple proposition. We're asking to put a charter change on the ballot. And I think that's a significant enough of a matter, particularly since by all accounts we all agree that this has been a significant issue for some period of time, that we could have very easily been discussing this over the last few months to make sure we got the right language, make sure we worded it in a way that was appropriate, make sure that the community, as well as the bargaining units had sufficient time to give their input, and we could have done all this and still been here today and voted on something that I think most of us if not all of us would have been far more comfortable with than we have here. So I will ask my colleagues' support of the motion on the table.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Just to be clear and understanding where we end up. With let's say a task force comes forward with a proposal, Rick, I assume we need to negotiate with the bargaining units and, say, if fire

didn't agree to whatever the result might be, that the task force recommends, then we support, I assume that means we go to arbitration, is that right?

>> City Attorney Doyle: I think you're correct, in your -- with respect to Police and Fire. Because that's part of the impasse procedure. But at the end of the day, flog would preclude you from being able to put a similar measure like this on the ballot in the future. So you can let that process play itself out and see where you go.

>> Councilmember Liccardo: Understood. But the point is we'll never be able to get the point where we can for instance, for the other nine bargaining units, you know, we obviously want to negotiate, get to a result we all agree on and have that become the new retirement plan. Or have the option I guess if we can't reach a decision to actually be able to implement. But we never even get to that point if we can't first get over the hurdle of having the language in the charter changed.

>> City Attorney Doyle: You're talking about public safety. And to the extent you get specific, it triggers the meet-and-confer, you're talking specific benefits yes, that's a problem.

>> Councilmember Liccardo: I guess where I'm going with all of this is this. I think we all want this task force to work and we all will support it and make sure it goes forward but the reality is in is really going to come down to negotiating with individual bargaining units and to the extent that they're willing to agree to whatever the second tier might look like. That is going to really greatly constrain our ability to move forward. We absolutely have to be able to have the freedom to move by at least going forward today and having voters approve this in November so we no longer are shackled to a retirement plan that we all agree is not sustainable.

>> Mayor Reed: Councilmember Pyle. Councilmember Pyle is alt talked out, I don't know if everybody else is or not. Appears to be. Councilmember Herrera.

>> Councilmember Herrera: I, like others on this council, have made public comments about my concern in terms of the unfunded liability. And as we've heard again today we are talking about \$2 billion. In excess of \$2

billion when you talk about unfunded benefits and unfunded medical. As I read in an article in the Evergreen times, it is the iceberg -- we're the titanic and there is the iceberg. So we're constantly talking about negotiating contracts but never really getting at this iceberg. When I first heard about Pierluigi's memo, I was pretty committed to voting no on the first language. I didn't think it was workable and I was -- even though I really believe that we need a second tier and we need to have reform I was not satisfied at all with the language of that. And I let people know that in the community and I need to let you know now that with the new language change, I changed my opinion. So I will not be supporting the substitute motion. I think that we need to at least get the language in the charter out of there, it's limiting us from being able to make that change. And I really do support the task force coming forward and working through the details of what that second tier will look like. I think we have time for the stakeholders to hear the ideas and put the best ideas forward. The support of the charter is untenable. We need to move past that, and this is not -- again it is not the process I would have liked, but if I had my way we wouldn't have that in the charter. So this is an obstacle we need to move past. It is not the most elegant way. We may need another voter -- another ballot measure. I don't know if that's the case but I do know that it's right to get this out of the charter and hopefully we can communicate that to the voters so that they will understand that. I can also say that I've received overwhelming input from the community that they want a change in this. This is not something that I have to wonder about. I think it will pass because I think there's an overwhelming demand for the change. My other concern about this, and you know, was that -- are we leading them to believe that we are making an actual change in our plan when all we are doing is changing what's being decided by the charter? So I think again we're going to have to communicate because this is really just opening the way for negotiating a second tier. It's not creating a second tier. And so I was also concerned that you know, that people would get the impression that we're creating a second tier in this ballot measure. It's not perfect but it is the first step. So I will be supporting that and I cannot support the substitute motion.

>> Mayor Reed: I think we're done talking about substitute motion. I have no other requests to speak on the substitute motion, all in favor? Aye. I'm sorry, all in favor, say aye. That is not including me. On the substitute motion we got ayes from Kalra, Chu, Campos and Pyle. That is four ayes. Opposed? One, two, three, four, five, six, seven, everybody else was opposed, that fails on a four-seven vote, I think I counted them correctly, City Clerk. So that motion fails on a four-seven vote, back to the main motion which would be made by Councilmember

Oliverio and back to the text of this language, I assume you would change the motion to clarify it so it has this text in front of us?

>> Councilmember Oliverio: That would be correct mayor.

>> Mayor Reed: All right and then your motion was to move this head to the ballot and to convene the stakeholder statistics that was referred to.

>> Councilmember Oliverio: Correct.

>> Mayor Reed: On the main motion Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor I want to briefly state, Councilmember Pyle and I are not opposed to a charter amendment, if it's done right, stakeholder negotiation after the fact has it all backwards. So I won't support this motion as I've state as our memo that we just voted down stated, we are equally concerned about the issues regarding the pension. We, at least I just think we're doing it backwards and we would have a better product to take to the voters with more support even potentially from some of the bargaining units. And at the end of the day, if they don't agree forward with what we do, we can still go to the voters and I think have a better product ultimately. Thank you.

>> Mayor Reed: I'm going to support the motion, although I have some reservations because it doesn't go far enough it is not specific enough. I think we have to put in front of the voters a meaningful second tier on mentions but I also understand the realities that if we want to have a meaningful second tier we've got to meet-and-confer first. Police and Fire have arbitration rights and so doing that in the form that we can say to the voters, this is what the second tier is going to look like is just not something that's feasible in our current situation. This at least gives the voters an opportunity to say yes, we want a second tier which I think they will overwhelmingly be supportive of because it's quite clear that the voters understand that the system we have is not sustainable. The kinds of cost increases that we've had in pension and retirement and health care for retirees, you name it, have just been

enormous. The voters understand that. I think they will be supportive of this even though it doesn't get as specific as it should but I'm going to support it nevertheless. Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. I won't be supportive of this motion just because of the same reason I stated. I think we should definitely negotiate a second tier before we then get all the language all the ducks lined up right before we take it to the voter. But I appreciate the amendment to include the task force. But I believe because we didn't do the -- in the right order, it will probably make the task force work much, much more difficult, so I won't be supporting the motion.

>> Mayor Reed: All right open the main motion in front of us I have no other requests to speak. All in favor, opposed, in opposition we have Kalra, Chu, Campos and Pyle so that main motion passes on a 7-4 vote. So that will go on the ballot. [applause]

>> Mayor Reed: We also need to consider the ballot argument drafter author, and whether or not there will be rebuttals and-or full text of the thing published so we need a motion on those.

>> Councilmember Oliverio: A motion to do the same as we've done on the others I would imagine.

>> Mayor Reed: We need to designate the author of the ballot argument.

>> Councilmember Constant: I second his motion with him as the writer.

>> Mayor Reed: Okay, the motion is no rebuttals, we don't publish the full text, whatever that means, it's published, we just don't pay for it to be in the ballots. It cost a lot more and Pierluigi would be the author of the ballot argument, not on behalf of the council but the author of the argument. Those who want to join in can talk to him about it. That's the motion on the floor. All in favor, opposed is Kalra, Campos, Pyle opposed, that passes. I think that concludes our agenda with the exception of open forum. Once upon a time, many hours ago I at least a

request on open forum. We'll take that now, I think we have a card or two. Looks like we're missing most of the National Night Out. Sorry about that. Business does sometimes get in the way. Paul kindle. And -- Paul Kindle.

>> Well, before I begin I have a point of inquiry, if I might.

>> Mayor Reed: You've got a minute.

>> Well I'll try this and see if can I do this. If I get my glasses on here.

>> Mayor Reed: What's your question?

>> I just -- I came to -- have you seen the movie inception yet? I'm outside your community and thought I would step in.

>> Mayor Reed: Use your time to do what you want.

>> Thank you, I'm not sure what that means. What I wanted do it's a very special city, I'll be spending some time, leaving next week and I just want to make a few points with you, if I might, I'll get right to it, here especially with your one minute ruling. First of all there needs to be a carbon tax. It needs to be immediate. If you're pushing to removing carbon, you need to be paying a tax. Everything outside of a family transaction, all money transactions need to have some type of a fee imposed that's immediately extracted unless it has to do with a single family dwelling or need. All your discussions from now on need to be on camera, they need to be public they need to be on split-screen because the problems are becoming so complex and cascading in nature and intertwined it is going to take a greater body of the community to be able to resolve them. We need to decouple all public services, essential need to be decoupled from our home funding base and from our life essential energy needs. We need to limit all public employees to some type of term limit. The reason I mentioned this is not to disparage your community. It is because we are having the same problems throughout the nation. I just came from Colorado and Alaska and Nevada we're seeing the same thing which would mixic --

>> Mayor Reed: Your time is up. If you want to send something in writing you can send it in write. Thank you that concludes the open forum, that includes our meeting, we're adjourned.