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>> Mayor Reed: Good morning. I'd like to call the city council to order for an early start. We have a long agenda today so we're starting early with the closed session. First item on the agenda as usual is the labor update, we'll adjourn in closed session and return here to take up the rest of the agenda at 1:30. Alex Gurza.

>> Alex Gurza: Good morning, Alex Gurza, deputy City Manager, we have no presentation this morning.

>> Mayor Reed: Okay, we're going to adjourn into closed session, we'll be back here at 1:30.

>> Mayor Reed: (gavel strike) Good afternoon. I'd like to call the San José city council meeting to order for the afternoon of December 13th, 2011. We will start this portion of our meeting with an invocation and I'd like to introduce father McGuire to, 1989 was educated as an electronics engineer and worked in Silicon Valley for five years as a high tech executive, became an ordained priest in 2000 and has been at Holy Spirit Church for nearly eight years. He's also the vicar general of the diocese of San José. Father, thank you for joining us.

>> Thank you, mayor. And we pause in a moment of prayer. God, and father and giver of all good gifts, we pause this afternoon, to recognize the gift of your presence among us. You are at the center of our lives. You are profoundly within us. And in each other. Lord, help us, help us to ponder the goodness that you have created within us. Help us serve each other and to seek only what is best not only for ourselves but also, for those whom we have come to serve. Help us then to recognize that all we have is truly a gift from you. Give us the courage to be generous, give us the desire to be generous, give us the strength to be generous. Open our eyes and enlarge our vision, open our minds to deepen our knowledge and open our hearts to increase our faith in you. Lord, we ask you to bless this proceedings today, help us to listen with open hearts and to serve the common good. We pray this through cries our lord, amen.

>> Mayor Reed: Thank you, father.

>> Councilmember Pyle: Now we will do the pledge of allegiance. We have some folks here to help us today, fifth grade class of success academy district 7, San José and Campbell. Please stand for the pledge. [pledge of allegiance]

>> Mayor Reed: Thank you, students for helping us with the pledge today. It's a good way to start the last council meeting for the year. So while it is a very long meeting, we are always looking forward to this meeting for a long period of time. We have a lot on the agenda this afternoon and this evening. The first thing for us to do is to make a few changes to the printed agenda under orders of the day. We need to add a ceremonial item, presentation of a commendation to Priscilla Carrasquilla. And an item 2.18 is an agreement with the Santa Clara Valley Transportation Authority regarding upper Penitencia Creek improvements we need to defer until January

10th. Item 4.6, an administrative hearing on Moe's Stop gas and service station we will take up this evening, not on the afternoon agenda. Any other changes to the printed agenda? Motion is to approve the orders of the day. All in favor? Opposed, none opposed, those are approved. Closed session report is next. City Attorney.

>> City Attorney Doyle: Mayor, the council met in closed session this morning. There is no report.

>> Mayor Reed: We'll now take up the ceremonial items. I'd like to start by inviting Councilmember Chu and members of the jubilee Christian center to join me at the podium. Today we're commending the jubilee Christian center in recognition of their service and dedication to help identify individuals and families in the local community for need of food, splicing, shelter and clothing. Councilmember Chu, who just happens to have jubilee Christian center in his district, has much more information.

>> Councilmember Chu: Thank you mayor. I would like to thank the mayor and my colleagues in allowing me to commend jubilee Christian center in recognition of their service to our community, active congregation located in Alviso, district 4 since 1980, with more than 14,000 members. From health fair to pantry outreach, Jubilee Christian Center has been a key contributor to our community. Their pantry outreach program serves people who are struggling. Food clothing and small household items are provided for 2,000 families on a monthly basis. Pastor Michelle and her parishioners provide large scale give aways. Over the summer, Jubilee back to school giveaway provided 1500 children with free back packs shoes, and haircuts. As they prepare for a new school year. On November 19th, an amazing team of 300 volunteers worked tirelessly to pack and distribute 1,000 turkey dinners to families in need. I was there, and I witnessed, watched their actions, and I've seen a lot of family members after they received their food meals, that included the stuffing, the turkey, the dessert, hugging each other and crying in the parking lot. They give those food meals out and they also helped them to carry them to the cars. And this month again jubilee Christian give away will provide food and toys for another thousand families and their children. Jubilee Christian centers in yielding support of our community will continue to make a positive impact on the lives of individual and families during this tough economic times. So here today, to accept a commendation, is pastor Michelle Bernal and Meredith Brasell, Katherine Meyers. Did I get your names right? All right. [applause]

>> Well, thank you for the award. Truly, it is a labor of love, what we do. There is such a big need in our city. And I figure somebody's got to do it, right? So it is a privilege and an honor to be able to serve the people that are hurting in our area. We do it on a daily basis but to do these big events every year, just is -- means such an impact to our city and our community. And just truly a privilege for jubilee to partner with the city and to just make a difference. And be a part. Thank you. [applause]

>> Mayor Reed: Now I'd like to invite Councilmember Chu to remain, Councilmember Kalra to join us along with Julie Edmonds Mares and Greg Brazil, to recognize the great American litter pickup 2010-2011 winners, and Greg Brazil for his contributions to district 2 great American litter pickup.

>> It's my great pleasure to present this award for the 2010 great American litter pickup to Councilmember Kalra, for his appreciation and recognition of his district's outstanding performance in gathering 640 volunteers in 2010 for that weekend and pickup. Thank you very much. [applause]

>> Councilmember Kalra: All right, so I only have a few seconds to hold onto this before I pass it onto Councilmember Chu so I want to savor the moment. I really love the great American litter pickup. Over the last two years our office has brought in well over a thousand volunteers to come out and pick up litter and more importantly do something positive for the community. I want to thank my staff because my staff really does a lot of work to outreach and help arrange for the day of the event. Especially Stacy Shee who has been spearheading for the day-of event and getting the word out to the community that helps to get the volunteers there. It's such a great event because it is an opportunity for all of us as councilmembers to have healthy competition that benefits the city. Tons of garbage which is great. Healthy competition amongst ourselves but more importantly we get thousands of people from around our city to come out and spend the day with each other, do something positive and see what we can accomplish, this is what symbolizes more than anything, our offices and the people we represent really do our best to step up in order to make our community a better place to live. With that it's a great honor for me and I know how hard they work, too. Because there are a lot of friendly verbal sparring when we

were talking about this year. It's great to hand this over to Councilmember Chu, don't get too used to it because we're coming back after it, all right?

>> Councilmember Chu: Thank you very much. Thank you, Ash. I was wondering what does it take, it's so long, the great American litter pickup took place in March. And soon after that event, we know district 4 would have the most turnout, and not until the end of the year I'm receiving it. So City Clerk, make sure that next year's presentation will be the last council meeting of the year not immediately after the march. But I would glad to receive this on behalf of all the District 4th residents, the volunteers, and my staff, really a collaborative effort of my office with many of the community groups. And definitely, I encourage my colleagues to continue their effort to increase the level of participation for the year 2012. I think that will be taking place march 17th. And I'm hoping to hang onto this for one more year. Thank you. [applause]

>> Councilmember Kalra: This next year it's on St. Patrick's day and we can really be green and pick up litter on St. Patrick's day. That was corny. I really have an opportunity to present a commendation along with the mayor and members of the council to Mr. Greg Brazil. Mr. Greg Brazil is the activities director of Oak Grove high school and has been working there since 1983. He strives to have his students engage in as many activities and programs as possible to build character and leadership skills and become contributing members of the society. District 2 Office since 2009 allowing us to have hundreds of volunteers year after year to help beautify the community, many of them high school students, it's really great to see, in these times where it's challenging here, it's challenging the schools, what we have are great people in the schools to help our students and Mr. Brazil truly is one of those people who will go out of his way with great humility to help his students and it's great to recognize him today because I know this is something that is long overdue. Mr. Mayor if you could present Mr. Brazil with a commendation. [applause]

>> Just want to thank the councilman and the city and the mayor to give the students the opportunity to have events like this and build character and social contributors. Don't hold onto that too tightly. Thank you. [applause]

>> Mayor Reed: Thank you all for being here. Now I'd like to invite Councilmember Liccardo and our sponsors from downtown for the holidays to join us at the podium. Come on down. Big crowd. That's something to celebrate. Celebrate the fact that we're having Christmas in the park. Downtown ice and winter wonderland. Would not have happened without the sponsorship of these folks that you're going to see lined up here.

>> Councilmember Liccardo: This is indeed a moment to celebrate. A year ago, with the City's budget looking redder than Rudolph's nose, we faced a gap in funding. Had serious question whether or not we would be able to continue this transition, which brings half a million kids and parents down to the downtown this year. I'm happy to announce Santa's coming back to town, because of great community partners, many of them standing right here with us today. Great community partners like SunPower, virgin America and allied waste. Who stepped in to fill the enormous gap that we faced. Two weeks ago we celebrated the reopening of these three holiday events, Christmas in the park winter wonderland and downtown ice and of course this year we're seeing record numbers I'm told, is that right Scott? Record numbers at these events as kids are out there enthusiastically enjoying the beautiful weather we have there. So we formed an umbrella group last year with various organizations that host these events, San José downtown association, creative and Christmas in the park and with the help of Carl Guardino, the Silicon Valley leadership group, we and Mayor Reed we were able to raise over \$200,000 in private contributions to keep the lights on this holiday season. Now not only can you take your honey skating under the palms at Downtown Ice or join your kids on the Santa Claus express, but we've also got the historic Candyland Express coming in with PTA stepping up, and we're seeing the historic trolleys return to downtown after many year hiatus. We have a lot of thanks to give. And certainly to our sponsors that stand behind me but I also want to give special thanks to the partners who have been pulling together to make this happen. Ed Bautista, of course, City of San José who's been champion for many years of Christmas in the park, and all the holiday events. Scott Knies and Blage Zolalich from the San José downtown association. Of course they hosted Downtown Ice events. Reagan Henniger on my team, I'm really grateful for her tireless efforts. Chris Esparza at Giant Creative, they put on the Winter Wonderland every year, and Bobby Mace is here with the Silicon Valley leadership group, thank you Bonnie for all your hard work. But of course we are here to honor our sponsors. I'd like to announce a few of the folks who are here, Gil Chesso from allied waste. [applause]

>> Councilmember Liccardo: Jessica rink with Bank of America. Todd Trakel with Barry Swenson builder. [applause]

>> Councilmember Liccardo: Allison Jenkins with Waway. [applause]

>> Councilmember Liccardo: Bill Devagio, I saw him a moment ago, with metro A trust and the metro A foundation. Jonathan Prall with PBG properties. Thank you Jonathan. The other way around? BPG. All right we're getting the initials straight. Thank you, Jonathan. Poppy Gumblin and Carla Lomac with PG&E. Thank you both for being here. Steve weakland is here with our first place San Francisco 49ers. [applause] Mike Sebilis and Barbara Lampiria are here with the Santa Clara County association of realtors just behind me. [applause]

>> Councilmember Liccardo: Tim steele representing the Sobrato organization. [applause]

>> Councilmember Liccardo: Bobby ram with SunPower. [applause]

>> Councilmember Liccardo: And Stephanie warner with virgin America. Thank you, Stephanie. And we also have commendations thanking our great partners that is Ed, representing Christmas in the park, downtown association, SVLG and giant creative. Thank you all for pulling together and we look forward to doing it again next year. [applause]

>> Mayor Reed: Let me say this would not happen without Sam Liccardo taking the lead. [applause]

>> Mayor Reed: I don't think we'll get this all in one photo frame, unless somebody is at the top of the stairs. If you haven't gone to Christmas in the park, winter wonderland, go, it's there for all of you made possible by these folks. Go. [applause]

>> Mayor Reed: Now I'd like to invite Diane Salazar and members of the Communiversity to join Sam and me at the podium as we commend Communiversity in honor of the organization's tremendous accomplishments in reaching a milestone with volunteers and resources for many community products. Councilmember Liccardo has the details.

>> Councilmember Liccardo: Thank you, mayor. As they stroll up we have I think many members of the community are joining the Communiversity staff team, to celebrate because Communiversity as we all know builds social capital by engaging residents to set goals in their community and leveraging the brains and brawn of San José State University and the City of San José represented here by Kip Harkness to are improve the quality of life of many of our communities in constant with the goals that those communities set. They attract eager students and perform community service and service learning through outreach and research through various departments of San José State and City of San José helps to pull together on occasion with resources and knowledge to help direct all that effort. We are grateful that since 2005, Communiversity has official surpassed the 100,000 volunteer hour threshold which is extraordinary. We're now up to 105,000 volunteer hours, is that right, Diana? Engaging over 33,000 residents in the community organizing over 7,000 students over those years and inspiring over 1,000 corporate volunteers as well through member companies. We are thrilled to see this extraordinary effort happen because of leadership of the great people at San José State university working with our community. I wanted to thank Diana Salazar and her team. I know Imelda Rodriguez, Liz Figueroa, many others behind me. With that I'd ask the mayor to present a commendation to Diana.

>> Good afternoon, my name is Diana Salazar, and I have the pleasure of serving as executive director for Communiversity. I really want to thank the mayor, the council and especially Councilmember Sam Liccardo for this honor. Some of you might be wondering what Communiversity is, so maybe we can really quickly go over that. So Communiversity includes community members from the larger downtown neighborhood. So if you are a community member who has worked with Communiversity, please raise your hand. Fabulous. And the university really encompasses the entire San José State university including faculty staff and students. If you are affiliated with San José State university please raise your hand. All right. And then the last part of Communiversity the glue which holds us together is the city. So many of you have worked with Communiversity. If you have done that,

please raise your hand, very good. Sam is raising. And the mayor, too. So that's Communiversity, we work together. To achieve the neighborhood development priorities that the residents of the communities have set for themselves and we have been working on these for this last six years and I think our elected officials might be happy to hear that for every single dollar that the city has vested in Communiversity we have been able to provide at least \$10 of services to our downtown communities. So again we're very honored to be here today receiving this commendation and we hope to continue this collaboration for many years to come. Thank you. [applause] Next item of business is the consent calendar. Are there any requests to speak on the consent calendar? I have no cards. We have a request to pull item 2.19. For some change to the language. Staff, this is the agreement with Windsor and Kelly for permitting assistance. I think we've got to tweak the resolution or something, 2.19. Anything else? We have a motion to approve the balance. All in favor, opposed, none opposed, balance is approved. So 2.19, some change to the CEQA language that we need to make sure we get.

>> Good afternoon, Matt cano deputy director, Parks, Recreation, Neighborhood Services. The CEQA reference at the end of the memo is incorrect, and we need that changed to not a project, PP-10-066.

>> Mayor Reed: Any objections? I don't think so. Is there a motion? Motion is to approve the item 2.9 with the changed language. All in favor, opposed, none opposed, that's approved. That concludes the consent calendar. Item 3.1 is the next item, report of the City Manager.

>> City Manager Figone: Thank you, Mr. Mayor, members of the council. I would like to take a couple of minutes to recognize Tom Manheim, our director of communications, who as many of you are aware is retiring next week after 15 years of service with the City of San José. And today is Tom's last council meeting. You can see he's smiling. Just a little bit on Tom. Tom started with the city as the administration's first communications director in 1996, and over the course of his 15 years, he's just played a tremendous leadership role in establishing all facets of really what is now a very complex and sophisticated communications system for the city. Some examples, you know from what would you expect, he has ensured that we've communicated effectively with the public on a wide range of topics. Including the very, very complex elements of our work such as our budget and just to ensure that the public was always well aware of City's processes and what we were engaged with. In that regard, he also has

played a major role in ensuring that we've had strong relationships with our media. Tom comes from a media background also, and so he really ensured that we were always timely in responding to the media, and he kept media relations always in the forefront. He was also quite committed to open and honest government. And that is best illustrated through his work with the Sunshine Reform Task Force and the subsequent development of the city's open government and public records management programs. And many, many other accomplishments include the development of the city's government access channel and civic center television channel 26 which allows us to transmit these meetings over the airwaves. And of course a very important role which is crisis communication with the public. He certainly has embraced new technologies over the years and we all know we've seen many, many changes in technologies as they affect communication. He's navigated us through the Internet era, era of social media and much, much more. He's been a very valued member of the senior staff. I know he's worked effectively with your offices over the years and he has just been a really trusted advisor to myself and all the city managers that he has served. So I would like to personally thank Tom for his 15 years with the city and wish you best, Tom, with the city, we certainly will miss you. Congratulations, thank you. [applause]

>> Mayor Reed: Next item, 3.3, comprehensive annual financial report and comprehensive annual debt report.

>> Good afternoon, mayor and members of the city council. On the agenda 3.3 is the CAFR and the CADR, comprehensive annual debt report, and then we also will have the agency's comprehensive annual financial report, too. In order to ease with the flow a little bit of the presentation I'm going to start with the Comprehensive Annual Debt Report, then we'll do the city CAFR presentation, and then the agency. And then since they're all kind of interrelated, then I think we can have questions, I think that will help facilitate the conversation. And any questions that you may have. So --

>> Mayor Reed: Let me just make sure it's clear, so 3.3, the debt report. 9.2, the comprehensive annual financial report, and then there's another one --

>> It's 3.3 A and B.

>> Mayor Reed: A and B and then 9.2 which is the agency report. So all the three items here, presentation and then we'll get into whatever questions council may have and we'll take testimony in the same way whenever it's all over with. Okay, thank you.

>> Perfect. Okay. The debt report, the debt management program is we have several policy objectives which are outlined on the slide there which are represented on our debt policy adopted by the city council and appendix A is the debt report. About 25% of our effort is associated with issuing new debt and then about 75% of the work effort involves managing the approximately \$5.8 billion of debt outstanding which is incorporates 130 series of bonds, about a \$600 million airport commercial paper program which was as of the end of June 30 and the City's financing authority commercial paper program. So and we also provide a significant amount of financial advisory service to the organization as they look at various ways of advancing capital improvement projects. This slide just provides an overview of the outstanding debt issued by all agencies but it excludes the multifamily housing revenue bonds in which we act as a conduit issuer. So you can see of the 5.2 billion outstanding a large portion of that is attributable to the airport at approximately \$1.4 billion and the Redevelopment Agency at just over \$2 billion. In terms of debt issuance over the last fiscal year we renewed over \$900 million of letters of credit for the variable rate program and as you recall we've come to council and talked about that and then we did about \$350 million of new debt issuance and we're also planning in the current fiscal year to issue just under \$1 billion. We have six series of multifamily housing revenue bonds in the queue. We've done airport revenue bonds and we anticipate coming to market with the rest of the G.O. bond program as well. As I mentioned we also provide financial advisory services to the organization. We have negotiated letters of credit, done financial modeling, helped with transition for the Redevelopment Agency, worked with the ESD, done a lot of private activity analysis as the organization looks to ways to leverage the capital projects that we have and enter into private partnerships with other organizations. And as I mentioned, renew the letters of credit for the airport commercial paper program. We're finishing up the closeout of inactive improvement districts and worked on various compliance projects related to the multifamily housing program. We continue to be highly active in the areas of administration and financial advisory services, despite the slow down in the City's capital improvement program. We're maintaining a strong and dedicated program that protects our financial interests. There's been a lot of focus and relationships with our credit rating and long term management of debt compliance to minimize any financial

penalties for noncompliance. And as you're aware there's a significant regulatory requirements and penalties can result if the city fails to comply. And then just as a summary of the City's overall credit ratings, we do maintain high general obligation credit ratings from all three rating agencies. We're AAA from Standard & Poor's and moody's and double A plus from Fitch. Taken together, the city's credit ratings with the city, the redevelopment agency and the financing authority range from the double B to triple A. The double B is related to the 4th and San Fernando Street parking garage, and it was downgraded last year as a result of some of the stress of the Redevelopment Agency. Appendix C on page 91 of the report provides a listing of all of the outstanding debt and the associated ratings with those bonds. And finally we still remain higher rated than the state of California, and the county of Santa Clara. So with that, turn it over to Sharon.

>> Sharon Erickson: With that Sharon Erickson, City Auditor. I'll kick off part 3.3 A and 9.2. Section 1215 of the city charter requires that the city council employ at the beginning of each fiscal year a certified public accountant to audit the municipal books records and accounts and fiscal procedures of all officers and employees of the city who administer, receive or disburse public funds on behalf of the city. Section 1215 further requires that as soon as practicable at the end of the fiscal year a final report shall be submitted by such independent accountant to the council setting forth his or her findings and recommendations regarding those reports and records. Under section 805 of the city charter, I'm the person who's required to cause those audits to be conducted and publicly issued. So that the council and the public will be informed as to the adequacy of the financial statements of the city. So in that capacity I'm here today to introduce the external audit team that's providing that information. Representing Macias, Gini & O'Connell we have Cynthia Conn, CPA, an engagement partner for the city, and David Bullock, CPA, and engagement partner for the agency. As we said earlier, Julia Cupertino will kick off the presentation of the city's 2011 comprehensive annual financial report or CAFR. Following that presentation, Richard Keet will kick off the presentation for the Redevelopment Agency. If I could just take a moment to thank the entire project teams of the city and the agency, the countless individuals who contribute to these reports. I particularly want to thank airport, convention, housing, retirement, and all the enterprise funds who make the annual publication of the audited financial statements of the city possible.

>> With that, in terms of the CAFR, the table of contents, the report is divided up into an introductory section which includes the transmittal letter, talks about the awards we receive, lists the mayor and city council and the organizational chart. The financial section of the report includes the independent auditor's opinion, the management and discussion analysis, also called the MD and A and the basic financial statements. It is those three components in which the auditor's giving its opinion. We have provided supplementary information and other supplement information and the statistical section. Those are provided as information but not audited 50 auditor. With that I'll turn it over to Cindy.

>> Good afternoon. Thank you for inviting me to discuss the results of the City's financial statement audit. As discussed in page 1 of the financial statement the scope of the audits includes the City's government wide statements its major governmental and enterprise fund and the remaining fund information of the city. The responsibility of these financial statements rests with the city and our responsibility is to express an opinion of these financial statements based on our audit. We performed our audit in accordance with generally accepted auditing standards and we render an unqualified or a clean opinion. This means that the financial statements presented are without qualifications or exceptions and that the financial statements are represented fairly in accordance with generally accepted accounting principles or GAAP. The fiscal year 2011 audit report includes three additional paragraphs to emphasize different matters. There is a paragraph that discusses that the city implemented a new accounting standard, governmental accounting standards board statement number 54 related to fund balance reporting and governmental fund type definition. The effect of this accounting change is that the city re-categorized three of its special revenue funds to internal service funds and recast its governmental funds fund balance. There is also a paragraph that is similar to the prior year and discusses the funded status of the City's defined benefit pension plans and post-employment health care plans as of the most actuarial valuation and directs readers to the disclosures at note 4A. This paragraph emphasizes an important matter to readers of the City's financial statements. The other additional paragraph emphasizes that changes to the California redevelopment law and its effects on the Redevelopment Agency's ability to continue as a going concern. This paragraph is similar to what is included in the Redevelopment Agency stand-alone financial statements and is included in the City's audit report since the agency is a major fund of the city. As discussed in the notes, as of June 29, 2011, the California state legislature enacted legislation that is intended to provide for the dissolution of

redevelopment agencies in the state unless certain payments can be made to the state. Such changes to the California redevelopment law have also terminated the authority of redevelopment agencies to undertake new obligations to redevelop property. The effects of this are uncertain pending the results of certain lawsuits that have been initiated challenging the constitutionality of this legislation. However based on the agency's financial condition, the effects of this legislation raises substantial doubt about the agency's ability to continue as a going concern. The agency's financial statements will be discussed in greater detail as a separate item later. And with that, I'll turn it be back to Ms. Cooper.

>> I have a couple of slides here just providing a summary of the financial statements. This is a summary of the net assets for the organization. As you can see, it's also presented on page 24 of the CAFR. The deficit of net assets, balance of negative \$129 million, it's due to a number of factors, most importantly the accrual of long term liabilities related to OPEB obligations and the increase of actual and estimated claims for workers compensation. The net assets for the business activities are shown on page 35 of the CAFR and are summarized here as well and the net assets of the fiduciary funds which are primarily the two retirement funds are shown in page 40 in more detail of the CAFR. The General Fund comparison with prior fiscal year, this here shows a very high level summary comparing on an accounting basis the total revenue and expenditures compared fiscal year 2011 and fiscal year 2010. So as you can see the General Fund revenue increased by 31.5 million from the prior year and expenditures decreased by approximately 5.2 million across all categories. So on a budgetary basis the fund balance was a negative -- was down \$30 million over the prior fiscal year, was 29 million. Since when we talk about fund balance, it's customary to kind of think about it in a budgetary base as opposed to an accounting basis since most of the conversations we have are about budgets, in looking at doing the reconciliation, between Guadalupe or accounting and the budgetary basis that's the different of the \$30 million that was shown on the other page. This is primarily the difference between on a budgetary basis the year end encumbrances are recognized as expenditures for budget, but on a GAAP or accounting basis they are not recognized as expenditures until the equipment and services or supplies have actually been received by the city. So that essentially means there's about \$30 million in encumbrances and we can see here the beginning fund balance from last year was \$20 million. So this just provides a summary. So if you look at the budget document and you look at a CAFR, what's the difference and this does the reconciliation. Okay. The subsequent events to June 30,

2011, in terms of the things that are reported that happened after the end of the fiscal year that we make a note of that are important to the readers of the financial statements that we did an anticipation borrowing in early July of \$100 million, we also issued airport revenue bonds, the series 2011-A bonds. The 2011-B bonds aren't noted as a subsequent event because they don't official close until tomorrow and the financial statements are dated prior to that. Then also, the Redevelopment Agency we had the credit extensions for variable rate demand bond renewed by J.P. Morgan subsequent to June 30 and then also the possible dissolution-ment related to state action. And in early August the Standard & Poor's down graded the government debt, the U.S. government debt so that's recognized as well. So recommendations are to accept the comprehensive annual debt report and the annual financial report. So with that, I will turn it over to Abe and Richard for their presentation.

>> Richard K et managing director of the Redevelopment Agency. I want to thank Julia Cooper, Arn Andrews and their team, in the city finance department and Charlene sun, financial manager, wave Charlene. In our extremely difficult year and the state Supreme Court stay that you've heard so much about. As a separate legal entity, the redevelopment agency law requires that we prepare and publish a complete set -- sorry, here we go. We -- a complete set of financial statements. This is our 11th year of preparing a comprehensive annual financial CAFR. What's going on? Okay. There we go. We've prepared these same high standards for the last years and we've actually gotten several awards for doing so. And in spite of our -- of concerns outlined by Julia we still anticipate submitting this for the work, because we think this is an excellent presentation. I'd like to thank Alex Brim and Sandy Shayefsky on our staff and David Bullock from MGO for helping us during this period. They spent innumerable hours on this document to get through. Again, as part of our CAFR we had full disclosure of the state Supreme Court decision to hold the stay and the possible dissolution of redevelopment agencies. If we were to pay to play, the funding requirement would be \$47 million this year. That's on the heels of paying the state \$75 million over the last two years. And \$107 million over the last seven years. The CAFR is used primarily for bond investors, bond rating agencies. We will submit it to of course the state controller's office and we've made it available on our Website to citizens, as well, of course the mayor and council. I will now turn it over to David Bullock of MGO to review our audit. Thank you.

>> Good afternoon. Very similar to the City's CAFR we've also completed our report, our audit of the agency's financial statements. And included in the agency's CAFR starting on page 15, which is the very first page in the financial section we have our opinion letter. And any time you know there's significant matters that the reader should be aware of we note that in an explanatory paragraph. First of all we express an unqualified opinion and Cindy went through the details of what that means and basically we're stating that we believe management is presenting fairly the financial position and activities of the agency in accordance with generally accepted accounting principles. In addition to that we also want to make the reader aware of other changes. The first of all the change in consistency which is the implementation of a new standard. The agency now presents their fund balance in a different way than they have in the past and we are highlighting that through this explanatory paragraph. But most importantly is the following paragraph which cites the recent legislation that has been enacted by the state. That basically is trying to either dissolve redevelopment agencies or allow them to opt back in with a continuation payment. And Richard mentioned some of the significant amounts that would cost on an ongoing basis not just the annual payment for the current fiscal year coming up in 2012 but also on an ongoing basis. Probably to the tune of \$12 million a year. So it's very significant. And because of the legislation, the -- and the agency's position it doesn't seem likely that the agency will be able to continue to make those continuation payments and therefore would have to dissolve in accordance with the legislation and identify the successor agency which would be the city under an oversight board. Now a lot of changes out there. Now of course a lot of this legislation which I'm sure you're very well aware is being looked at by the California Supreme Court. Who is trying to render a decision here in the next month, June 15th is their goal because that's when the first initial payments are coming due so the Supreme Court is trying to make a decision in the very short term in order for agencies to continue with their operations. Or dissolve under the new legislation. So very trying times for all agencies in the state. And including the City of San José. And so because of this uncertainty, we've highlighted it in our opinion, and management has disclosed it in full detail in the financial statement so the reader can be aware of just how this legislation impacts specifically the San José Redevelopment Agency. That's the most significant thing that's going on right now. In addition to the financial opinion that we just talked about there's two other opinions, and they have to do with internal controls and compliance. There's a brand-new -- on the next slide -- there's a brand-new opinion and the state controller's office has spent a lot of time on redevelopment agencies in the past year to identify reporting deficiency and whether or not they are complying with the health

and safety code and through that they've mandated a new opinion letter which we've included in this report which requires specifically an opinion on the compliance with the health and safety codes. In addition to requiring this they've issued a new guidelines for auditors of redevelopment agencies in July of 2011. Very significant because the last time they updated this was 1998. It was over ten years in the making and be required significant additional work of auditors to render an opinion on compliance. And we're happy to report that the agency met all the compliance requirements and we had no noncompliance issues to report in that report. So with that I'll turn it back over to you for questions or --

>> Sharon Erickson: Yes, if I could just step in. That completes our presentation. All these reports are up on the web and available for the public.

>> Mayor Reed: Thank you. Excellent work, as usual. And it's relatively only a short period of time since the end of the fiscal year compared to when most government agencies are doing their reporting so it's good to have it where we can still remember last fiscal year although, as bad as it was, we probably won't forget for a long time. I had a couple of questions in no particular order. The first is on the debt report. Just want to make sure I'm drawing the right conclusion from some of the data seen. On page 52 and 53 are some nice colored graphics of general recourse debt and -- well, two categories of general fund recourse debt. So when you add together both categories of recourse debt, the way I see this, it's about \$50 million a year. In some of those categories we have revenues coming in, with so-called self-supporting debt. But I see it at about \$50 million a year total. I think that's the total exposure of our General Fund to \$5.4 billion worth of debt. Because all the other debt has funding sources and different agencies and different places. But if we are looking at what our General Fund is picking up or perhaps will be picking up it's about \$50 million a year.

>> That's correct, that includes the ice center and the Hayes and those kinds of things but it wouldn't include the convention center for example is considered self-supporting I think in this analysis here.

>> Mayor Reed: I understand the definition of self-supporting doesn't necessarily mean they support themselves. Means they're supposed to.

>> Out of all the debt, that is true like the G.O. bonds we levy a special tax for that, so that's the total risk to the City's General Fund.

>> Mayor Reed: It's like your kids who may move away from home are supposed to support themselves, they don't necessarily, sometimes they come back. As we've seen with some of this debt. But the point I want to make sure I've got the fact right is we're talking about maybe around 6% of our General Fund expenditures go to debt obligations, which is a relatively small number. And certainly far below what the charter provides in terms of debt obligations, which is a good thing. And then, the other question I had was, you made a reference to the OPEB liabilities and how they get booked and I'm looking at page 86 on the notes to basic financial statements and there is a net other post-employment benefits OPEB obligations line in there. What I'm trying to understand is how do we deal and where do we book and where does it show up in the financial statements, the unfunded liability for not the OPEB but the direct pension obligations. I'm just not sure where it is.

>> The unfunded pension liability is not reported as a debt, a long term obligation in this particular page on page 86. Given that the city has been paying its annual required contribution that particular liability is currently not required under the accounting standards to be reported as a liability. Going forward, there is discussion by the accounting standards setters to change that. And start reporting that in the entity's fund financials or government financial statements.

>> Mayor Reed: So if the GASB changes its rules as proposed and they've been circulated and discussed and debated, if they change those rules will those unfunded liabilities show up on this page, along with the OPEB, other post-employment benefits?

>> Yes, that is the change.

>> Mayor Reed: Sharon Erickson has something to add.

>> Sharon Erickson: If I could just add, page 1 of the auditor's letter does tally the unfunded liabilities. So the pension liability tallies at \$1.4 billion, the unfunded liability, and the OPEB liability shows on page 2 of their letter at 1-- the unfunded portion is \$1.7 billion.

>> Mayor Reed: Okay. Other questions from the council on any one of -- or three of these reports? Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor. I just wanted to thank Julia for your great work and the work of your team. Through what has been obviously an incredibly challenging time for lots of governments and issuing government debt and U.S. bonds got down graded this year, you stepped into the fire obviously stepping in for Scott who departed. I'm just looking at what you've reissued. Or the team has reissued through various partners at the airport, \$383 million of debt, \$241 million of debt on city facilities, with the Redevelopment Agency you worked out J.P. Morgan, at least we bought ourselves another year, I think this is you know a really impressive work given the incredibly difficult circumstances. I also wanted to thank Richard Keet for your collaborative relationship working with the city. It hasn't always worked smoothly with the city but this year it did and I really appreciate that. I also want to emphasize it's important for the public to emphasize that we're not issuing new debt on the back of the General Fund. Whatever debt going out is being paid for a stream of income outside the General Fund and we're not out there trying to borrow our way out of the budget problems, is that fair to say?

>> That is correct. We did issue a short term note that will get -- to help with cash flow purposes, and that is customary with a lot of government agencies, and because so much of our revenue comes from property taxes, and we do the prefunding of the pension payment every year, it creates a little bit of a cash flow problem for us. But the cost of doing that borrowing is much less than the savings that we achieve from the retirement fund by prefunding. So we do do interim cash borrowing, it is very common among cities that rely a lot on property tax revenue.

>> Councilmember Liccardo: Right, so I just think it's important for the public to understand and they see that we have \$5 billion of aggregate debt outstanding. It's not because we are borrowing our way out of trouble, like some

other government entities that we won't name that might be proximate to us here in the state. And really, as we issue new debt, for instance, on convention center, it's being paid for by hotels on T.O.T. taxes, it's not coming from what we'd otherwise pay to support police and fire and libraries. So it's just important for everyone to hear. Thank you.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thanks. Sam said pretty much everything I wanted to say so I'll just say thanks and we missed getting to hear this at the Public Safety committee. I usually enjoy hearing it twice but thanks for all the work and I have a motion to approve.

>> Mayor Reed: Motion to approve all three items. Councilmember Rocha.

>> Councilmember Rocha: Thank you, mayor. I'm not sure this is the appropriate place to ask but in terms of preparing for worst and hoping for the best, as far as us moving forward with the potential state legislation on the dissolution of the agency what's our next step as far as process -- wise for the council? Are we setting up something for January immediately after any decision is made?

>> City Attorney Doyle: I think the council's been brought along with respect to the pending litigation with the Supreme Court. There are currently letters out to various entities that would appoint members to the oversight board. And trying to make sure that people are geared up met medically with the county and the public schools and agencies. We're gearing up with that, staff is sort of anticipating -- preparing for worst, hoping for the best and there's discussion he potential legislative strategy in the event the court comes down with an adverse ruling. So there are probably three or four different scenarios that can play out, given what the court can do and how it plays out we're sort of preparing. We don't have anything you know set at this point but we are preparing to try to address those and the immediate thing would be that if in fact the legislation is upheld, that the city is in a position to transition and accept as a successor agency the responsibilities in working with an overtime board. I suspect one of the problems is the way the legislation originally worked is it was supposed to go into effect July 1. But the

redevelopment agency was given until October 1st in which to sort of close its books and close down. The Supreme Court has put a stay on all of that and so the question will be will the court give a four or five month period for the Redevelopment Agency to sort of unwind and the city to take over. We don't know. That's really left for the court. So we have different scenarios that we're prepared to do. We just don't have any one game plan at this point. It is sort of like a football game and you sort of accept the defense as it is and act accordingly.

>> Councilmember Rocha: That's generally what I expected but just needed to hear as we move into the enclosure, we don't have a meeting until January 10th, I suspect staff is doing all the work necessary to prepare us. I had to hear it out loud for my own comfort but I thank you.

>> City Attorney Doyle: The court can act any day now to January 15th.

>> Mayor Reed: The comparison of other cities in the California and the state of California, how do we stack up against other big cities in the country? We have a AAA rating from two of the agencies and double A plus from one of them. Other big cities?

>> I would have to double check but we're still well within the AAA categories. There's very few large cities rated in that threshold. And across the country, other cities don't have the same constraints we have on raising taxes and fees so it's easy for them to maintain that triple A rating because they can balance their budget in a much easier fashion than we can because they are not constrained by things like prop 213 and prop 218.

>> Mayor Reed: But a AAA rating, whether you have one, two or three of them, is pretty unusual for big cities?

>> Yes, it is very unusual.

>> Mayor Reed: Well, I want to thank our staff and council colleagues for helping us maintain that rating, which helps when we are trying to borrow money, which we are doing on a regular basis, as you've just seen, for a lot of different reasons. And all these ratings are important, and they help us manage our city and it's great to have a

AAA rating and something that we can be proud of. And I want to thank the staff for all the work that goes into holding the hands of all of the people whose hands need to be held to manage the debt. Because I think you said 25% of the effort is issuing debt, and 75% is managing that. So I know there's a lot of work that goes into that. So appreciate that and appreciate the quality of these reports. Undoubtedly be award winning again. And that's something else we can be proud of. With that I have no cards from the public to speak on this item. We have a motion to approve onto floor. All in favor uh, opposed, none opposed, that's approved for all three items. Next item, 3.4, actions related to Team San José. There will be a staff presentation on this. Kim Walesh is going to take the lead, I believe.

>> Kim Walesh: Yes, good afternoon, mayor and council. I'm Kim Walesh director of economic development and chief strategist. Today, staff is recommending that the city discontinue working on the RFP for management of the convention center and cultural facilities. Since this time last year, considerable work and changes have occurred that have led staff to make this recommendation. To outline this work, and our staff analysis, it's my pleasure to introduce Lee Wilcox, downtown manager, who oversees the city's agreements with Team San José.

>> There we go. Thank you, Kim. Since this time last year a lot of work has occurred between the city and Team San José. Just want to give a quick background. In August of last year the city issued a notice of default to Team San José under the terms of their management agreement with the city, which resulted in a number of actions including expanded audits by the City Auditor. In December of last year city council approved a city audit report and 12 recommendations. In addition, they direct the City Manager's office to amend the current management agreement with Team San José on several fronts and less deregulated the City Manager to begin development of an RFP for management of the convention center and cultural facilities and services provided under the CVB. In January of this year, the administration brought forth recommendations and amendments to the management agreement that the City Auditor had outlined in her report. In addition in March the city council approved a report outlining a three year forecast for the city's convention center and cultural affairs fund, or fund 536, which we refer to. The purpose was to ensure that no General Fund dollars were needed during the renovation and expansion period of the convention center. Also, in March, the city hired convention sports and leisure as the City's hospitality industry advisor. The scope included development of the RFP for a new operator, a best practices

report on industry trends, team San José benchmarking study, and ongoing support for the city. Lastly in March and June of this year the city approved a series of short term agreements, with the -- for the CVB agreement with Team San José. As Kim mentioned, the administration is recommending discontinuing work on the RFP for management or bringing in a new operator, many changes have occurred over the year. Since last year, first the management agreement, that was entered into earlier this year which was recommended by the City Auditor, better aligned Team San José incentive and performance measures to the budget, increased Team San José accountability and transparency and ensured that Team San José was no longer receiving an incentive payment unless expectations were met or exceeded. In addition to that recommendation by Sharon Erickson, of the 12 recommendations in her report I'm happy to say that all 12 have been implemented as of last Friday. In addition, the city has revised our standard operation procedures in the way we work with San José. We now have a series of monthly meetings, one specifically dedicated with the Department of Finance and our budget office to work with Team San José on monthly financials. The second is a larger oversight meeting consisting of all matters related to operations, sales, marketing, and performance measure targets. In addition to those changes, Team San José has had numerous changes. Most importantly, increased engagement by the board of directors. Their board of directors has been taken from 28 members to 15, it no longer has an executive committee. In addition to positions from the city, one from the city council and one from the City Manager's office has been added to the board of directors as ex officio members to help with transparency. In addition to those actions, the board of directors hired a new chief executive officer, chief operating officer, and chief financial officer, all of which provided much-needed stability to the organization and to the city's relationship with Team San José. I think one of the key results this year is when we were before you earlier in the year talking about the three-year projections we assumed that the fund 536 budget would lose \$1.7 million this year however due to increased activity and new short term sales Team San José actually increased the fund balance by \$2.1 million which is a net improvement of \$3.8 million. In addition to the positive steps by both parties, the city has conducted much needed research and analysis on industry trends. This time last year there was a number of questions by the city council and city staff, on the current Team San José model and how it related to the industry's best approach nationally. To help answer these questions the City's hospitality industry advisor was commissioned to provide a report detailing organizational structures used in convention center and destination marketing organizations, both as separate and combined structures. The report is completed and is attached to the staff memorandum for your reading. Some of the initial

results are according to CSL, in any community is very critical, for the entities that sell and operate the convention center to work closely to coordinate efforts. To achieve this goal significant emphasis has been placed nationally on how convention center management companies and CVBs work together. There are several approaches nationally, however in San José we have our approach has been one of combined structure. Essentially the Team San José model. Since Team San José's inception there have been other destinations that have gone with such approach. One of the outcomes of this approach according to our industry advisor that it provides much more strategic coordination amongst the folks selling the building and the folks managing the building. While this report simply looked at the structure in place in San José. The City's hospitality industry advisor is completing Team San José's benchmarking study as we speak. That report will be available early next year and that report and recommendations will be brought to the city council. However some initial feedback from convention sports and leisure is that there's no current compelling reason to pursue private management approach at this time citing that Team San José is on the right track. In addition to discontinuing work on the RFP the administration is recommending a new agreement with Team San José for a CVB services. The short term extension is set to expire at the end of this year. In 2009 when the city council approved the new management agreement for five years city staff was directed to come back with a new CVB agreement with concurrent time period related to the management agreement. Staff was nearly done with that agreement, Team San José when the city issued a notice of default last year. Not wanting to enter into that long term agreement with the uncertainty of Team San José, City Council decided on a series of short-term agreements which expire as this says before the CVB is responsible for the long term sales of the convention center and really drives economic development through the sales, through the marketing and through communications services. With the convention center expansion and renovation underway it is essential to continue the CVB operations so we can sell the new space. Therefore staff will be bringing back a revised new CVB agreement early January 2012 for your consideration. So in conclusion, staff is recommendation discontinuing work on the RFP. And seeks direction to negotiate and return to council in January on a revised CVB agreement that would match the terms of the original council direction to match the management agreement. With that staff's happy to answer any questions you may have.

>> Mayor Reed: Thank you. I think we'll have a few questions. This is the best Team San José report we've had in a long time and I'm very happy to hear the report and I want to thank Team San José board, their staff,

especially the chairman of the board, Chuck Toeniskoetter, and their executive director, Bill Sherry, as well as City staff, for making remarkable changes and progress in the last year when we had the notice of default, tremendous improvement in transparency, cooperation, working with us, I feel like for the first time, that the city is being treated as a major partner, a major investor in this enterprise and certainly a lot of funds that are in there, because of the city, as well as the funds that are generated by the enterprise. So that's good and bottom line, fund 546 is growing, instead of shrinking, which ultimately is the measure of success. That is a lot to be happy about and I'm going to be supporting the recommendation and I'd like to call on Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. First of all I want to add my thanks to Team San José. I know we have several of the board members and staff here joining us today. As the liaison to Team San José, I've had an opportunity to see the organization from the inside, from the outside and all around as we've been through all the different cycles over the last couple of years. I want to follow the mayor with his thanks to Bill Sherry and Chuck Toeniskoetter, because I think they've done an incredible job providing leadership to the team at Team San José. I know we have Robert Thomas here. Robert is the current vice chair. Wave Robert, so they know who you are, there you go. I would like to announce, I don't know if it's publicly announced yet, but Michael Mulcahy is here as well, there he is, waving. Michael has just been elected to be the chairman for the next two years of Team San José, and that will start in July of this next year, next fiscal year. Also wanted to thank Jeanette Sutton because she is the person who has been bringing us the good news and the numbers. She's been a pleasure to work with. And has really made understanding the numbers of Team San José, a lot easier not only for me but I think for also all of the board members. As we've heard, things have changed considerably. The cooperation between Team San José and the city, the reforms that have been not only put in place but institutionalized in their bylaws to ensure that whatever changes have been made continue forward regardless of how the organization evolves as far as composition of the board or the staff members. I think that we have -- I don't know how many of you have driven by lately, but it even looks different now, with the MLK library gone, the old MLK library, it looks like a convention center again, which is really cool. I know the sales team has been doing an incredible job. From what I hear, there's over a dozen bookings in a new facility that we haven't built yet. It's great knowing we're booking up that facility as we start moving forward. So Robert can you come down for just a second? I want to ask you just a couple of questions. And I know that we've had an opportunity to talk at a board level about the

different structures, structural changes, and the reforms. And I want to personally thank you because I know you've been an industrial part of that. But as we go forward there's a couple of areas that I think that we could make a little more -- some minor changes. We've already been kind of doing it in practice but maybe there's some way that we can formalize this going forward. The bylaws as we've discussed have been changed. But we know bylaws can change pretty quickly as any board meeting. So in the memorandum that the mayor and Sam and I have put out which I'll make a motion to in a moment, talks about just ensuring that the city is given adequate notice of any changes to bylaws. Because as I mentioned earlier, we want this structure that we're putting in place to kind of outlive all of us that are here. So that we can continue having success. And I know that there's also the ability of the board to call special meetings of the board. So my request would be that we continue and find a way to institutionalize, if there are special board meetings called, specifically a meeting to change bylaws, that the ex officio members, City Manager's office and whoever sits in my position, are given formal notice, just like the board. So in other words, treating the ex officio board members from a transparency, notice, and providing information at the same level that we do now. And I know we've talked -- I don't think that's a problem at all, is it?

>> No, we've received that suggestion. I know the entire board is with you 100%. You know this effort that has been put into the transparency I think comes across loud and clear and we intend to keep that going forward. So those two requests have been noted and really there has been no negative response, really positive response to those.

>> Councilmember Constant: I know that's how it's been working, and I'll tell you from my perspective I know -- I feel like I know so much more of what's going on, when it's going on, and I don't feel like I'm ever searching for information. So I wanted to personally thank you personally for that and make sure that Chuck knows -- Chuck Toeniskoetter knows, I know Chuck Reed knows -- that we're appreciative of the changes, and it makes us feel a lot more comfortable going forward, and quite frankly, it's the reason that we're taking that action today. So with that, I would like to make a motion approve the memorandum dated December 9th authored by me, Sam, and Mayor Chuck Reed, with the addition of the two items that we just discussed, the notification for bylaws changes and special meetings, to the ex officio members.

>> Mayor Reed: Thank you. We have a motion to approve the recommendations, as noted. Councilmember Liccardo. Do you want to --

>> Councilmember Liccardo: Thank you. I just wanted to echo the praise. I can't say much more other than we're thrilled. And thank you for all the hard work that many people who are sitting here today, for banding together and also, in very tough times, to make this really take off. I'm very grateful for your great work. I also thank Lee and the city team for working well with Team San José and making this what appeared to be a situation that was very dire turn 180 degrees and it's really impressive.

>> Mayor Reed: I had one more suggestion on the motion. The motion includes the recommendation to negotiate and return to council not later than January 30th, 12th with an agreement for the convention and visitors bureau. There's some simple changes to the bylaws that would give the notice that Councilmember Constant is talking about.

>> Councilmember Constant: Thank you mayor, that was my intent.

>> Mayor Reed: Okay. I just wanted to add my comments that the way the organization seems to be operating now is the way I thought it was going to operate when we made the major change six years or so ago or eight years or so ago, I've forgotten exactly how long ago it was. So that's good. We're seeing great results and that combination is something we should be pretty happy about. Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I agree with you 100%. I think that what's been done is absolutely admirable. I don't mean this as a criticism, but just as an observation. We in the last month had a head of state from Portugal, and we were never contacted. I guess what I'm asking for is something on the Website that indicates what, you know convention visitors bureau so something, anybody who's coming here would know exactly whom to contact and how to make their presence felt. I just was very saddened that he came and left and none of us were ever included in his entourage. So that's all I have to say. If someone wants to make a comment about that they're perfectly free to do had a. Here comes someone right now.

>> Mayor Reed: That someone would be Michael Mulcahy.

>> Well, I have to be on duty since Mr. Toeniskoetter is not here and Bill Sherry is recovering from knee surgery. So Michael Mulcahy, incoming chair from Team San José. The secret service got in the way of something like that. But I think what's noted is that sort of the protocol of San José, you know how might we look at that, and serve a role in that arena. So point noted. And we'll get the secret service out of the way and be able to engage with those heads of state in the future.

>> Councilmember Pyle: Thank you, Michael, I really appreciate it.

>> Mayor Reed: Well, the secret service certainly can be actuality to deal with because when President Obama came to town, a lot of that wasn't made public at all until suddenly we closed down the street around the Fairmont hotel and people began to wonder what was going on including the hotel managers, yes.

>> Councilmember Pyle: In this case there were as I understand, 500 people who had a dinner at Fairmont. So somehow if we can get the hotel to let us know, as well, that would be great, close the gaps. Thank you for that.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. This is really, really good news and I think we've been hearing about these improvements for some time. So today is sort of a roundup and a summary. I think the numbers say it all. I mean fund 536 tells the story with you know \$2.1 million increase, that's amazing. And I just remember last year, when I was signed on a memo, about this item requesting the RFP and other items related to Team San José, this is just a really great turn of events to see this all turn around. I also want to thank Chuck Toeniskoetter and Bill Sherry. I had a chance to talk to Bill Sherry at one point because I think his leadership has been amazing and he really attributes this with the team effort with Chuck Toeniskoetter and the whole staff. These are great

results, I'm looking forward to the opening of the new convention center and very glad that we're not having to move forward with this RFP.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I just want to add to the thanks and Lee, thanks to the presentation. You know, there was the consideration for the RFP again was there. In case we needed it. And I think it's clear that we don't, and we can set that aside now because of the success of the transition and the transformation of Team San José. I just want to commend the entire board particularly for creating a new structure which allows for much more clear oversight, a smaller more nimble board that will allow for very quick movement in response to economic changes, and the ability to take in feedback appropriately and react accordingly. And I want to finally thank the hoteliers, who have shown through this process that they are committed with as much to gain as well as much to lose with the convention center. Mr. Mulcahy is a clear example that the hoteliers are willing to step up and make that effort. So again thanks to everyone involved.

>> Mayor Reed: We have a motion to proceed. Are there cards? Slowing down, Ross.

>> Councilmember Constant: Mr. Mayor, I was also going to ask if we just wanted it to make it available for Mr. Thomas or Mr. Mulcahy to make any closing remarks before we take a vote.

>> Mayor Reed: Let's see if Mr. Thomas or Mr. Mulcahy want to make my closing remarks before we take a vote and then we have a card from Ross Signorino.

>> Thank you, Mr. Mayor. We just wanted to make sure that we took the opportunity to thank the mayor, city council, our liaison, Councilmember Constant, the incredible Lee Wilcox who really has been a great staff support to us all year long and through this transition. As well as the City Manager's office as a whole. We are focused on our core mission. Driving visitors and driving visitor spending and expanded and renovated convention center that's ready for business in 2013 and working with our partners to build more admissions to our theaters under

management. So we look forward to continue this open relationship with the City of San José, and we look forward to great things. Just think, about five years from now when the A's are in downtown, the 49ers are in Santa Clara, a new earthquake stadium, all the incredible things that are happening in our tech industry, it is a game changer in so many ways and we will be well prepared to receive much more visitor spending in our city. So we look forward to working with you. Thank you very much. And I don't want to leave here without recognizing, like you have, Chuck Toeniskoetter and Bill Sherry. But also Dave Costain and the rest of the senior who is here today. They really do all the heavy lifting to get people in Downtown San José and are responsible for this turn around. Thank you.

>> Mayor Reed: Ross Signorino.

>> Mr. Mayor, members of the council. Read this particular item on the agenda. I was prepared to receive a whole bunch of bad news on this which we've been accustomed to in this Team San José. But it's gratifying to sit up there and I had to speak on this that this is good news. Good news is not bad, really, thank you very much and thank all the people who worked on this and trying to make Team San José work, you're doing a good job, thank you.

>> Mayor Reed: That concludes the public testimony. We do have a motion to approve. On the motion, all in favor, opposed, none opposed, that's approved. Thank you very much, congratulations. We will now turn to item 3.5. Report on request for proposal for landscape maintenance services for small parks and civic grounds.

>> City Manager Figone: I believe staff is here to respond to questions. Is there a presentation Ed or mark?

>> Ed Shikada: We have no presentation. Staff is prepared to respond to any questions.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: Thank you, mayor. I had submitted a memo this was mainly as a follow-up to the last approval that we had done for contracting out some services. And I also spoke to staff as well as city attorney's office and City Manager's office and I want to thank them both for their feedback and input on this. My intent or interest was to at least open the discussion so we can look at this. A little bit troubled that our third tier review really in my mind is not enough to really weigh the value of what we're doing in terms of these contract-out projects that we're considering. So going forwards in the next fiscal year, I wanted to make sure that we at least took this consideration to heart and had something in place as we maybe potentially adopt some other stuff in the next fiscal year. So let me as opposed to reading the memo I did have some questions for staff and it's generally mostly for I think the City Attorney and there was a suggestion about the living wage policy and we had a brief discussion on that. And I think at the end of the day, we thought this would be simpler. Looking at the criteria that we have when we measure the proposals, I thought the simplest way would be just to include this as one of the criteria that we actually measure. But of course nothing is simple in terms of government. And there was some feedback I got from both departments. So if you would like to weigh in on that suggestion I'm happy to or I can just move forward with my recommendation.

>> City Attorney Doyle: I think and I can address what I see as the legal issue and we need to sort of tackle it. The question with respect to third tier and how issues such as benefits, whether it's vacation, health, or those types of things, how the city may use that information in terms of assessing and rating or ranking on an RFP process, is a question that right now, as you indicated, and you're right, the third tier, what we call the third tier level of review, we assign no weight, it used to be a tie breaker, all things being equal we would look to that. I don't know the answer as to why that is. This goes back some 15 years. And we need to do some research. There may be some ERISA issue, some national labor act issues. And particularly with respect to when there's a collective bargaining agreement. So I think by the end of January we can probably get an answer back to the council with that and the council can then address how it wants to proceed in terms of whether it wants to include that as part of the overall RFP process and provide points or use it as part of a weighted process.

>> Councilmember Rocha: Okay. There was some discussion about outcomes of this and I guess my thoughts on whether this is added to let's say the priority-setting list or other options. My interest was more making sure we

get this in place for next fiscal year. I'm not interested in a really punting on this or debating this too much. If you can put something together and the staff is willing and able so we can have something in place by next fiscal year, that's really important at least to me and I don't know how the rest of the council feels. But given what I heard from you it appears that we can. I don't have any interest in compromising any legal issues obviously and if this isn't something we can do I'm open to hearing why we wouldn't be able to. To me this is such a priority at least for me.

>> City Attorney Doyle: And let me be clear. I can address the legal issues. There may be operational issues that it may be longer discussion, but the first issue is, you should get the answer as to what you can do before you decide, whether operationally we should consider doing anything.

>> Councilmember Rocha: I did have question for staff in terms of additional projects or items coming before us, in terms of contracting out, is there anything else that was adopted in the last fiscal year budget that we should expect? Because if there is, it would help for me at least in terms of deciding how to go forward.

>> City Manager Figone: Yes, Ed can jump in here. But we are in the process, as we have in the last couple of years identifying those service areas that are you know higher priority candidates for contracting out, so that we can take them through the business case analysis and evaluate where the potential savings might be. That would then lead to an RFP and some of this quite frankly might be an overlap with the council's decision making process. Because we are starting earlier this year given what we knew at least a few weeks ago to be the deficit. And so we wanted to be prepared. But Ed, do you have anything to add?

>> Ed Shikada: Sure, thank you, City Manager, councilmember, members of the council, Ed Shikada, assistant City Manager. For better or for worse I think the council has already seen the most notable of the contract, the procurements coming forward. And of those I'm thinking of the graffiti contracting, custodial services, parks, maintenance being really the largest I believe in the current cycle that have gone through a procurement process. As the City Manager pointed out, leading into the next fiscal year budget and fiscal discussions, we have

a number that are in the works but coming out of the most recent council actions I believe we've hit the big ones. Look to staff to verify but I believe that's it.

>> Councilmember Rocha: Looking at evaluation criteria I see one for environmental stewardship and the max level is 5. That's not a mandatory criteria for them to meet. They have a choice of whether or not they want to do anything to meet that criteria, as I understand it.

>> City Manager Figone: I'm assuming you're referring to the recommendation in front of you?

>> Councilmember Rocha: Yeah, I'm sorry.

>> City Manager Figone: I think Mark Giovanetti should speak to that, councilmember.

>> Councilmember, Mark Giovanetti from finance purchasing. Yes, 5 points are allotted consistent with the EP 3 policy and we allow the protesters to come back and tell us in their proposals what they do to meet our objectives per the EP 3 policy.

>> Councilmember Rocha: I guess my point is more as a valuation criteria if we did add a line in there in terms of employee compensation or benefit it wouldn't need to be a mandatory evaluation criteria for them to meet, they could get a score zero on it but score high in other areas and still get the contract, potentially?

>> That's correct.

>> Councilmember Rocha: So I guess I wanted to be clear on that, at the end of the day, that's something conceptually that I thought about, but I'll leave it to the professional staff of course, should anybody be interested in supporting any recommendation I make in kind of vetting that out of course for the council to consider. I'm not suggesting we adopt that out today. I'm hearing enough from the City Attorney in terms of any issues but maybe can city staff talk to me about any potential issues you have with something like this?

>> Ed Shikada: Sure, be happy to. First I'd like to note for the council's awareness that there was an information memo that was issued I believe it was today or yesterday that provided a little bit of background on the third tier review so that might be helpful going forward. One of the dilemmas that I think we'll find ourselves in and one of the issues to confront is the City Attorney pointed out first is the question in contrast to environmental stewardship at what point questions about work environment do cross boundaries related to labor relations requirements, or boundaries, in effect, so that's one that we'll look to the City Attorney to give us some guidance on. Aside from that, the next question from a decision making standpoint will be, how to weight or to assess the tradeoffs between, for example, time off and medical benefits. And at this point, in the context of third tier review, it's really the qualities responsiveness of the proposal, the cost -- at the end of the first tier, the quality and responsiveness of the proposal, the cost is the second tier, and again, this work environment questionnaire being the third tier. Actually I learned that via the info memo so I always wondered why it was called the third tier review. But given that as we look and drill down within that third tier, again, the question, how to assess different types of benefits and again co-pays versus family coverage and those types of dimensions and benefits and how best to approach that. That should be the council's desire for us to take this on. We could see this becoming quite a substantive order of work in order to try to develop some criteria that lead to really effective decision making based on the interests that you've expressed.

>> Councilmember Rocha: You led right into the next issue I was going to talk about in terms of outcome and workload issue, I recognize as I mentioned earlier, nothing is simple as we do this work. But in terms of timing for me, I don't know if an expectation for a -- I don't have an interest in a large study session on this item. But I would like to have again as I mentioned an outcome when we return to council with some options for us so we can give you some direction not to send you off on a wild goose chase, of course, but part of the budget process we often have those -- what's the term, I'm sorry -- the budget --

>> Ed Shikada: Study sessions?

>> Councilmember Rocha: Yes, study sessions are devoted to certain items, and maybe this might be one of them where we can sneak that in and talk about proposals. So we set ourselves up for July gut again, I'm not going to be too prescriptive in how we do this. I really want to trust staff on this and what they think the best outcome and use of their time. So with that I'll stop and wait for a motion because I know I'm sure some my colleagues would like to weigh in and I apologize, thank you for your patience.

>> Mayor Reed: Some of your colleagues do wish to weigh in. First would be Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. I'm having a little issue with process here. Because we have an item that is noticed to be on an RFP but we're talking about changing a policy and how we handle RFPs and the memo came out yesterday, I think this is something where a memo should have went to rules. When I left City Hall yesterday this wasn't out. So I really think we need to separate the discussions. We have one item in front of us that an RFP was approved, an RFP went out, and I think we should be taking an action on that. And quite frankly, the other discussion I'm not opposed to having it but the traditional way we have discussion in modifying policies and procedures is going through Rules with a memo or sending it to a appropriate committee or sending it to staff. And I just think for the average person who may have got this agenda on Friday and looked at it or yesterday and looked at it to even know that we're having this discussion about changing the policy, I just don't think that's right. That's my comments. I'd like to separate the two completely and send the policy discussion through Rules like we normally handle it.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. Couple of questions to Rick. So I'm assuming that we have multiple options here, one is to accept the staff recommendation and approve the contract. Another -- could another be rejecting all contracts, reissuing an RFP, or could another option be, how did the other -- I mean obviously we saw how some of the other applicants rated. Could staff go back and evaluate -- or could the council actually recommend the different -- a different contractor in here? And then I do have a question regarding the second place finisher. How off were they in terms of the costs or is that something you can't share with us?

>> City Attorney Doyle: Well, I don't have an answer, and I'll let staff address that. I think your options are really limited to two. And to the extent it's either go with staff recommendation or reject all. And I'm going to look to my staff Brian if the third option is available. I'm not aware enough with this RFP, that the RFP represented the highest tallied or point person would get the award then your basic choices are just the reject all or accept staff recommendation.

>> I think given the current level of how the third tier review is treated, we only treat it as a tie breaker. And I don't think -- Mark will have to confirm, but I don't think the second runner up was close enough that we could actually call it a tie, is that --

>> That's correct.

>> I think at this point we didn't really express to the people that proposed that we would decide it differently than we currently do, I don't think it would be possible to award it to the second lowest at this point.

>> Councilmember Campos: Staff, on my --

>> On cost, councilmember?

>> Councilmember Campos: Yes.

>> They're very, very close. I don't have the exactly cost of the runner up, paradise. But on cost, Bay Scape was 31 points, and paradise was 32 points. So that would suggest that they were virtually identical.

>> Councilmember Campos: Okay. I guess with where I'm getting at is with the supplemental. And I'll tell you again continuing on with this discussion from a couple of weeks ago when we had the other contract in front of us, I'm just -- I'm dumbfounded as to how we don't put enough weigh in the third tear consideration, given that when

you just look at days off, holidays, the recommendation is to approve a contract, to a contractor that has two holidays. Two holidays in a 365-day year. You can't even begin to think about taking vacation until you've spent one year on the job. You accrues after 90 days many but you can't start thinking about using any of those days that you've accrued until after one year. And I -- again, this is a council that takes pride in its social consciousness. We really do. Each and every one of us goes and supports nonprofits, supports county services, supports everything out there that is supposed to make our community healthier. And then when it becomes -- our job is to be the steward of public dollars, and we would even consider a contractor that doesn't even -- to me, it doesn't seem that they value that as much. And I don't know if it's -- if it's the type of work that they're doing, and the type of worker that is going to work that job, or -- I don't know. It's hard for me to -- obviously I'm very emotional about all this. But for good reasons. I mean we're talking about human beings that are going to be an offshoot of the City of San José, because they're providing a service for us. I'm going to put out a motion right now, and I would love to hear comments from my colleagues and I would love to get a second, at least for purpose of discussion, but I would hope that my colleagues would join me in recommending that we deny all contracts and put this back out to RFP. Extending -- and actually if the City Attorney could give me feedback on whether or not we would be able to extend the contract of the current provider, so the work is still getting done. But that's my motion is to deny all bidders and put this back out to RFP for a period of six months, to bring it back within six months.

>> Councilmember Rocha: Councilmember Campos, is that including the direction in my memo?

>> Councilmember Campos: Yes.

>> Councilmember Rocha: Okay, thank you.

>> I'm sorry, I didn't want to interrupt the City Attorney.

>> Mayor Reed: First question is whether or not there is a second for the motion? Okay, we have a second for the motion, so we have a motion on the floor. City attorney.

>> City Attorney Doyle: And I'm going to have to defer to staff on whether or not -- I think the current provider is Jensen, and under the same terms and conditions that exist right now, would they be willing to extend, that's the first question.

>> Correct. There's one six month extension to extend the current purchase order with Jensen.

>> City Attorney Doyle: Now, Councilmember, I just wanted to comment on, again, I need to reiterate. I don't have an answer as to why we don't weight the third tier. It goes back, and both the City Manager and I were here many years ago, fortunately or unfortunately. I remember one of the prior councilmembers, Councilmember Alvarado, making impassioned pleas for bringing janitors in-house based in the very concerns you raised, and then to the extent we were contracting out, this third tier process began. It began as a pilot program and the memo addresses that. After it was adopted permanently, that's when I wasn't here, and so I don't know the legal restrictions. And I raised ERISA and perhaps labor laws, and we just need to get the answer back to you before we can say we can actually factor it in. And whether or not the council wants to factor it in, that will be a separate discussion. So I think the sensitivity is one that has been echoed for many, many years in terms of justice for people and making sure they get good employment benefits. As an employer, obviously you have that control yourself. But here we are, and I think we would like to be able to take some time to get the legal answers back to the council and then you can work with staff accordingly.

>> Mayor Reed: City Manager.

>> City Manager Figone: Yes. I was here in part of the development of the third tier review process, and I agree with Rick. The research would be important to look into the legal issues. My concern in deferring which certainly if we can exercise the option and have the service in place, then that really takes the pressure off, is without a change in council policy or direction, I don't know what would change, if we went out again. Because third tier review was not designed to be weighted. It really was, all things being equal, a way to assess the environment, the workers' environment for the same reasons that have been expressed here today, and many of the areas that

we ask questions about in that third tier review questionnaire were the results of concerns being expressed by janitors for Justice and other groups back in the 1992 time frame. So again, without a change in council policy, because I would think that this would come back as a cost issue for the city, some of the operational items, Councilmember Rocha, that you mentioned I think would really be more on the contractor's side such as maybe flexibility that they might lose in their workforce and other things that could find its way to cost to the city. So I think we would have to think this through, clearly beginning with the legal issues. In addition to -- I think the history's important, but again, I think it would really reveal itself in terms of cost to the city, as well as perhaps the lack of flexibility that the contractors would have in terms of how they deploy in providing service to the city.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. I want to commend Councilmember Rocha for bringing this issue forward. It's an important issue to raise. Especially when we deal more with contractors to do the work of the city, and happier world we'd have nor money and more city workers doing the work. I'm not going to support the motion, though I certainly appreciate the sentiment. I'm very concerned about a process in which we set the rules based on council policy. We have a bidding process, and then we pull a bait and switch and decide, well, we want to change the rules. And I know that's not your intent, Councilmember Campos, you're not trying to pull a bait and switch. But I think that's clearly how it would be perceived by those contractors who would be bidding on this or any other contract for the city, which is usually you reject all bids when there's been some behavior on behalf of the bidders or some changed circumstance beyond anyone's control. But really, in this case we would be changing the circumstances ourselves, that is, changing the rules after the game is played. And I think there's an inherent unfairness there in terms of how we're gauging with partners, who are going to be providing these service. I do think it's an important issue to raise in terms of our policy generally, and I'm not certain it should be part of the weighted score, it may be that we simply set a base line or minimum and say this is the standard minimum we require of all bidders. Anyone is going to prevail, have so many days off or so forth. Because I have a feeling we're going to get into very complex questions in terms of assessing different benefits, you know, one company's offering disability or a better disability package, another company's offering better health package, another company's offering better time off. And there's a qualitative challenge in terms of assessing in a

quantitative way, what all that means. And we may just be better off being much simpler and saying this is at a minimum what we require of everybody who bids, but at least everyone's going to have clear expectations going in without a sense that they're having the rug being pulled out from under them. In this case for instance paradise and Bay Scapes were compared on the days off. But Bay Scape offers health insurance to part time employees. Paradise doesn't. Now, I don't know if that's just because they don't have part time employees or they just have a policy against it. But this is kind of illustrative of the fact that there's some tradeoff. And it may be that if we engage in a very open way with unions and the contractors themselves and talking about sort of the cost and benefits of these different tradeoffs we may find that there are other benefits that are more valuable to the employees they'd rather have than just days off. Or whatever it may be disability or health or otherwise. I think we need to be careful, we need to tread carefully here. I think we've gone through a process, there was a bidder that prevailed. We ought to award the contract. At the same time Councilmember Rocha's memorandum should give us all reason to stop, take a look at this, and for the next cycle of contracting, whatever that maybe, let's have a very intentional approach about what kinds of minimum level of benefits we all expect.

>> Mayor Reed: I think I agree generally with Councilmember Liccardo. I'm not going to support the motion on the floor but I have a couple of things that maybe we can slice this up a little bit differently. First, I think the policy recommendation that Councilmember Rocha puts out should go to the Rules Committee so we can deal with the work issues and schedule to get it done in time that it can be considered in the next round of decision making. So I think that's the place for that work to be done. But the recommendation is for an initial three year term and then to execute three one-year options. So what I would suggest is, we approve the initial three-year term but not the options. And this comes back to us so that if we're going to change directions on this, we can do that, and not be locked into six years of this. That will give us, you know, plenty of time to deal with it but it also sort of doesn't change directions right at the end of the process, have people already invested in the bidding and we're ready to go. So I'm not going to support the motion on the floor but I would support something, a slight modification. Councilmember Kalra.

>> Councilmember Kalra: Thank you. In terms of a way of approaching it, I think that rather than make it part of the scoring system, I do think there ought to be a minimum baseline of what people that are working on behalf of

our city should be entitled to in terms of days off. Yes, there's going to be other types of benefits and so on. But the living wage is an example and I know they can pay more and have no health insurance and pay less with more health insurance. That should be a minimum qualification as to how many days off may be required. In terms of issues of labor relations boundaries and all that I think there are some baseline benefits in terms of just the quality of life and the quality of the work environment that we can put in place that we can at least be proud of. And you know, I certainly I don't believe we have been, I don't think we ever should be in the habit of revisiting items that have gone out to RFP and come back but the reality is similarly to the janitors, I don't think it's coincidence that we're talking about janitors, or folks that are doing landscape maintenance. When it comes to this more importantly than the perception of the contractors is the decent work environment for those that do the work for our cities. And I think we have an opportunity here because we have a six month option to continue with Jensen who is one of the folks that applied anyway as we do an RFP it might bump up the cost a little bit if we do add into it minimum qualifications in terms of number of days that should be at least there to allow for a decent work environment. Otherwise we are approving a three year contract which means again, just as the council voted to have the janitors and that same environment now we're going to basically for the next three years be telling those that are doing maintenance on behalf of our city landscape maintenance that they're just going to have to deal with it for three years or up to three years. And I think that we can do better than that. Yes, there certainly are process issues. I agree with the memo and I think it will be great for us to look at those issues. In the meantime, I'll support the motion. I can't support a contract like this I think that we have it within our authority to do a step back to do a six month extension and put something in there that at least has basic dignity in terms of days off in addition to living wage and I think it's the least we can do, it's the last of the major contracts we're contracting out so if we don't do it now we are basically contracting out a large number of employees with substandard working conditions in terms of days off.

>> Mayor Reed: Vice Mayor Nguyen.

>> Councilmember Nguyen: Thank you. Very sympathetic to Councilmember Campos comments as well as the direction that has given. But I have to agree with Councilmember Liccardo. In that we had a policy in place, I think at this point, it's really unfair to go back and ask all the bidders to submit the bids again. And I think that you know,

we can certainly do this the right way and I think we can take Councilmember Rocha's memo and pass it on to the Rules Committee and at that point we can ask the staff to go ahead and make an evaluation to see how we can incorporate this as part of the minimum baseline rather than part of the scoring criteria. So if this motion fails I'd like to make a motion if this motion should fail. Thank you.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I'm also very sympathetic to the issues that have been raised and I think it is important as we are looking at contracting out, some of these services, that we have a minimum standard that we set than we put out that expectation. Unfortunately, that isn't in place right now as we are looking at awarding this contract. And I think that we also have to look, as a council, setting about creating fair policies which we've done with awarding this then to go back and not award it, I think is a violation of our own process there, too. So I don't think today's the day to do that but I am supportive of the discussion continuing going back to Rules to look at how we move forward on future contracts so I won't be supporting this motion.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. Most of what I had to say was already said. But I do want to get a couple of questions answered. The people that we currently have, have been with the parks department in the past were laid off and they went with Jensen? I don't know who we're talking about, what that might look like. And that would be helpful to me. And I am -- well, Julie is coming down, I do want to say that I don't think we need to suffer the potential for another lawsuit. And would we not be since we've already made a recommendation?

>> City Attorney Doyle: No, this the staff recommendation. The council has the authority to award the contracts or reject all bids at this point.

>> Thank you. Julie Edmonds-Mares, acting director of parks, recreation and neighborhood services. The current service provider is Jensen landscape. They are providing service on a stopgap. Prior to June city staff did that

work, and so moving forward we would have a different vendor, because Jensen, although they did bid, they were not the lowest bidder in this particular process.

>> Councilmember Pyle: Difference of two points. However, would they -- they're coming I think from Santa Cruz, was that it?

>> If I could clarify. The current vendor came in I believe it was third. They did not come in second. I'm going to pull my memo. Correct, they came in third.

>> Councilmember Pyle: So the people that you're recommending which would be bay scape?

>> Yes, the procurement process outcome would be bay scape.

>> Councilmember Pyle: They are located in San José?

>> City Attorney Doyle: It is San José.

>> Councilmember Pyle: That's an important consideration as well, thank you very much.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor Reed. I just want to reiterate that I believe we outsource to essentially save money to either close a deficit hole or to provide services to residence that are of higher value that cannot be outsourced. I think the savings has been apparent in every time we've done it, and I think doing this at this point in time is not the appropriate time. The discussion can continue at any time, but I don't see it as relevant. Today I won't be supporting the motion and I did want to give feedback that some of those parks are in my district. And the feedback I have from residents that have lived across the street from these parks for 25 and 30 years is, quote, I've never seen the park look better. And when I drive by these parks are looking like golf

courses. Not that I support golf courses, but that they are very trim and very well apportioned. And so I think it's -- we've received not only good cost, but a quality product at the end of the day. So I appreciate staff's working through all the details and I know there's disagreements on this council about that but I think it's been a benefit and again if we can deliver more for less, that's good.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thanks. Let's just cut to the chase. I'll make the substitute motion to approve staff's recommendation, with the exception of item B, with the -- which are the options, and to refer Councilmember Rocha's memo to the Rules Committee.

>> Mayor Reed: All right, we have a substitute motion. On the motion, Councilmember Rocha.

>> Councilmember Rocha: Thank you, mayor. Can I ask for clarification in the referral? You're speaking about to committee is this for the committee to discuss whether or not the merits of the staff work doing this, or just to make the formal referral?

>> Councilmember Constant: It's to refer the memo to Rules which is the regular process we use for policy changes.

>> Councilmember Rocha: So could you turn --

>> Mayor Reed: I would anticipate when Rules gets it since we've already had a little bit of warning and heads up today that staff will be prepared to talk about it January -- when -- first Rule Committee in January the which is going to be the 4th, January the 4th and if they have any workload issues or if there are issues about doing the work then we'll hear that at Rules, then. But clearly, not on -- I don't see Rules having a decision on whether to discuss it on the merits. This is a referral from the council. So we're going to have that discussion on the merits.

>> Councilmember Rocha: Not to beat that issue, but I'm going to ask the City Attorney, as far as our recommendation as to whether we reject or approve this contract, we can make a referral to staff to do additional work as far as the council's authority.

>> City Attorney Doyle: The council can yes.

>> Councilmember Rocha: Process is irrelevant to that.

>> City Attorney Doyle: The council has the ability and you've done it before to direct additional work.

>> Councilmember Rocha: Thank you. I appreciate my colleagues comments most of them. I tend to agree with Councilmember Liccardo as far as changing the dynamics in things we've put forward. In terms of fairness and equity I'm struggling about that. Human dignity and human rights in my mind that really trumps those issues in those cases so I struggle with that and I get as passionate about it as Councilmember Campos and I appreciate you being passionate about it. Folks need to remind us about these issues and I appreciate it when you do that. Whether or not the park looks better than it ever has before I'm also don't put a high value on that in terms of the cost that it may cost us with folks not having time with their families so I'd rather sacrifice a little bit of shrubbery with somebody to have time off. So in the future, I will not be supporting these, I will support the substitute motion but until we do some work to make sure that we're not approving contracts like this again, I won't be supporting them in the future. Thank you.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor and I do appreciate the substitute motion incorporating Councilmember Rocha's memo, so this is something that we all agree, from what I've heard, that something that we all need to look into more closely so this doesn't happen again and you know I do think I will vote against the substitute motion, it's true we don't have a current policy but there's no violation of our rules or laws to put this out to bid again. We have a six month option in place and I think Councilmember Rocha stated very well that yes,

parks look better just like our bathrooms are clean but you know we have to be concerned about those who are doing the work. And again you know, it's although not necessarily shocking it's disappointing that the perceived fairness to the companies is outweighing a decent respectful work environment to those that are actually doing the work.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. Let's not be fooled. We're not saving the money that we think we're saving. When you've got people that are working themselves to death and we're talking about two days off, in a 365 day year, two days off. And also, not having -- because this in the supplemental memo it also stated that health care is only available for the worker and not the family. Well, that means if the worker has a family, and generally, when people don't have health insurance, what do they do? For something as simple as a common cold, that turns into bronchitis. Undiagnosed bronchitis. Then that turns into pneumonia, undiagnosed pneumonia, where do they end up? They end up in the emergency room. We pay for this. We do, we do pay for this at the end. May not be coming from our city budget but as taxpayers we pay for it. Because it cost a lot more to treat someone with pneumonia than it does to prevent them from getting sick or from a cold.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: I just would like too clarification on the days off for the -- for paradise. Councilmember -- I mean bay scape, I'm sorry, for bay scape. Is it two days, is that --

>> Councilmember, Mark Giovanetti from finance purchasing. It's two holidays and five paid time off days, so there's seven days total --

>> Councilmember Herrera: So there's seven days total, okay, and is that -- six days, is that part of paid time off, that includes everything?

>> That's correct.

>> Councilmember Herrera: Okay.

>> Councilmember Campos: Pair, if I could just get staff --

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: I'm reading your supplemental and unless I'm reading it wrong, this says that after one year, they can get -- they can start taking vacation. Is that how it reads?

>> Tom Ellington from bay scape is here, Tom can speak to this. I believe it means they start accruing at the rate of five days a year after 90 days and as they accrue the time they can take it.

>> Mayor Reed: Mr. Ellington is here and I've got a card for him to speak so perhaps Councilmember Campos can I ask him directly when he comes to speak, I'll come back to you Councilmember Constant. Councilmember Constant.

>> Councilmember Constant: Yes, do I my math a little different. It's 111 days off per year. Not two. Because people work five days a week. 40 hour work week. So you get two days off. There's a far cry between 111 days off and two days off. So I think we should use a standard calculator when we're calculating these things. In the world if you are not a government employee it is typical you accrue your vacation and you don't get to take your vacation until a year. In fact even when I was hired by this city as a police officer, that's kinds of how I had to take my vacation because had you your time. So I really, I really -- I think this should be a policy discussion that goes through Rules we should stick with the RFP, we should have the policy discussion wherever it goes, and come through committee and discuss the policy when we have the policy.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Obviously there are people who work in the industry who work every day but I don't think it's standard to include weekend days when we talk days off. When you say days off, we're talking about sick and or vacation days, so it's kind of ridiculous. After one full year off, after their first full years off basically the employees are going to have about three and a half days off they can take off after an entire year, of their first year in terms of sick and or vacation days.

>> Mayor Reed: All right I'd like to take the public testimony starting with Mr. Ellington and then Ross Signorino. Mr. Ellington, still here, yes. Please come on down.

>> First of all I'd like to thank Mr. Mayor and the councilpeople and the staff of the city for their recommendation proposing that bay scape be awarded the RFP. I've been sitting up here for the last two hours. And I've been listening to discussions intently of course in the last 45 minutes. And I'm trying to take a deep breath. First of all, the culture of the company is not stated just in that little sheet of paper. That sheet of paper is a very vague sheet of paper. First of all, how accurate it is could be questioned. Because does, when we compare days off, are we comparing staff people? Field people? It doesn't quite go into that detail. Okay? Number 2, is our company is a company of culture. My average lead people, and I have approximately 40 lead people in the company, have been with us for over ten years. And I have, and these are field people. And these people, some of them, have been with me 15, 20 and 25 years. Okay? So when we talk about two days, I don't think it's fair that an evaluation is taking place right now without really knowing the detail of the culture of the company. That's number one. We're in a competitive market. And in a competitive market, if you're not competitive on benefits your people will go somewhere else. And so when I look at the retention of our employees, which is greater than 90%, okay, our people don't leave us because of wages. They like working for our company. And that's part of when you look at an RFP, and pick out a little tiny segment of the RFP and relate it to making such a discussion, the RFP -- you're not discussing what else goes into a good company. Now we have been in the City of San José for over 35 years. We are a preferred contractor for the Department of Transportation. Jensen valley crest and bay scape, formerly known as coast, have been a working relationship with the city for the 30 years. Okay? When we -- you can go to city officials that we work with, and they are so happy of the job that we do for them. Okay? We do a

good quality job, Jensen does a good quality job, valley crest does a good quality job. We take pride in doing good work for the city we live in and work in. Okay? So a lot goes into the RFP. A lot of sweat, blood and tears goes into the RFP. Staff time, thinking through. Why did we prevail. Because we put through a management plan that spelled out how we will do a good job for the City of San José. I'm a little troubled with a motion that says, we want to change the RFP today to where there won't be a three-year option. The RFP is the RFP. When a contractor is going through his process of the bid, he looks at all kinds of factors of that bid. And so we look at those things, and we take all of those in consideration. So from the standpoint of a good contractor, for the City of San José, okay, I'm a little troubled that the discussion of an RFP that has been recommended by the city staff who have spent, I know, they spent hours and hours and hours of evaluating these RFPs and the selection process is brutal, okay. So I would ask the council to please approve the RFP as proposed 50 staff.

>> Mayor Reed: Thank you. Councilmember Campos did you have a question?

>> Councilmember Campos: Just a clarifying question, sir. So in this supplemental memo that came out from staff, I will -- I'll read it verbatim. Bay scape in terms of -- it's section 3 employee basic benefits. Bay scape. Five days paid time off after one year. Accrual starts at 90 days. So I'm reading that, I'm reading it literally after one year. So I'm thinking after one year, you can use your vacation. Is that -- am I reading it wrong or did staff report it wrong?

>> You're reading it correctly from the standpoint of what's on paper. But when I read through this, I did have the opportunity to go through this. Okay? And you have to look closely. Because what I noticed is, when companies are pointing out, and I will mention Jensen. They are pointing out staff people of their company. We give the same benefits to our staff people as Jensen. When you spell out account managers, operations, supervisors, techs we are giving those people, so our benefit package does give seven paid holidays to those paid staff people. So we are not quite compared apples to apples. In other words --

>> Councilmember Campos: Those are my questions, mayor.

>> Councilmember Oliverio: Mayor --

>> Mayor Reed: I hear a voice.

>> Councilmember Oliverio: I want to thank you for putting it in perspective. Thank you.

>> Mayor Reed: With regard to the options it was my intention thought to change the contract. But make sure that the options don't get executed until this council has a chance to weigh in on the policy issues that we're going to look at. It's not the company's option. It's the city's option to extend for the three, one-year periods. But I think the council needs to have the ability to do the work that we've just described here.

>> Councilmember Constant: That was my intention. I may not have stated it as clearly as you just did.

>> Mayor Reed: Okay, thank you, sir, I've got another speaker, Ross Signorino.

>> Thank you, Mr. Mayor. Councilmember Constant's remark to me sounds very capitalistic. Also, the remarks that Councilman Liccardo made here that this is not the time to bait and switch, also Councilmember Rocha's memo is also good, also all of you did make some excellent remarks here. Now in the industry, normally it is normal to work one year and then get a week's vacation. I know when I was working after two years ago you go to two weeks, but that's normal. Now, the 40 hour a week work is law. There is nothing we can do about it, and it should be that way. But I appreciate the fact that Councilmember Campos' remarks saying that we are talking about human beings and I'm glad you brought that up, that is a very touching point never to be forgotten. That's what he said and that's what this council is all about and that should not be forgotten. So I think I think that regarding these days off, we have to look at them again, when you come up, when it comes up again on the agendas or at the -- away do you call, that -- the committee, the -- nonetheless whenever you bring this up again, you should rethra this out, and go through it and that everybody has an equal playing ground when they bid on these jobs. Thank you.

>> Mayor Reed: That concludes the public testimony. We have a motion on the floor to approve the staff recommendation with the change in section B regarding the three-year options. So that those are subject to council approval. I think we're done with the debate. On the motion, which is the substitute motion, if this fails we'll come back to Councilmember Rocha's underlying motion. I guess it's Councilmember Campos' underlying motion. The substitute motion made by Councilmember Constant. On that motion, all in favor? Opposed? I got one two three opposed, Kalra, Campos and Chu opposed so that fails on a 3-8 vote or passes on an 8-three vote, substitute motion passes on an 8-3 vote and includes a referral to the Rules Committee for first week in January for Rules. I think that concludes our work on 3.5. We'll move now to 4.1. Amendment to title 20 zoning ordinance. Multiple amendments. We will have a presentation from our Planning Department staff. Take a minute to get them in position.

>> Thank you, Andrew Crabtree of the Planning division, here to present on 4.1. This is an amendment to the city's zoning ordinance, title 20, a number of small changes that collectively advance three city objectives. The first is to implement our economic development strategy. In October when the council approved the economic development strategy they included within that a direction to staff to look at permit streamlining, actions that would help to promote economic development. The second objective is to do an update to the zoning ordinance to help it align with the recently approved Envision San José 2040 general plan, and the third was just that this was an opportunity to address some issues of readability, clarity that staff has become aware of over the years and so we've included that as well. Looking at the streamlining changes address the seven different issues here. There's more flexibility for minor additions with the permit adjustment process. Provision to allow drinking establishments within hotels certain criteria are met. There's more clarity around how we allow tankless water heaters, power inverters other things that are part of our Green Vision program as well, there's something to allow rental car storage in general commercial district, allowing expanded use of temporary trailers during construction to house workers that might be displaced by building remodeling or new construction activities. We're looking at some minor adjustments to parking requirements and adding more requirements for City's RM multifamily residential district. In terms of alignment with the envision general plan, there are places where the ordinance just made references to the 2020 general plan that needed to be updated. Or to specific policies within the 2020 general plan that have been replaced with the 2040 general plan. One significant change is that we're moving the

regulation of height out of the general plan and into the zoning ordinance. So that the city council won't be seeing general plan amendments as much to change the height for a specific property that can be dealt more through the zoning code which is an easier and more appropriate way to do that. And then we're also moving forward some initiatives related to promoting urban agriculture, neighborhood agriculture within residential community as part of our efforts to bring healthy food choices closer to the community. Going through the public engagement process and Planning Commission, we had some comments from the community and those can be categorized into about five topics. A number of them really related to additional zoning ordinance changes that the community would like to see. So we took that input and we'll consider it as we continue to evaluate our work program going forward. We had some requests for just how we can continue to make sure the community is informed as we move forward with permit streamlining we had a number of comments related to the main street zoning district which is already established in the zoning ordinance and it's already established that it can only be applied within a segment of Alum Rock. But the community expressed concern that we might be applying that and not apportion to the city so we just discussed that and I think came to the conclusion with the community that there was adequate safeguard protection for the community related to their concerns on that. Some questions about setbacks that we were able to answer and then just a request for more opportunities for the community to be participating in the development of ordinances going forward. And we're looking at how to address that through our work program from here. So with that, that's our presentation, thank you.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor. I just wanted to thank Andrew and the whole team for all your hard work. Could you tell us again what all these do? I'm joking. I know there's been an enormous amount of cleanup with the passage of the general plan and I know we've got still more with assessing readjusting all of our zoning definitions and so forth. I know it's an enormous mass of work, thank you for your hard work. I want to give you a particular thank you for the hotel provision, thorn in the side of one of the hotel managers, Jim Fox may he rest in peace, we had maybe a couple of years ago the Redevelopment Agency was willing to pay for the fee for him to get the permit that he believed he was given 20 years before when you know, back when planning was in the hands of RDA and nobody knew exactly what happened to that permit and he was so furious he just refused to

even have the RDA pay for the permit application because he just was adamant about the fact that his hotel had the right to operate as it had for probably many decades before. So anyway I am just very supportive of seeing a lot of these provisions go forward and I appreciate the additional flexibility so thank you and I make a motion to approve.

>> Mayor Reed: We have a motion to approve. Councilmember Campos.

>> Councilmember Campos: Thank you, mayor and thank you staff. This obviously when you have to get into the details of our zoning ordinance and having to make adjustments is a lot of work. I have a question under 16, personal services so I guess I'll really direct my question, where do tattoo parlors fall, do they fall under personal services? The reason I'm asking is it's such a regulated business, you know they have to get health permits, you know they deal with a lot of other state regulations, it almost seems like that we should start looking at considering having them as their own -- their own section there. So would they fall under personal services?

>> Typically yes. Unless they're somewhere otherwise called out specifically in the ordinance, and they're not at this point dealt with separately, so it would be a personal service.

>> Councilmember Campos: So if a business like a tattoo parlor I would imagine they would have to do a lot of coordination, they would have to go and do what they have to do at the county and then as they're coming for permits with the city, you're asking for those documents?

>> Joe Horwedel: If it is a permitted use with the city then they would just be going and getting a business license and we do not do zoning verifications when a business license certificate is applied for at the city.

>> Councilmember Campos: So how are we -- whether they do a tattoo, you know, you're breaking skin, you're you know, I mean it's painful, I would think that that -- that that would be -- that we would have much more of an interest than, okay, well you're just a business like any other business and you know, people can get hepatitis from that, you know, someone that's not regulated. How we monitoring that?

>> Joe Horwedel: The city does not regulate medical type uses like that, State of California is the normal body that regulates just like cosmetology, you know wide range of uses. There is separate licensing that happens through the state.

>> Councilmember Campos: So is it pretty easy for someone to fly under the radar on something like this and actually have a legitimate business license from the city, and you know, they start doing tattoos without the state knowing about it or giving them proper certification?

>> Joe Horwedel: That I can't answer. I can say, is that there are cases where a business has filed for a business tax certificate so they're paying their city business tax, where they do not have other required permits either from the city or from the county or the state. That that does happen from time to time. And when we become aware of it, we do enforce on those rules. It's just a matter of there's not a positive checkoff at that business tax certificate. That is something that Scott and I were talking about before Scott left, what it would take to do that. It is a significant volume of work that goes through the business tax windows. And to do zoning verification, it's just what the medical marijuana verifications are doing from businesses and bail bonds has overwhelmed our systems. It is less than 200 businesses so we're really not scaled to do that. We would like to but it's not in the cards right now.

>> Councilmember Campos: Okay. And when I was doing research on this one section I did see that what was it maybe a couple of years ago, we did clarify massage parlors and so there's a little section in there that categorizes them as personal services. They have to meet certain criteria. I think moving forward given that this is, someone could potentially get really sick if an unregulated business operator is doing this type of work. It's something that we need to perhaps add to our list.

>> Joe Horwedel: You are correct, Councilmember Campos. The health issues around that, that's one where with massage because of the issues that have gone on around the state about illicit massage businesses, in how cities were prohibiting the massage, the legitimate therapeutic massage industry went to the legislature and said

let's adopt rules that are very prescriptive and if the business follows that then cities would not be in the business of regulating that specifically. And if you were not such regulated by the state then cities had free rein about regulation. That's why we made that change. So we wanted to make sure legitimate massage was not put into extremely rigorous, difficult regulatory process where it was not warranted. But if you had fringe type businesses that could not meet the state standards they were subject to full rigorous review by the city. That's why that definition is there and I think the question is one for us will put it on the list of code changes and see how the state really deals with tattoo and is there a rationale why we would treat it differently, to come back.

>> Councilmember Campos: Okay, thank you.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: My questions have been answered, thank you.

>> Mayor Reed: I have one question on communications towers and other structures. I'm trying to figure out if we're making it easier, or more difficult, to process communications equipment.

>> So we are, in terms of the height regulation or the height exception, we're carrying over the provisions that already are in our general plan and really just taking the language and moving over and adjusting it to make it more into an ordinance type language and not changing the regulation. There may be some benefit, in that it's easier to find the regulations than it was prior. But it's not trying to make it easier or harder at this point. It's really just to make the transition from the general plan being the place where those height provisions exceptions really were provided to the zoning ordinance now provide those exceptions.

>> Mayor Reed: I haven't looked at the cell tower policy for maybe ten years because I know we went to a lot of work to try to figure out a system that we could use to bring some order to what was happening. But it seems that that kind of communications is growing as opposed to we never seem to get done with it so I know there's going to be a lot of business in the future as communication changes and we're going to have on later on this agenda

things that are different kind of communications. I don't want to make it more difficult than it has been to deal with. It's impossible for me to read this and tell, because it's in that famous planning ordinance language that you have to have the secret decoder ring sometimes to understand. I just want to ask, we're not making it harder, they keep changing the policies and we have to keep doing it.

>> Yes, mayor.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. Joe I just wondered if you could elaborate a little bit on the main street districts the things that come back for discussion regarding villages. I know right now it's pretty much confined to the Alum Rock district. Maybe if you could talk about what you think might happen forecast a little bit about how that would fly villages.

>> Thank you. So one of the action items under the envision general plan is to develop an urban village zoning district. If you look at the history of the zoning district it was really developed prior to the general plan update effort fully evolving the concept of urban villages. So sort of as an outcome of the general plan update we would anticipate that that would be a separate new district that we wouldn't necessarily -- there was some intention in the past of sort of replicating the main street district around the city wherever there was a neighborhood business district. We sort of moved past that now, it's more of a priority to develop this urban village zoning district, something new and different, we could certainly start by looking at what's in the main street district but the way that district ended up it was really tied very specifically to the geography of a portion of Alum Rock boulevard and we're not thinking that it's something that can be picked up and translated to other portions, other places in this city. So part of our input from the community was, you know, how do we create a process where community members at large, to participate, we're going to be recruiting the community members and we have some that have already expressed interest, bringing them together and sort of working through with them how do we develop an urban village zoning district. We may realize too that the urban villages again are different enough in their context and character that there's not a one -- we don't expect a one size fits all for them either. But there will

be some sort of community engagement outreach process before that district's developed and before it's actually applied to any location in the city. And just on the main street district there will be more community engagement for the Alum Rock district before that's actually applied to the district. Right now it's just a district that exists in the theoretical context of the zoning ordinance allows it, but it hasn't actually been zoned yet in any property.

>> Councilmember Herrera: I agree with you very much that I don't think there will be a one size fits all for the villages, depending on where they're located, if they're tucked away in a residential neighborhood or whether they're closer to larger, more retail oriented kinds of areas. So I think there will be differences, and I look forward to that moving forward.

>> Mayor Reed: Any cards from the public to speak? I see none. I don't know whether we have a motion yet. City Clerk, we have a motion, okay. So we have a motion on this. I have no other requests to speak on the motion. All in favor? Opposed, none opposed, that motion is approved. Next is 4.2, ordinance amending the sign code. Before we get started on this I just want to disclose that my staff in preparation for this meeting had conversations with Chop Keenan and John Shank of the Keenan land company. Yes, I'm sorry.

>> Councilmember Campos: I too also want to disclose that I did have a meeting with Mr. Keenan.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: I just want to talk after staff's presentation. Just get my light on early.

>> Mayor Reed: Are we going to have a staff presentation? We are.

>> Thank you, Andrew Crabtree with the planning division. What we have here is phase 2 of three phases of zoning, excuse me, sign code or title 23 ordinance amendments. The city council really considered the substance of this sign code update program in 2010 over the course of five council meetings and at the conclusion, gave a fairly specific list of direction to staff on what to do in terms of ordinance amendments that would generally

facilitate a greater degree of flexibility for signage within the city. Some very specific standards and details were included in that direction. So the first set of ordinance changes was finished in late 2010. And we're now bringing forward the second phase. We expect sometime in 2012 to come forward with third phase of sign ordinance changes. The one that's in front of you today addresses skyline and roof signs, fin signs, freeway signs and programmable electronic signs. So this is just an example of skyline sign and roof sign, remind us that roof signs are the ones that are sort of above the roof and the skyline signs are at the top of the roof but don't project above. These are two examples from our city. In terms of the recommendation that's first there's a fairly minor change to bring consistency. There are a number of subareas in the sign code currently that have different height transition points between when you are allowed or not allowed to have a skyline sign or roof sign, so that bringing those aim into consistency with 80 feet again that's per the prior council direction. And then there are also removing a prohibition that currently they're not allowed within 1,000 feet of a public park so part of our proposal is that they remove that prohibition. Moving on, fin signs are signs that sort of project out from the side of a building perpendicular sort of a traditional urban setting type sign to see, and they're really addressed within our sign code, as something that's often pedestrian oriented but I think there's some recognition they can also be oriented to vehicles and moving along on the street so some of the changes help to address both of those applications. So the proposed ordinance would increase the maximum size for those signs, allow them to be placed higher up on the building, and not require that they be directly in proximity to a building entrance, but that they can be located anywhere on the building. So just providing more flexibility for those and there's an example of one that was approved under the current standards but the proposal would allow something a little bit larger and higher and more flexible in termination of location. Moving on to freeway signs, there's an example of freeway signs, these are signs on properties that happen to be adjacent to a freeway, this is one from the Bay Area, a little bit larger than this particular example larger than what our ordinances allow but it gives you the idea of what their purpose is generally in. And the proposed code change would allow our signs to go from 400 to 500 square feet in area, then allow a lot more flexibility in height restricts that are already in the zoning code that really deal with unique situations where there's grade change between the property if the freeway's elevated then it allows the sign to get taller to make up for that sort of height difference. Then related to programmable electronic signs, the council direction was to come back with a three-year pilot program. That would address some subareas of the city and currently we allow them in our downtown. We would be adding two other areas in terms of the proposal, along

Stevens Creek boulevard and along Blossom Hill in the Oakridge area. The provisions that are included, there's already established in the zoning code a number of regulations that address the intensity of the light, the frequency that the message can change, those sort of things are established city wide, but you'll see there's a standard of 60% of the sign area being electronic, that's in the proposed ordinance, that's also something that's reflected other parts of the sign code. And there's some provisions to try to address community concerns about visual clutter, possible distraction of drivers, and so forth that are included in our ordinance proposed ordinance for that. So and with it being a pilot program, the intention is that this provides an opportunity for the city to see how these are implemented, and evaluate them, once they've been implemented in the real world setting and then come back at the end of the three-year period and then make based on that evaluation make a recommendation for how to continue to allow the signs expanded to other parts of the city and so forth. Just this outlines the Stevens Creek boulevard area, you can see it's one side of Stevens Creek because the other side is Santa Clara. An area that has a lot of auto dealerships and that's the part of the intent of the district is to promote that activity. And then, this shows the Blossom Hill road signage subarea, sort of the large commercial properties that are developed there. This also happens to be one of our -- a part of one of our urban village areas where we are looking for intensification down the road. If we look at something about electronic signs as being something that's appropriate in our downtown or urban environment can be a model here to explore with these large -- in an urban village area that is also very commercial and has large properties. So with that, we'll conclude staff report. Thank you.

>> Mayor Reed: Thank you. We have some -- one request to speak from the public, I think I'll take that first. Chop Keenan.

>> Good afternoon, mayor, and ladies and gentlemen of the council. Chop Keenan, 700 Emerson. So for the past year and a half I've been working with Nancy Pyle and Chuck Reed in trying to bring forward this programmable electronic sign. And here we are. And I can't thank you enough for bringing us this far. Here's my problem. Everything that staff has proposed is great for us, with one exception, and that is, the -- we would like to add the allowable square footage to exempt the existing pylon signs. We have three of them. And those pylon signs are controlled by our anchor tenant, lucky and our many anchors. So they have four tenants allowed on

those three pylon signs. And I have a total of 41 tenants in the center. So when we built the project in '92, we kind of created a park, and a lot of vineyards and trees and it's beautiful. We did too good a job. None of our shop space signs are visible from one of the most powerful retail corners in your city. Corner of Blossom Hill and Santa Teresa. What this electronic sign ordinance does is, its allows us to bring 41 less four, 37 tenants out to that powerful corner, kitty corner from as I say, a great regional mall. So I know there's concern about sign blight. Actually, this project had exceptions when it was built for signage. In fact they were signed by Joe Horwedel, who was a city planner at that time. But we have flying beam signs and it's pretty creative stuff. And this is the next generation, the electronic piece.

>> Mayor Reed: Sorry, your time is up.

>> Appreciate the consideration.

>> Mayor Reed: I believe that's the only testimony we have. Bring this back for council consideration. Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I'd like to begin by first of all thanking Joel and Laurel for their support on this issue and their willingness to include the Blossom Hill corridor in the pilot program area. That went back to I believe November of 2009. And I'd really like to thank you for all the work that you've done since then and for all of your patience with me. I've asked at least 10 million questions and I can be pretty dramatic about my feelings. So first of all I'd like to say I'm a big fan of bold, exciting signage. And you welcome the addition of electronic signage in your council district or I do and have had many tough conversations with the Planning Department about how to allow this to happen sooner rather than later. Each pilot area has its own unique physical characteristics and the changes in your memo you signed with the mayor, the mayor and I signed come from concerns raised by Chop Keenan who you just heard speak. The pilot program is designed to allow sites to install electronic signs in place of existing monument signs as you know. The problem as I identify it, is that removal of the monument signs is problematic. So I would like to ask for Joe's input in reference to the comments made by Mr. Keenan. Or Laurel's, don't fight over it. There's room for both.

>> Joe Horwedel: So the questions that Mr. Keenan asked and requests something staff's been thinking about. The ordinance that we've brought forward with this pilot is really creating more flexibility of how signage is - - what type of signage can be used in a shopping center. The ordinance that we brought forward does not increase the total square footage for neighborhood shopping center like this. Through the pilot. One of the things we recognized is the pilot at the end of three years, if the council decided you did not want to have these types of signs, we wanted to have something that still looked like the rest of the signs other than that it had some programmable features built into it but it still looked size-wise number wise like the rest. I think the challenge that we look at there are three signs that Mr. Keenan has in the center which from our rough estimates we think is his site's allowed. We have not done a specific analysis on all the frontage dimensions yet, is really the question of should we go in as a part of allowing electronic signs to add more signage onto shopping centers. And I think this clearly is a center that is well designed. There's some streetscape views that I think we've grabbed these off google view and some other pictures we've done previously, is a well landscaped center, very nicely done. Unfortunately I think the signage that was put together back in '92 really doesn't work today and how his leases are put together really make it difficult to go and do something differently. And that is a challenge that other centers do face. The challenge from the city standpoint is, when we go through and grant or approve an ordinance this applies to everyone equally. Every business owner on Blossom Hill road with a similar circumstance would be able to do the same thing. This is the concern staff would have, of adding a provision into the code, even in a pilot, to say that you could go and add programmable signs in addition to the total number you have, total square footage and total number. You would go through in this case on Blossom Hill road probably put another 15 or 20 new signs down that street, similar on Stevens Creek of adding that in. So that is something that's a very deliberate discussion that the council should have that's not a discussion when we talked with the council in the larger policy issues, that this would be additive, it was very much a replacement. So my recommendation and then certainly would defer to Rick is that if the council is desirous of making it an additive type provision, I would say that we would need to come back to the council because that's not something we've done any outreach on. We've done no analysis on, done no environmental review on. There's been no work on it so I think from a public meeting, Brown Act, you know disclosure we really would have some challenges of recommending approval of that today.

>> Councilmember Pyle: However, Mr. Keenan would have three years to make the corrections for the other signs. He could begin the pilot program, and have three years to work it out with tenants.

>> Joe Horwedel: That's correct.

>> Councilmember Pyle: That is where I'm coming from.

>> Joe Horwedel: That is why we are doing this as a three year pilot, is we knew that there were going to be leases and it was going to take a while for tenants and property owners to figure did this make sense for them, to really think of how to do it. And so we wanted to provide the options for that to be in place and up and running so everyone have the benefit of these provisions. So our goal is to not to fix it today, that it immediately works, some things are going to have to work themselves out between tenants and landlords.

>> Councilmember Pyle: With that I would like to move for approval of the plan with the proviso that there would be a three year time period to work out the items, and I'm sure Mr. Constant you would have --

>> Mayor Reed: Your motion is based on the memorandum?

>> Councilmember Pyle: Yes.

>> Councilmember Herrera: Second.

>> Mayor Reed: Councilmember Herrera's got the second. Councilmember Constant.

>> Councilmember Constant: Thank you. First of all I'm very happy to see the sign code progressing because this is been one of my top concerns since 1987 to be exact when I couldn't get a sign up on my building years ago. I'm very happy the direction we're going. I think especially in this environment, we have to be able to give our

businesses the tools they need to survive through this as we come out of this recession and thrive once we're out of it. I know that sign code's still not exactly where we'd like it to be but I'm glad to see that the auto row and the freeway signs, you can drive through every area and see freeway signs except San José. It's almost like we tell people to go do your shopping elsewhere. And I'm glad we are going to tell people to do their shopping here. There are a few areas of concerns that I have before I come back to this particular issue here. And that is -- I talked to Joe about this but make sure we're on the same page all of us up here. We have one more -- is it just one more section of revisions we're doing or is that broken up?

>> Joe Horwedel: We have one more big chunk coming forward, that's part of our work flow early next year, does that come in one big piece or a couple of pieces? As they're getting done our goal would be to bring them to council and not wait.

>> Councilmember Constant: The reason I ask, I know you've heard me talk about a particular issue that we have off of Winchester boulevard that Joe and Laurel are very familiar with that we all hoped would be in this particular update and we have been having difficulty getting a tenant to sign a couple of floors of a -- vacant floors of a building. And the only thing keeping them from signing on the dotted line is some certainty over the sign that they're able to get or not get. So I just hope that my colleagues agree that that's something that we need to put emphasis on. When we have people that are willing to take up not just a thousand square feet but a couple of floors of vacant office space, that's really, really important to us as well as the signs for assembly uses that you and I discussed last week. For the benefit of my colleagues we have a lot of assembly uses in our city, whether they be churches or other forms of assembly use that really are disadvantaged in that they don't have any real signage that they can use through our vehicle code -- our sign code or our vehicle code quite frankly but our surrounding cities give those tools to those areas. And I know that we have again on Winchester, that's the street I'm always complaining about because we have so much opportunity out there on Winchester boulevard, that's another one I think that hopeful we can to. From this side it seems very simple. I know from your side it's not as simple as we would like to be but I would like to see that going. Because I think as we have talked about over the years, I think this council has been pretty sign-friendly compared to historically what the city has seen. I know that we have seen tremendous use of signs in the downtown area, and none of them look like blight to me. I love

seeing the signs that we see downtown. You showed a couple of great examples in your slide show. But there's many others and one only needs to drive by Santana Row and see those signs in the parking structure, not new anymore but the newest parking structure that really shows that can you have big well lit attractive signs that don't cause blight in the neighborhood. And I don't know if I'm speaking on behalf of Pierluigi but I know I haven't received any complaints at all about those signs and they're probably the largest signs in residential areas that we have. So I think that we have an opportunity to continue to push the envelope. And allow better signs. I don't want to just say more signs but better signs so that we give our -- all of our businesses and assembly areas and the other things to have the opportunities to succeed. Now, in the particular instance, I spoke with Chop as well prior to this meeting, I understand the concerns that we have there, but I think it's not just this one particular, I guess you could call it a -- it's almost a regional type draw but a larger strip center, I hate to use that word strip center because it's not, it's much more. But we all have centers like this in our districts that are sign-impaired. And between the trees, that we all want everyone to plant, and the attractive landscaping and bringing buildings out on the front to get them -- pads closer to the street we really do a disservice to those businesses that are deeper into the project. And we have an opportunity with these electronic signs to give people the ability to sign-share. So instead of having 100 signs on a property, we can have a couple of signs where every business gets an opportunity to express themselves to customers. I think we really need to do everything that we can to encourage tasteful signs that can be used appropriately. So I think it's important that we do pass this today. But I really would like to see us work towards a resolution that will work. Because we are be talking about huge investments. These signs are not cheap. To put a couple signs in, I would imagine they're \$200,000 a piece or something like this. I see chop shaking his head. So people are investing a couple hundred thousand dollars each. If you are talking about the ones by Santana Row or valley fair auto dealers, they're significantly more than that. We're talking about major investments by our businesses that will return to us some economic impact to our city tax revenues. So I hope that we can work a way to do what Mr. Keenan wants to do here or something similar that will achieve the goals of what he's trying to achieve and that we can use that to set a standard for all of our centers that are of similar quality. Because I visit other cities and they all have them. We're one of the few that don't. You know when I was in Arizona a couple months ago, I'm trying to remember the name of -- a place caught Westgate. Not like Westgate in district 1 but Westgate in Glendale that the whole concept is of the building and the development is about signs. I don't know if you've seen it but you walk in and all you see is signs. It's a

development around signs. One of the coolest developments to be. Especially when they have events there and stuff. For those of you who haven't seen it, I suggest you google Westgate in Glendale and look at their signs. They have a development it's almost like a Santana Row type thing but smaller with billboards and electronic displays but it's all done tastefully, you don't feel like you're in Hong Kong. I think those are things that we can move forward as we go forward. I think I've talked far too long but I think we can continue to work to liberalize our sign code and give the tool that we need to our businesses.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: I agree with Pete, he did talk far too long.

>> Mayor Reed: At least you're agreeing on something.

>> Councilmember Kalra: I don't need to repeat what Pete and others have said. I want to thank Councilmember Pyle and the mayor for staying on this issue, and of course the planning department. It's a very challenging issue because yes we all want signs just as done in other cities not all cities do it right so we want to make sure we do it right. But I think it's very important for our businesses for their competitive advantage to be able to market the products that we want them to sell. I go to the Blossom Hill Santa Teresa shopping center there, I go there all the time, and so it is very well done. The way that it's landscaped and all that is a service to the city but it's a disservice that we can't market the businesses that are in there. If it takes a pilot to figure out how they can do it right I'm all for it. That is very close to the freeway. Close to a regional draw so we definitely have the opportunity to pull in extra tax revenue by marketing the shopping center right across from Westfield over there. I hope it works out well and I look forward to continuing to have the dialogue on how we can improve marketing for our businesses.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. Councilmember Constant mentioned the investment amount that someone would have to make in these signs. And so with that in mind I wanted to ask a questions about the freeway signs. The current recommendation is to limit it to 60% of the sign being manageable for LEDs but we have requests from Westfield valley fair to be 75%, I'm sorry so that memo actually switches it to 75%?

>> Mayor Reed: Yes.

>> Joe Horwedel: Two different issues.

>> Councilmember Oliverio: Let's Claire that, I'm talking about freeway signs, let's go Joe.

>> Joe Horwedel: As part of the memo that Councilmember Pyle and the mayor signed and staff's reading of it was the 75% was being proposed for the neighborhood signs in the pilot area. There is a separate provision in today's ordinance dealing with the signs that are allowed adjacent to the freeway and these are the rules that allow shopping centers of I think it's like 30 acres in size, that are adjacent to the freeway, that allow them to have a tall sign that advertise them so valley fair Oakridge the Almaden ranch and fashion plaza are the five sites that qualify for that. In doing those sign approvals with those shopping centers we recognized that the original rules we approved for height and some of the square footage that we thought we could go and actually be a little bit looser on that so we've recommended the increase in the total sign area from 400 square feet to 500 square feet and increasing the height because of the Oakridge freeway interchange to allow additional height there so that you can actually see that sign better. We did not talk about changing the percentage of digital to solid signs for those provisions. Those are currently 60%. 60% rules are what we use citywide, the downtown and staff recommendation for the pilot. We have done no outreach around changing the percentages for the freeway sign so again it would be my caution and it would defer to Rick, that if the council wanted to go through and increase the 60 to 75% that is something that we did not notice for today's meeting and I don't think we have public notification on. But I do you know it's one that we go back and look at, what is the right proportions there We've been continuing to discuss that with Westfield for their two signs as well as working with the Almaden fashion plaza.

>> Councilmember Oliverio: Thank you Joe. So with that I mean clearly there's been the outreach on the whole topic of digital signage and whether or not to have a freeway sign at all. Whether it's percentage, at the end people see a sign, right? You said you've increased it to 500 square feet. Does the person you know we can't regulate message, color things of that matter so in the end the resident you will have a sign but I think what's here is that because you have to make a big investment and we're talking about that limiting the what's programmable or what's displayable about showcasing certain retail sites, for example at valley fair, allows you to see those much easier. I think an example might be a tablet computer, if you have an iPad or whatever brand you have, you have a border around that screen. Under this proposal we have a really big border and you have a much smaller screen to look at. And I think what's been requested and I'll seek an amendment, friendly amendment of course is to allow it to be bigger. So you can have a smaller border, showcasing more availability for what's inside. I think it's a pretty rare circumstance these things will not be popping up all over because Joe you said we have some very specific requirements about size, location of freeway et cetera. And I was candid in my comments, Westfield Valley Fair, thought 75% programmable LEDs versus 60% would be better. I would be inclined to go with that myself and I would simply ask the maker of the motion would that be an acceptable friendly amendment?

>> Councilmember Pyle: May I read what is on the -- on my memo?

>> Mayor Reed: Just before we do that, City Attorney needs to weigh in here on the issue of whether or not we have clearance et cetera.

>> City Attorney Doyle: I don't -- it is not inappropriate to make the amendment on this freeway sign issue going from 60 to 75%. As I understand Councilmember Pyle's memo that just deals with the blossom him highlight area.

>> Councilmember Pyle: Right, period.

>> City Attorney Doyle: You are adding the 75% separate on the free why signage.

>> Councilmember Oliverio: That would be correct City Attorney.

>> Mayor Reed: Councilmember.

>> City Attorney Doyle: Just one of the things you need to note, one of the reasons why there isn't an issue from my standpoint at least, on this is this is putting out for publication if it's approved today. The actual adoption of the ordinance comes back for the second reading on January 10th. So we'll just have to make that correction.

>> Mayor Reed: So there's some additional time, so Councilmember Pyle, the request is to add to it a completely different section, the 75% that's included in our memo.

>> Councilmember Pyle: I'm not really comfortable with that because it's a totally different scenario. But I need clarification from Mr. Horwedel.

>> Joe Horwedel: Yeah, it's one that I think as a part of the issues around those signs, we really do need to go through and make sure we do the outreach. Recognize that if Westfield is working on a sign we have been working with them for quite a while and that's where we came back with the increases in height and total area and worked that out with the community. I can tell you one of these signs we're working on in Councilmember Rocha's district we are getting significant opposition from the neighborhood about the proposal because of the amount of illumination off of the sign into the neighborhood. And we're trying to quantify what is the impact of that into the second floor windows of the houses that are near where the sign would be. So that's partly why I want to make sure that we have analyzed what is the actual magnitude because even with the increase in square footage we're doing, it's going for about 240 square feet to I think about 360 square feet, 75% of 500 puts you up you know we're doubling the size of that digital sign. That may be the right thing ultimately to do, but I have no analysis that explains what is the consequence of that so that's my hesitation around that.

>> Mayor Reed: I wonder if Councilmember Oliverio in your conversation with the neighborhood where the recommendation was to increase the total square footage, because 60% of 400 square feet is the same -- 75% of 400 square feet is the same as 60% of 500 square feet. I don't know if they are addressing that issue or not.

>> Councilmember Oliverio: They are certainly thankful for the larger sign, but in the end it's the ability to showcase what's inside the shopping center, the various brands that are constantly changing. And to Mr. Keenan's comments, it is to avoid that scenario of getting locked in with just a few and being able to provide more. Again the border is what we're talking about back to the iPad analogy, tablet analogy, think about it being much more black and less visible screen. Not increasing the size, just maximizing the potential of what you're already going to put there. This is a request from Westfield, valley fair.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Let me read as what we have as an inclusion here. Limit the PES to approximately 75% of the total sign area of a freestanding sign, to provide ample room for architectural improvements. And what do we mean by that? Can you put for example the name of the shopping center or whatever it happens to be on the top of the sign. So that there is no interference with the amount of space available for advertising.

>> Councilmember Oliverio: So Councilmember Pyle are you saying then that really, you already had the intention of including freeway signs in this memo?

>> Councilmember Pyle: I didn't -- I'm just thinking about one shopping center. I'm sorry it was not my intention to think about freeway signs but I think it could be a good segue.

>> Councilmember Oliverio: Well, in that spirit I'm just -- we're trying to you know because we've been tackling this for a long time and I know we have and I attended this outreach for the smoking ordinance which got in front of this one. Again I'm just passing on to the council one of our largest tax producing entities in the city ask requesting more ability to have more versatility with the sign. Not increasing the sign but just allowing that. So you

know this is a request of a friendly amendment if that's not your specialty, I would you know just simply ask the question Councilmember Pyle.

>> Councilmember Pyle: I'd like to get your input mayor because you're the co-producer of this.

>> Mayor Reed: I would be supportive of a friendly amendment if we could, the 75%. I think it's a very significant change probably not even noticeable, between 60 and 75% to the average person going by on the freeway, it's a freeway sign. I think it would be okay, we just haven't had a chance to talk about it, now that I understand it, I think it's probably okay.

>> Councilmember Pyle: Well, it certainly shows more consistency.

>> Mayor Reed: I think Councilmember Herrera had the second. Is it okay with the seconder?

>> Councilmember Herrera: Yes.

>> Mayor Reed: We'll take that as a friendly amendment. I just wanted to clarify, the motion was for all of the staff recommendations and the memorandum from Councilmember Pyle and myself now with a friendly amendment. Because there are lots of other things going on in this ordinance than just this particular issue. So Councilmember Oliverio, are you done?

>> Councilmember Oliverio: And very thankful, thank you very much.

>> Mayor Reed: And Councilmember Liccardo.

>> Councilmember Liccardo: I also met with Mr. Keenan, thank you very much for your investment in San José. I want to congratulate my colleagues, Councilmember Pyle for getting this over the goal line and Councilmember Constant many years of pushing which obviously is bearing some success. And I think if Bob Keeve is listening, I

think we ought to thank him for singlehandedly spearheading a grassroots movement to liberalize our sign -- I'm not sure it's grassroots, but anyway, to really get us moving to try to liberalize our sign code. I know we all seem to be thinking similarly. I very much agree with the sentiment that Councilmember Oliverio expressed which is if we've got a major tax producing entity that wants some flexibility and it's not too onerous, given the flexibility let's take the brakes off. Thanks.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you. I'm glad to see this is moving forward. I had a question for Joe about the rest of the sign code update that might be coming back. I think we still had some category of other out there. That might -- some of that might relate to signs in villages, signs -- could you address that? I know I had some specific requests on that.

>> Laurel Prevetti: Thank you, councilmember, Laurel Prevetti assistant director. There's quite a bit of work still ahead. As Councilmember Constant mentioned we do need to get back to the question of assembly uses and the ability to do programmable signs for our places of worship. We also are working with a company I spoke again yesterday with the Realtor who is trying to lease some space in district 1. The question is should we allow two signs on the single side of a building that are at the skyline level. So that's a policy question that will be coming to you. We still have some work on the supergraphics, we had that conversation back a while ago in 2010 and then we have some other changes that we would like to consider as well for our villages. There's quite a bit of work based on the conversation today we will likely chunk it into some smaller bites so that way we will continue to be making the forward progress that we need to help our business community.

>> Councilmember Herrera: I know we had the one that we are working on for Evergreen village square pending configuration out there.

>> Joe Horwedel: Yes, there are some things as we think about special sign areas, thank you, Councilmember Constant, about your comments about the garage at the Santana Row. My daughter loves what we did with that.

That's my judge of kind of are we doing the right thing or not, kind of, is it cool? And that's one where we created the special sign zone to allow that to happen similar to the project done in Glendale the America center that they built there and that's where we're looking at how do we go through and create those special sign regulations where we have the Mirasou Evergreen village is one we're looking at, how do we go through and define the area kind of like what we do with Blossom Hill road, is there something that's a unique area that would allow us to create some different sign regulations and really weave in all the things we do, community identification signs, private property signs, public artwork, how all those pieces work together to project an image for that area. So that's never been done before here so we've got to kind of invent it as we go to that's kinds of why we're chunking it through, the vision here how to get into legalese.

>> Councilmember Herrera: Very exciting. I wanted to know on the pilot how do we know it succeed and if it doesn't, does Do the signs get to stay and then we just don't do it anywhere else or -- I don't understand.

>> Joe Horwedel: That's a really good question. Some of it I think will be the experience we have with shopping center owners and tenants. Are we seeing higher occupancy levels, are the sales doing really good in those centers, compared to areas that are outside of it kind of the general area. Part of it is I think are we seeing commentary that you know looks good, looks bad, you know what is it that we're hearing as we're working community meetings out in the area. Certainly we're going to look at traffic accident data, are we seeing anything different that happens with the programmable signings. The way the rules are set up we are not anticipating that but that is one of the reasons why we think having a sunset provision is important with it. Couple of councilmembers noted, a number of cities do allow programmable signs, and you know I think realistically at the end of this pilot, we will be coming forward with citywide rules for programmable signs. It's just, we want to make sure before we roll this out citywide that it really works. And it's partly why we picked different types of streets. Stevens Creek boulevard is very different than Blossom Hill road. That's why we picked the two lane streets in the city is it appropriate? The assembly uses the churches, how those fit into neighborhoods and streets. So I think at the end of the three years we'll have some experience of it here, Stevens Creek, what we're doing, in the assembly arena and then being able to come back and here's how we should deal with this on a citywide basis.

>> Councilmember Herrera: I had one more question. In terms of signs, way finds being signs that we see in coming off of tree way ramps, for example the signs for lake Cunningham that are being moved around for construction. What options do we have for example in lake Cunningham can we add skate park to that or add something to existing signs to change the look and feel of them at all? What control do we have over that? I know it's something with -- regulated by the state, right, so --

>> Joe Horwedel: This was one of those things where it's a sign, but basically I have nothing to do with it in PBC, as part of that is through CalTrans and part of that is through what we do in our transportation department so I'm going to punt to Rick.

>> City Attorney Doyle: It's really, it is generally a CalTrans issue and I know D.O.T. works closely with CalTrans on signage for the freeway but probably --

>> Councilmember Herrera: I thought that was the answer but I just wanted to be sure.

>> Councilmember Nguyen: Councilmember Rocha.

>> Councilmember Rocha: Thank you, Vice Mayor. I'm glad you raised the issue about the district 9 project, that's actually where I was going to go with this. My experience is residents in the area have not been supportive of the concept and the plan spacing. Probably first start, I did meet with Chop Keenan, and I also wholeheartedly support liberalizing our sign ordinance, so let me start there. But what I'm trying to understand is how we're moving from where we are in the pilot project to increasing that have we had any ones that we've implemented yet to date?

>> Joe Horwedel: For the freeway signs, none of the freeway signs have been built yet. We have approved the one for the @ First development. If we hadn't proved the one for the Almaden -- we're close to approving the

Almaden fashion plaza, we have asked for some additional lighting analysis so we can solve the residents' concern about brightness but we've done the --

>> Councilmember Rocha: The Princeton plaza or one right there at 85.

>> Joe Horwedel: Where Costco is at.

>> Councilmember Rocha: That's the one we're close to?

>> Joe Horwedel: Yeah, we've resolved the design issues, we're down to working out the lighting level issue and so we're trying to do a comparison literally of what's a full moon, how bright is full moon that the neighborhood experiences and how much brighter or less bright is the sign compared to that.

>> Councilmember Rocha: So given the feedback we've kind of gotten so far in terms of opposition, and again I recognize that's oftentimes the case on new policies, so I'm not suggesting we should listen to those concerns wholeheartedly in terms of just eliminating what we're doing but why are we moving towards the direction of increasing based on the feedback that we've gotten?

>> Joe Horwedel: So the total sign area that staff is recommending, we are bringing it forward, as we think from a scale, just the proportions of the signs, we think it is a number that I think the math the mayor did it was not a substantial increase of what was going on, that the height and distances from where it was sitting from residential, that we weren't seeing that as a major change from what was out there. But it is an increase and that's why we put it out for community comments on that. I don't think we got any real community comment on this provision, which we were a little bit kind of surprised with. But you know, that is why we recommended, it's really a function of working through with the two signs for Westfield as well as working on the proportions of the sign for the Almaden Fashion plaza, that we felt it was a little bit constraining, the dimensions that were available for the -- when you are looking at the heights of these signs, it was you almost ended up with this little itty-bitty thing on top

of it that looked out of place. So looking into a lot of proportion over the years, that was from staff's opinion resulting in a better look sign.

>> Councilmember Rocha: Based on input you have received and looking at stakeholders and looking at increased signage? That's correct.

>> Councilmember Rocha: Okay, and as far as the pilot program, how does that work if someone moves forward, and they install a \$200,000 sign, how is that a pilot, they are grandfathered then?

>> Joe Horwedel: It would become a legal nonconforming at the end of the program.

>> Councilmember Rocha: Thank you.

>> Councilmember Nguyen: Councilmember Constant.

>> Councilmember Constant: Want to thank Sam mentioning Bob Keeve. He turned 90 Friday. When we are talking about signs up here some these numbers seem really big and overwhelming. And when we were talking about Stevens Creek auto row and fives or six feet higher than that, I encourage all of you, if you get an opportunity to drive down Stevens Creek, you look at the Mazda dealership that put in a new sign under our new, really tall sign code, and it looks like one of the smallest signs on the street. So you know it's really -- it's relative because it's really about where you are at. And where people are used to driving down seeing some huge ones like the one we saw on that slide which is probably three times as tall as we're going to allow but when you look at the Mazda sign which is at our max and they invested a lot of money to put that in, it still hatches to be just about the right size to be hidden behind trees and half the size of the Toyota sign right next to it. The concern that came up to me and I guess I didn't read the memo, Nancy's memo that closely, I just assumed that it was all the programmable electric, programmable electronic signs to go to 75%, if I'm understanding where we are right, everyone is going to get 75% except for auto row which is going to get 60%, I really think we should have a

standardized 75% across the board, and the auto dealers are huge as far as the sales tax. So I would ask for a universal 75% so we are there with everybody.

>> Mayor Reed: I think the maker and seconder are yes to 75% friendly amendment. Friendly amendment to the friendly amendment. Any other questions or comments on this? So we have a motion with a couple of friendly amendments. On the motion, all in favor, opposed, none opposed, that's approved. Thank you, staff. I know these are big projects. And you don't have a lot of people to work on them so we appreciate you getting back to us. Next item 4.3, item regarding development taxes fees and costs.

>> Kim Walesh: Good afternoon, pair and council, I'm Kim Walesh director of economic development and chief strategist. This item is coming to you from the Community and Economic Development committee meeting and responds to the Mayor's Budget Message and I want to acknowledge that responding to this directive was a very significant effort over many months on the part of our CED city service area. I especially want to recognize the terrific analytic work of John Burke and Chris Burton. When we got into this we discovered there's a lot of interdependency between economic development and transportation and city budget. But on balance, we're very, very excited about this recommendation. The intent is for us to be more competitive and predictable at a really critical time, where San José can accelerate the leasing of vacant office space and stimulate new workplace development. Especially in North San José. We know that you want to send a very strong signal that San José is open for business. And we think that taking these actions will definitely help us implement our economic strategy, but also get out of the gate quickly on our jobs-first approach to implementing envision 2040. I just want to say a few slides to convey the gist of what we're doing here. We're really focused on two construction related taxes. The building and structure construction tax and the construction excise tax. These are applicable to all building permits in San José. So both for tenant improvements as well as new construction. And the rate that you pay for these taxes depends on the use. And the use is determined by a permit technician in Planning, Building, and Code Enforcement. So what you notice on the slide here is that the -- whether you're classified as a commercial use or an industrial use, the combined tax rate that you pay is either 4.5%, or 1%. The other important point to understand about these two taxes is, the use of the revenues, which is also very important. So the building and structures tax is a special tax, the revenues from that must go -- be used for the construction of city streets. And

the construction excise tax is a general tax but it has historically been used for transportation related issues, as well as more recently for addressing General Fund budget gaps. So there's a really interesting history regarding the definition of industrial uses. For purposes of paying that lower tax rate. The original definition of industrial use was defined 25 years ago, back in 1987. There were 12 uses that were considered industrial that were named in the zoning ordinance from 25 years ago. And you have those on page 3 of your memo. So can you see there's some things you might expect like manufacturing facilities but there's also some interesting sectors such as frozen food lockers and trade schools and golf courses and other things that were deemed to be important at that time. So in 2003, when the city implemented the first economic strategy, the city council recognized that that list from 1987 didn't really align with our modern economy, and the kinds of driving industry that we want more of in San José. So in June of 2004, title 4 was amended to include an expanded list of industrial uses that were to be taxed at the lower rate. So things like the driving industries we typically talk about like software and Internet and networking and mobile and solar were included on that list. The ordinance was drafted however to sunset five years later. So that ordinance sunsetted in 2003. So the situation we have now is the effect of having the five years of the incited treatment followed by two years of sort of back to the old ways has caused some confusion I think in the real estate community and has directly impacted a number of projects in process or under consideration. So what this is about is trying to eliminate that ambiguity and better align our developing objectives with our construction costs and our permitting cost. The key issue that I mentioned is really the gray area up on slide here. So we have on the left our traditional industrial uses. Manufacturing, R&D laboratories and then on the right we have commercial uses which are the general business uses. The challenges that relate to our construction taxes really center on driving industry companies that are essentially performing R&D activities but in the office environment. So we've created this new use definition category called office R&D. That was created when we developed the North San José area development policy and more and more in driving industry space in this office R&D area. So the challenge is when we did -- participated in the cost of development survey which benchmarks San José with other cities in the Silicon Valley region for this kind of activity if it's classified in the industrial rate San José is actually very competitive with surrounding communities on overall cost of development. If it gets classified as commercial which occasional it does, it goes there we're way more expensive we're with Palo Alto in terms of doing the development. That's why we're making the recommendation we are, to attract the kinds of driving industries companies that are performing R&D in an office environment and make sure

we're cost-competitive for those so that as the economy turns around we can get more jobs. So you have the recommendation and I just want to point out a couple points here. So one is, A-2, the including all office R&D uses for the lower tax treatment, is really the biggest change here. And then secondly, we're including data centers and third, we're including installation of solar energy systems regardless of what type of business it's on, that kind of business would be taxed at the 1% rate. And then also, we want to reduce the financial impact of doing this on the traffic capital improvement program. And so we've worked with the budget office and our recommendation is to recommend back-filling the revenue losses by tapping the economic enhancement fund up to \$450,000. And I just want to point out, there's a little discrepancy that was in the committee memo and the recommendation that is up there. So under A-3, we would like it to read, funding anticipated revenue losses up to \$450,000, with the economic development enhancement fund. Budget director would let me make sure that that gets in there. So the second recommendation is that we'll put this interim solution in place but get to work on the longer term solution which will likely require voter approval. And then C is also critically important and we have work to do on this to get back to by the end of January, with the North San José existing traffic impact fees we're just not at all well positioned to serve new development in the near term. So the burden of mitigation resulting from all the development that could occur over the 20, 30-year period putting that in the near term has created a competitive disadvantage for us. So we'll be coming back to you with some specifics about lowering that traffic mitigation impact fee to a more reasonable level and the impact to do that. So those are our recommendations and we're here to answer any questions you might have.

>> Mayor Reed: Thanks staff. Thanks for getting that back to us. I know it's taken a lot of work in a relatively short period of time. I just want to disclose that in preparation for this meeting and in dealing with these issues that my staff and I have had conversations with a whole bunch of interested parties, Boston properties, Cornish and Carey, Sobrato Development, Mission West, Perry Arrillaga, Hunter Storm, Schoennauer Group, HMM, Chamber of Commerce, NAOP, and everybody is concerned and I think generally supportive of the direction that we're going here and there have been a couple of letters that I just saw today from industry people supporting the staff recommendation and moving forward. So I think we're moving in the right direction to do some things that will hopefully help us do a better job of capturing some of the opportunities that are moving. Silicon Valley continues to grow jobs faster than the rest of the state, and in a lot of places job growth is zero or negative. So we're

fortunate in that regard. We haven't had any new office space in North San José oops it's been a while since we started a high rise downtown. It's time we take advantage of some of these opportunities by changing some of our policies. I think what we're trying to do here is to capture that. I appreciate the staff recommendations and the memorandum that have been signed by the councilmembers in this regard to move us along on this. But timing is important. The economy is moving ahead and getting us back quickly in January is important. We don't know how long this window of opportunity when people are spending money on new development is going to last. It would be nice if we could capture some of it to help with our revenues and jobs as well. Getting it back on the schedule he proposed I think is critical to our success and with that I know other councilmembers have some comments. Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. First of all I'd like to thank the mayor for your leadership on this issue and also I know the tremendous amount of work from the staff member. By accepting -- well first of all I'd like to make the motion on the floor, to accept the recommendation, from the memo dated on December 9th by Mayor Reed, Councilmember Herrera, Councilmember Liccardo, and councilmember Ash Kalra and myself.

>> Mayor Reed: Motion and second.

>> Councilmember Chu: Mayor I think by accepting this recommendation will give North San José an opportunity to allow the industrial development to catch up with the residential development. So I ask for your support. Thank you.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: I'm thrilled to see this. In fact I'm in love with the revenue award. So any time we have a chance of getting some of that I'm very, very happy and I'm delighted that you've taken this on. Thank you very much.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. And I am also very happy about this. I think that you know, wanted to just thank Kim and Nancy and of course Chris and John for the work that's done, a lot of people as well. And sometimes there's a sense out there that we don't agree on a lot of things when in actuality we agree on most things, especially when it comes to economic development. And that is something I think we all agree on and I think it will particularly have a critical impact on North San José which of course benefits all of us as residents here in San José and I think that which have a significant impact in Edenvale, as challenging as it's been, and successful as we've been in getting some companies in there, there's a lot more work to do, and of course downtown as well. I think this is great. If we call it a cleanup action it's probably the most significant cleanup action that we'll do in a very long time, and I think it just shows that we do need -- in our modernization of our tax policies it's really important for us to attract a 21st century strategy to attract companies, attract business, to really -- it says 21st century companies, and I think that's what we can do going through this process.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I was very happy to sign onto this and be part of moving this forward. I think this will create jobs. I think it addresses the situation of making us more competitive. So I had a couple of questions. How much space, how much vacant office space do you think there is in North San José do you think there is that would potentially benefit from this new policy?

>> There are millions of square feet that are under property owners and tenants who are thinking of expanding it can begin to really move the needle and as mentioned new development is something that we are striving to get in North San José and the high cost of traffic impact fee is a big barrier.

>> Councilmember Herrera: So this really helps give a developer a building owner the incentive to invest the TI money that they're going to need because our space is not brand-new spanking, this is not the perfect space that some of the you know some of the young companies might want and so by having this opportunity they can go

ahead and invest their money in it and know that they'll be able to be still competitive in attracting companies there.

>> Joe Horwedel: You're correct is really our goal is to reduce the barriers for tenants to say, choose San José. We, through offering the tenant improvement program we do with STI we've really made some traction with the brokerage community about getting people that they know they can get into space quickly. So now this starts dealing with the economic side, what is the net cost per square foot to get into that space. And the old analogy 4.5% of nothing is still zero, 1% of something is something. Our goal is to get square footage off -- out of the vacancy column and filled, because as soon as that happens the rents go up which then makes the economics of building an office building now possible. As long as there's 10 million 20 million square feet you're never going to get an office building off the ground because it's so much cheaper to go out and rent existing space.

>> Councilmember Herrera: So we need to make sure that these millions of square feet out there get developed, and then we can move on to newer buildings and we can be competitive. I also want to commend you on the economic development enhancement fund using, this is a very creative use of that fund to enhance jobs and to enhance economic development. Can you talk about the source of that fund, what -- and what it has been used for?

>> Kim Walesh: So that is a fund, originally it had about \$800,000 in it, the original concept came from the catalyst funding that was rolled over to provide some incentive funding for economic development projects and was funded again this year in the budget. So we used a portion of it for projects like maxa and polycom. We in OED feel so strongly that this is the right thing to do and also wanting to also keep the traffic capital improvement program whole, because that's so important for our ability to continue to attract business that we offered this suggestion as a good use of that funding and acceptable to the City Manager and budget director and our city team.

>> Councilmember Herrera: Happy to support this moving forward, thank you.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor and I wanted to thank the mayor for including the provision I sought regarding high rise incentives as well. I think when we all recognize that high rise development is challenging, and nobody's beating our door down, but given the rapidly increasing rental rates that we're seeing out there and also increasing demand it looks like San José State for student housing there maybe some real opportunities and I think this is a great opportunity for us. I just had a couple of questions. And thanks to everybody for their hard work on this because I know this is lots of work ahead. And I appreciate your willingness to take this on. Regarding North San José and the traffic impact fees that are there, do we have a sense about how far we are from sort of the minimum floor of traffic impact fees that we need to charge in order to avoid getting ourselves in trouble with the court, or based on the settlement that we have with our neighboring jurisdictions and or the EIR, obviously we've got some minimum fee we've got to charge in order to build out transportation improvements and how far are we from that?

>> Joe Horwedel: The traffic fee is the minimum fee the we need to charge to accommodate --

>> Councilmember Liccardo: I was worried you'd say that.

>> Joe Horwedel: What we're proposing is when we did the cash flow analysis for the traffic fee we were very conservative in our assumptions of other moneys that would come in state and federal tax dollars for regional improvements because these are freeway interchange type improvements where normally we would get that kind of money. What our thought is, is that we would go and look at projects and say instead of assuming zero or 5% the more realistic number is 30%. And so where could we go through and back out dollars that right now our assumed to be developer that could be realistically assumed to be state and federal tax dollars, gas tax, that's how we would he essentially come back and gas tax this, this is one where we're not going to come back and say lower the fee to five bucks and keep it there forever. It's really the goal you're going to hear from staff is lower it down to a figure in probably that magnitude but the first couple of projects that get concrete in the ground in the in

which two years because we don't want to incentivize stuff 20 years from now. We want to incentivize in the next two years.

>> Councilmember Liccardo: Appreciate that, I know you've got conflicting polls here. Where -- and I appreciate your confidence and whatever efforts I can lend with the MTC, I think though that we ought to be keeping a close eye on the federal reauthorization of transportation bill and how that moves through Congress. A few months ago we thought there would be a whole lot less money out there. Now we're more optimistic but I think we all know it's very uncertain there. And if Congress essentially turns off the spigot we may be left more to our own devices than we otherwise would have liked an historical precedent may not be a good guide for us.

>> Joe Horwedel: It certainly has cycles over the decades that those have gone up and down. This is a 30 year plan so that's how we're also looking at this. And the last thing I'm sure Hans is kind of drilling in the back of my head now is that the settlements we've reached in a number of parties moving forward in litigation assumed a number of dollars from the Redevelopment Agency and those dollars are not there so that's part of what we're also out looking for is how to cash flow all of our obligations out of developer fees which we are doing more than anybody in the valley to solving the traffic problems with developer dollars rather than taxpayer dollars. So you know I think we are not going to come back with something that is unrealistic. We want to come back with something that's believable and is doable.

>> Councilmember Liccardo: That raises my next question which is really should we be talking more with other folks in the region? I know VTA has been interested in this for some time about having more uniform set of traffic impact fees throughout the county developers may appreciate having a ceiling of some sort that is consistent. That won't fluctuate by city and I think we would certainly appreciate being in a more competitive situation with our colleague cities around here. I'm wondering if there's been any discussion at the staff level at this point about that kind of thing from one city to another?

>> Joe Horwedel: Not that I'm aware of, no.

>> Councilmember Liccardo: I know John Ristover over at VTA has been talking about it, and I'd be interested in seeing how we could move through it, move forward with something through the cities association or VTA. And then finally, on this distinction that tradition distinction we have between industrial and commercial. Even if we go back to the old definitions of sort of industrial and commercial I wasn't entirely clear why we gave industrial such a break. I understand that there's less traffic with industrial sites but usually you're involving heavier equipment and trucks that tend to break roads down more. So it wasn't clear to me why we believed that commercial should be more heavily taxed.

>> Joe Horwedel: I think, well, go ahead Nancy.

>> We have had some conversation about this with Department of Transportation and the understanding is still that the higher usage even though that's cars does have more impact on roads. There's conversation of OED, planning, D.O.T. that will bring back more information. And then the other part of that was very much keeping to wanting to incent manufacturing. That's what we want to do is get the jobs that you don't necessarily have to have a college degree to be able to afford the wages to live in the area. So the emphasis on manufacturing is a big part of it.

>> Councilmember Liccardo: Great, thank you.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: Thank you, mayor. I was actually going to ask some questions about the North San José area development policy and approach that we're taking here and I want to thank you for being proactive on all these issue so this is great to see. I do have a question though in terms of any reduction in the impact fee and how that would affect any environmental clearance that we have. Not to raise the bad issue but I wanted to better understand how we would actually do that. I mean is it just about moving the phasing and any improvements and all those issues but we don't have to go back and do any work?

>> Joe Horwedel: No, this is all coming forward with the kind of control points that we do not do anything that jeopardizes the EIR that we have certified, does not change the phasing that we have in North San José. So it would still keep the four phases. So what we are looking at is are there changes we have in phase 1 of infrastructure instead of assuming significant or predominant developer money could we send portion of that to be other revenues gas tax type dollars as a source for those. And transportation staff has been looking at that. They do think that there's some room for us to move projects into -- that would compete well at a regional level as they are all regional improvements and the investments we're making in multimodal do think that they would compete well and the question is, how much of that should we assume. And so that's what we would be bringing back to the council is, this is how we would go make that work. But it is absolutely, we are not rethinking what's in the EIR. We're not rethinking the phasing.

>> Councilmember Rocha: Okay, so the language that's up here though would really to me promote more new comment, and when we talk about vacant space the impact fee doesn't really imply to doing tenant improvements on space that's vacant. So as far as our plan and strategy I'm assuming you have taken this into consideration given the folks that are working on this. But if you wouldn't mind kind of clarifying a little bit for me.

>> The two elements would be the on the construction attachments that we've been talking about those are geared towards the TIs and the new development to San José is the traffic impact fee reduction.

>> Councilmember Rocha: The strategy for you that's how you're going to address the vacant.

>> Kim Walesh: Recommendation A is for vacant space for tenant improvements only.

>> Councilmember Rocha: I knew the difference I just -- when we talk about all the vacant land out there I mean there is some but movement on that is a little bit harder than just the TI stuff and I know you know that better than I do so just wanted to ask the question, thank you.

>> Kim Walesh: Right, our assessment was reducing the traffic impact fee on a temporary basis was the best thing we could do to move forward the new development in North San José.

>> Councilmember Rocha: Thank you.

>> Mayor Reed: We may have to rethink the phasing in North San José because the objective of the North San José plan is it's a jobs plan. And if it's not generating the jobs then we got to rethink the phasing. And the fact that neighboring cities are paying as they go, instead of trying to fund the 30-year plan, is a really big difference. And if we can't succeed at what we're doing we'll have to do it differently. Hopefully we can come up with a solution that is a shorter term fix. But if it turns out we're going to have to wait 20 or 30 years for the next development then what's the point of having the policy? We need to re-think the policy.

>> Joe Horwedel: We're already kind of rethinking that but that's not something we couldn't come back by January.

>> Mayor Reed: I have one request to speak on this issue, I'll take that now, Matthew Covedo.

>> Good afternoon, respected city council and Mayor Reed. My name is Matthew Covedo, I'm a student of San José State university. I've lived in the city my entire life. As a citizen of this city I'm interested in development in all areas especially the North San José area. Item 4.3 will help San José stand out in a extremely competitive South Bay Real Estate market. I believe that speeding up the process and creating incentives for companies to move to San José is very important when thinking of new revenue for the city, and providing jobs for citizens in the local economy. The speed consistency and predictability of the development review process and cost is important to San José companies as said in the memorandum from Joseph Horwedel and Kim Walesh. Also the general plan calls for the city to add more than 400,000 jobs to San José by 2040. Item 4.3 will help in this. We need to create incentives so we're attractive to new citizens and incoming companies so we can meet the goals we set forth for ourselves. If retrofitting our tax system and creating incentives for the near term will be beneficial now let us hope

that in the long term the actions you do today will help as well. I hope the city council approves this item and increases the number of businesses that come to our city. Thank you for your time.

>> Mayor Reed: Thank you, that concludes the public testimony. I think we're about done. I'm going to try to get the last word in and I was just thinking about these policy changes as they apply to the general plan which we just spent four years approving and I think it was I won't say universal but it's about as close as in a city as you can get universal agreement that we need more jobs and we need to try balance the jobs tapped housing and these policies are crucial I think for implementing that vision for the general plan. Because the general plan is not just to build the housing. We got to get the jobs and in North San José we've built a lot of housing okay, we've done that and now we need to get more jobs and now we have a great record with tenant improvements, with our tenant improvement team and our jobs generation team and all of those folks delivering a lot of new jobs in the way of tenant improvements and that's important but we need to get many some of that new development that's taking place in neighboring cities as well and these items are all important to do that. But this isn't just the short term. This is really part of our long term vision of balancing the jobs with our city and that includes the downtown, North San José, Edenvale, where we want the jobs because we want the money. And we want to be like our other cities, rich and we're not there yet. But we want to be. Councilmember Liccardo.

>> Councilmember Liccardo: Mayor, just a quick request for a friendly amendment for the maker of the motion to expand after some conversation with member of the academic development team, want to expand the incentives on downtown residential to include downtown office, not that we're likely to get a new office tower at any time in the near future but should the wonderful opportunity present itself I'd like the opportunity to add office. Is that okay with the maker. Okay.

>> Mayor Reed: I think you were the seconder, so I think we've got a friendly amendment to strike the word residential, where it says high rise residential to be high rise development. City attorney.

>> City Attorney Doyle: Councilmember, I just want to note that they are unspecified fees so I assume you are looking for staff to come back with recommended fees.

>> Councilmember Liccardo: Correct.

>> Mayor Reed: There is no problem the staff can't solve. All right, so we're confident they can figure out something we can do. I think that's the end. On the motion, all in favor, opposed, none opposed, that's approved. Just so the council will notice it's almost 5:30. We have a 7:00 agenda. Might anticipate getting done with all of the afternoon agenda items before we recess for dinner but I would want to recess before 6:00 so we at least have an hour dinner break. But looking at the things that are left, I think we'll make it. Well before 6:00. Item 4.4 is the next item, settlement with Union Pacific railroad company versus the City of San José. We have a motion to approve. On the motion. All in favor, opposed, none opposed, that's approved. Moving right along. 8.1, actions related to Public Safety broadband system. We do have a brief presentation from the staff. This has been a matter of great interest to the council a year ago I think when we got started working on some of the problems related to the broadband. Our staff has done a lot of work, city staff members of my staff and me personally have done a lot of work on this to bring it back to the council with some recommendations. So I'm going to let staff explain what those are. Chris Godley I think is going to take it.

>> Yes, sir, honorable mayor, and councilmembers, I'm Chris Godley, director of emergency services and managing the office of emergency services. You have in your packet a staff report containing recommendations on four items related to implements of a 4G LGE Public Safety broadband data system for Public Safety first responders in the Bay Area. Recommendations that are made here are the result of thousands of hours of staff time of San José spent working to ensure that bay web project meets the need of our Public Safety first responders now and into the future. Our legal and management staff are on the team creating the BayRICS joint powers authority and Michelle McGurk, San José's JPA board member, has served on the negotiations team since the spring for the final boom or build own, operate, maintain agreement with Motorola. During these negotiations significant compromises have been made on both sides and significant concerns have surfaced. For item 1 in 10 of sites, staff is recommending that the council approve moving forward with making the sites available to bay web at no charge for the public safety system. San José would be responsible for certain ongoing costs, utilities and permitting related to these sites. Making these sites available will assist with ensuring the

completeness of the network in our region. The City Manager has provided a letter indicating terms to Motorola solutions and the company has indicated an agreement in principle to these terms for our sites. Should we move forward, staff would bring these sites back to you for your approval once the environmental permit process has been completed. For item 2, the FCC waiver, staff is recommending authorization. San José has taken a leadership role in rectifying the issues with the FCC and spectrum waiver including incurring significant costs to do so. I would note that the FCC waiver petition will be distributed once it's completed as the draft was not ready for distribution as an attachment to this packet. For item 3, the draft comments on the systems funding plan, are included as attachment D to the staff report, beginning on page 34, and staff recommends approval of this. And finally with respect to item 4 the boom agreement itself San José staff is recommending that the council take a policy position of no. The report analyzes both boom policy options presented and says that given significant compromises made in developing the boom agreement the lack of guarantee that the funds invested will result in a system that meets public safety needs throughout the ten years of the contract and the fiscal risks to the authority and its members staff recommends policy alternative number 2 casting a no vote on the BayRICS boom agreement. Such a vote puts the American recovery and reinvestment act funds at risk but we can all site projects for free money from federal state resources has led to exponentially higher costs downstream. Had a different and transparent course been taken by UASI staff in the beginning we would have a different discussion today. Staff does not come by this recommendation lightly. Staff has invested thousands of hours in negotiations and related work to create the BayRICS authority, and the time has been well spent in ensuring that if the project goes forward, it will be governed by an organization created to operate transparently. As a result of San José's hard work and tenacity, there are protections and positions retained in the boom agreement that before benefit the entire region. This is a vital system for our public safety first responders and for that reason we cannot compromise on performance coverage or interoperability. Finally with respect to the process here the BayRICS joint powers authority is expected to vote on the systems funding plan and the boom agreement on Thursday January 19th, 2012, we are bringing these items to you today to ensure that San José's comments and the systems funding plan can be circulated to the authority in its member jurisdictions well within the 90 day comment period that concludes on January 16th. This is in keeping with our goals of transparency and fiscal responsibility. If the boom agreement is approved by the BayRICS governing board on January 19th San José would then have 90 days to withdrew from the HJPA or be bound by that agreement. In that circumstance staff

would return to the council to receive guidance. Staff understands the serious implications of this recommendation -- these recommendations and we are happy to answer any questions or concerns you might have.

>> Mayor Reed: Thank you. I'd like to add to the staff comments, that a lot of people have been very engaged heavily engaged and invested a lot of time not just City of San José staff but we've had a great deal of effort by the FCC, Department of Commerce, Motorola, members of Congress. And I particularly want to thank mayor's Quan and Lee that have gotten engaged on these regional issues to make sure we are working together as a region. So it is not for lack of trying that we haven't gotten this one over the goal line. A lot of effort has been put in, and I want to thank everybody that we got off to a rocky start, but I think everybody took this very seriously and invested the time and energy necessary, to make it happen on all sides of the negotiations. I know the boom negotiations which is build own operate maintain, right? That's what that means, took a lot of time and effort and I know Michelle McGurk spent hours and hours on the phone in conference calls I can attest to that and Chris has been heavily involved so a lot of people have worked on this. And even though we didn't agree with everybody across the region all the issues there was a serious engagement and serious effort throughout the region to make this work for the region. And I think the staff recommendations allow us to help the region without committing ourselves to some of the financial uncertainties that are inherent in this project because we're trying to meet some time deadlines and don't have time to answer all the financial questions. But nevertheless we want to support the region and we can use some of our sites to do that. While stepping back and taking another look at the financial issues, because most people have noticed we have some less capability to take on financial risks than we've had in the past and this is not a time to sign on to the possibility of significant cost that we might not be able to bear. And so I want to support the staff recommendation and thank our staff in particular for doing that but noting that lots and lots of people have worked to make this happen and we appreciate the efforts of everybody in the region. Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. I also wanted to give my thanks to Michelle and Chris, for all the work on this, especially Michelle because you had to put up with those long meetings, and Michelle has often had to be voice of reason in a reasonless room. So I appreciate that. I think this is definitely good for our

region. It's been a priority nationwide for these interoperability projects but they've been languishing for a long, long time. So I'm happy to see us making some positive steps forward. I can tell you, I think I mentioned it to Michelle when I came back from my last NLC meeting, national league of cities is putting interoperability the top item on its legislative agenda. To make sure that cities like us, cities bigger, cities smaller, that everybody can implement these important systems we need. With that, I'd like to make a motion to approve staff recommendations.

>> Mayor Reed: We have a motion to approve staff recommendations. We have no questions from the public on this. On the motion Councilmember Rocha.

>> Councilmember Rocha: Thank you mayor. Office spent a significant amount of time on this I appreciate what you've done on this, Michelle McGurk who has been doing the work. Thank you.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Join the thank to Michelle. Also ask, I recognize the vote's on the 19th, there's really not much time. But you know the primary concern I have is this cost and providing if system back haul because it just seems that's a huge bill we don't know how large it will be but it will be big. I'm wondering you know with the authority that the council is giving you here is basically to say no, is there any room of giving broader authority if Motorola backs off at some point and we get to a point where staff is comfortable with a yes, between now and the 19th, should we be giving you that authority?

>> We do have the ability to come back to council on January 10th. If anything significant changes. There is a JPA meeting on January 5th. And -- but I can tell you, having been on the negotiation calls with Motorola and at the bargaining table with them, the build don't operate maintain agreement that is before the council is definitely a last, best and final offer. It has been circulated, it is what they have turned into the Department of Commerce as their, you know, final contract with the region. They have stated there's not room to amend that you know on the board's behalf. And back haul was an early deal breaker. And the JPA board actually committed to be the

provider of the back haul with -- unfortunately not any staff analysis of what the cost of that might be. I was able at that board meeting to get an amendment to the motion to ensure that if back haul costs are not -- if the back haul is not obtained for free, such as through a partnership with BART or another government agency, that they do have to bring back the proposal to the full board for another vote. But right now, they are moving forward with trying to negotiate with BART.

>> Councilmember Liccardo: Okay.

>> But if BART falls apart, Motorola has put into the contract that the JPA is responsible for the costs of redesigning the system to use a different back haul provider. So it is a pretty significant question. And hopefully, that question of BART yes or no will be answered by the time we're voting on the January 19th. The BART back haul, though, doesn't actually get down to the South Bay.

>> Councilmember Liccardo: Right.

>> So we still have some challenges down here with aspects of it.

>> Councilmember Liccardo: For a few more years at least.

>> Mayor Reed: But BART's on the way.

>> Councilmember Liccardo: Yes, we're working on it.

>> Some day we'll have -- hopefully have BART fiber to our region.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: I just wanted to join in, in a chorus of thank yous. I can't believe how complicated this was. I remember the first time we heard about it, it was like you had a huge ball of yarn, and every string on it had a knot or something awful in it. And you just went after that like nobody I've ever seen. Of course none of us wanted to do the job so thank you very much for taking on a job and doing such a good job with it. Appreciate it very much.

>> Mayor Reed: We have a motion to approve the staff recommendations, on the motion, all in favor? Opposed? None opposed, those are approved. We now have a couple of items to consider in joint City of San José-Redevelopment Agency board that would be item 9.1 and 9.3. So 9.1 is San José incubator entrepreneur center transition plan. Before we get started on this, I just wanted to clarify. There's a memorandum that I signed on to, got some language that I want to add to it. Might as well get that up early-on the staff has got a -- can put that up so everybody understands the recommendation's changed a little bit. I just want to add three words. So one of the recommendations is to have the staff do an analysis of private sector partners, institutions that could assist San José State research foundation. I want to add, or replace. We're not quite sure whether or not they're going to be in this business or not. So assist or replace. And then one more designation of organizations to talk to, to add to that, after the Stanford, UCSC, which would be Y Combinator, because we know that's an organization that's running some incubators and with a different model. So that would be a request for the maker of the motion when we get around to the motion to include those changes in the motion. With that I would turn it back over to staff for the staff for the presentation.

>> Good evening, thank you mayor, so noted. I will get you out of here for dinner on time. The next slide please. We made this presentation essentially to the CED committee and now to the full board. Couple of things just to remember, is that we do have the Redevelopment Agency has the master lease on two buildings, downtown the innovation center and of course, the biocenter in Edenvale redevelopment area. Then, we do have two subleases that because the Redevelopment Agency under state law cannot operate this facility or manage it, we have subleases with the San José State university research foundation for the biocenter and two incubators that are in the innovation center and with Humboldt state, they manage the small local small business centers that are funded in part by the United States business administration, and currently they operate, manage they do

training and they do have fiduciary responsibility. As I move on, I just want to thank the Office of Economic Development. They have been instrumental in assisting the Redevelopment Agency staff in moving forward with the transition plan. This next slide shows the master lease term for the two buildings, 100 East Santa Clara building, the shark-colored building downtown, is currently about a 26,000 square foot building, on five floors, with a training room and several conference rooms on each floor. This lease runs through September 2014, and our attorneys, the general counsel has made it quite clear that there's no provision to terminate the lease. But the direction of the mayor and council has been to see everything we could do to absolutely have another entity take over the lease by the end of June 30th when our budget -- we have budgeted through that period. It's currently listed for \$1.50 a square foot, \$469,000 a year. On optical court the San José biocenter is about 36,000, 700 square foot facility on the second floor. That lease terminates on August 31st, 2012, and the sublease with the San José State Foundation terminates -- is co-terminus -- terminates at the same time, August 31st, 2012. It's currently leasing at 90 cents a square foot which comes out to \$395,000 a year. And again we've paid the rent subsidies through June. Our goal again is to, if possible, starting July, have some entity pick it up, July 2012. The worst case scenario for the biocenter is that the agency and we'd have to come back to the board for approval to relieve the foundation of its responsibility or its obligation for those two admonition between July and August. But that lease clearly terminates. In both cases, I have talked to both of the property owners and they're aware of both our master leases, the termination dates and our subleases with the foundation. Next slide, thank you. Of utmost concern to Redevelopment Agency and OED staff obviously and to the councilmembers is how do we retain these 85 companies that are currently in there. There's 22 in the biocenter, these are resident companies. There's other affiliate companies as well. The environmental business cluster has 25 and U.S. Market Access Center has 38 companies. The whole goal originally was several. One was to diversify the economy. To get away just from computer high tech and to get into biotech and now, how wonderful clean tech has become in the last few years, to provide innovative startups a place to do business, share equipment, knowledge and get training. Also to begin the commercialization of their products. The last reason of course was to fill vacant buildings both in Edenvale and in the downtown and I think we've been very successful on all counts. Next slide, please. Onto the transition plan itself, because of the leasing arrangements they are slightly different for the two entities. For the San José biocenter, San José State university research foundational has shown interest in maintaining the master lease. So going forward, we would work with them to work with the property owner to extend the lease and take over the

lease. There's an interesting provision in our lease, in our master lease that says that for, if we were to extend it five years, the agency, there would be the property owner would have to pay us \$365,000 or \$10 a square foot but that's at current market lease rates. Now obviously the agency isn't going to pick up that extension but if we were able to assign it to the foundation or another party that is a viable option. The second item suggests that the foundation seek an investor partner. Next slide plea. For the San José innovation center, we are preparing requests for information that the CED committee approved. And the only change to that is that we have reduced the time frame from 90 days to 45 days for both Humboldt state and the -- both research foundations and San José State to come up with a funding source or work with us on a -- for that period of time, which is not long, a no and a half, to come up with as I said to come up with additional funding to begin to take over the remaining lease from the period July 2012 to 2014 in September. If at the end of that 45 day period, our recommendation is to go out for a second request for information to any private or nonprofit entity that would be willing to take over the master lease for the building, we would assign the lease to them, and we think this is a viable option. With that, I am available for any questions you might have.

>> Mayor Reed: Thank you, Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I want to thank staff for bringing this forward and for all of the work that's been done in working with San José State research foundation. I want to thank the economic development staff Kim Walesh, Nancy Kline, Richard Keet, everyone. This did come to the economic development committee and I would like to first put a motion on the table here and then speak to that. So I'd like to move the memo, transition plan for incubators and entrepreneur center signed by myself, Mayor Chuck Reed, Nancy Pyle, Sam Liccardo, and Ash Kalra with the additional language that the mayor spoke about adding and/or replace and also Y combinator.

>> Councilmember Pyle: Second.

>> Mayor Reed: We have a motion on the floor. Councilmember Herrera, you want to speak to the motion?

>> Councilmember Herrera: So I think we've come a long way since we first started talking about this, and I'm very happy that we are all working and have also included Councilmember Liccardo's concerns, which I think it's very important that we get some of these questions answered and look to the future. I think the staff recommendations are contemplating all possibilities and I think these are some solid registers. These will come back as I'm looking at it, we will have an assessment or a coming-back to the Community and Economic Development committee in January for follow-up on this transition so at that time I think we'll probably be able to hear from I think Mary Sydney is planning to come and talk about where they are at with the transition with their plans. I know I did get a chance to speak with her and they're working very diligently with the transition plan of the biocenter, that's right in front of them in terms of the short time frame they have on that lease. They were very positive and was very positive about our move forward today and also, wanted to reiterate they are working also without side investors. So all of these options are on the table, and they're just moving very diligently forward on this transition. And so I'm really supportive of this. I think that the main thing we want to do here is make sure that we retain as has been said the potential for the 85 companies that exist in San José, retain in terms of the biocenter this chance to have you know a biotechnology and bioscience in our city and be able to move that forward and create local jobs in bioscience and technology. I see a huge potential for the academic collaboration with the institutions that have been named. Opportunities for local college students, opportunities for internships, opportunities for research. Again, I want to reiterate my thanks to the staff, to my colleagues, and to the current operators of the incubators all working together to move this thing forward. Thank you.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Just a quick question for Richard. Regarding the strategies that are on the screen there, at this point we haven't received confirmation yet have we from San José State that they're committed to want to go forward with an RFI or are we just starting those conversations?

>> We have received confirmation that they're willing to go with the RFI for the innovation center.

>> Councilmember Liccardo: Okay, just for Santa Clara street?

>> Correct.

>> Councilmember Liccardo: I guess the question I had, then, and I appreciate the addition of the language by the mayor, was that -- I was under the assumption based on prior conversations that we were going to have some kind of vetting of options that would include neither the city nor San José State being involved in managing and they actually that that second option would be one that would be openly considered and not considered sort of as a last resort. And so I guess my concern with the strategy as it's posed there is that we wouldn't be putting that strategy on equal footing. It's something of a last resort. Care to speak to that?

>> Only to the -- that it's only 45 days which is very limited. It would be up to the board, I think, to -- this transition plan as put together by plan it is fluid as is meant to obtain information and direction from both the CED committee and the board.

>> Councilmember Liccardo: I would be interested in knowing whether it's possible to issue RFI along a dual track, that is to see who might be out there who would be interested in taking it on independently and who would be interested in partnering. And that way we might have more information that would enable us to understand where the best path forward would be, rather than being sort of pigeonholed into one path or the other. Is that possible?

>> It's certainly possible. I could see one problem, if both -- if there really is two good entities both working with them and one totally under at the same time, how do we choose. But --

>> Councilmember Liccardo: That's a good choice to have. I mean that would be a happy world, right?

>> We are ready to go out can with an RFI, we have already reviewed it with OED staff and agency staff. We are ready to go out tomorrow on the first 45 days, if you think that happens with the process but if the direction is to

submit both at the same time, we can accommodate that. We may need a couple of days to put the second one together but --

>> Would that unduly slow your progress if you were to simply --

>> No, I don't think so at all.

>> Councilmember Liccardo: My understanding is the motion doesn't specifically plate how you're to proceed, am I wrong? Is what we see on the screen, are you looking for a vote on your strategy as it's described above?

>> That was the intent, yes.

>> Councilmember Liccardo: Okay, I guess then would I ask the maker of the motion to be willing to incorporate an approach that would entertain a dual-tracked RFI.

>> Councilmember Herrera: And I guess I'm hearing from -- so Richard you've had the conversations with San José State. Do you foresee any confusion that's going to be created by changing this? Because I'm guessing, I would have to believe about they have -- you have already communicated this as a direction that that we're going?

>> That's correct. They probably would not be thrilled with that recommendation but it's certainly within the board's prerogative to direct staff to do so.

>> Mayor Reed: City Attorney has a comment on this I think.

>> City Attorney Doyle: I just need to clarify, on the memo dated December 9th, from the mayor and various councilmembers, number 4 asks for a trademark. I'm told that's not the appropriate avenue, the -- what we'd

recommend is to explore additional steps that may be necessary to protect the San José biocenter to preserve bio-equity.

>> Councilmember Herrera: I would change the language to reflect that.

>> Mayor Reed: May not be a trademark, maybe something else.

>> City Attorney Doyle: Trade name would be the appropriate but we don't need to explore that.

>> Mayor Reed: We'll give I that flexibility.

>> Councilmember Herrera: That's fine. I'm struggling with this and looking at the economic development staff I'd like Kim or Nancy to weigh in on this a little bit. Because we're all working together, RDA staff, economic development, in terms of the relationship we have with San José state and moving forward and what they have already been told.

>> Kim Walesh: Kim Walesh here. Richard's been actively managing the relationship with San José State, but my sense is that time is of the essence here, and that we would benefit by casting as wide a net as possible, and that if it's your wish, we could make this work, and it would be an RFI that allows options with San José State or perhaps respond independently. And it would be great where we got to a point where we had a number of choices and we would stay in touch with the committee or stay in touch with council about how we proceed.

>> Councilmember Herrera: I likely the idea of giving the option of responding as a partner or independently. So if you would be okay with that language, I would modify to include that so we can go at it one time.

>> Mayor Reed: Okay with the seconder? So we've got a modification to make one RFI broader.

>> Councilmember Herrera: One RFI but to include the possibility that they might come forward as partners with San José State research or independently.

>> Mayor Reed: So we have a slightly modified motion including the city attorney's comments as well.

>> Councilmember Herrera: This is not for the biocenter, this is focused on the other two, right?

>> That's correct.

>> Councilmember Herrera: Any other comments, cards? I got no other requests to speak. I think we're done on this. On the motion, all in favor, opposed, none opposed, that's approved. Almost done. 9.3, acceptance of the annual report of financial transactions of community redevelopment agencies. It's a new report.

>> Mayor and council, it is the one thing the state didn't alleviate is any requirement unfortunately for financial reporting. This is under redevelopment law, section 33080.1, it is a full report, financial report, housing report, compliance report, and statement of indebtedness and extra material. I want to thank the housing department for their assistance. We're just asking for acceptance so we can send this on to the state controller. And it will be available to answer any questions.

>> Mayor Reed: We have a motion to approve. On the motion, all in favor, opposed, none opposed, that's approved. That completes the RDA joint part of the meeting. Open forum any cards, we have one card, please come on down. Actually we have more than one card.

>> Good evening. I know it's close to dinnertime. I have a collection of articles can I just pass them out to you or --

>> Mayor Reed: You can give the clerk anything you wish and she'll distribute them.

>> Okay, the collection of articles that I hope you'll receive and read, I just want to warn you about the negative issues of artificial turf for our parks. I know we're all excited about what the renovation that went on at Watson, I think that's one of our first parks that we have artificial turf. It seems like all across the country we're now -- special tariffs are just being put in all over the country. And I'd like to just go over some headlines of the collection. Synthetic turfs they are concerns about the health aspects, and parents are worried about children being exposed to unhealthy chemicals and synthetic turfs. A citizens group in San Carlos is actually filing a lawsuit, for the city council, because of the inadequate environmental impact has not been fully researched, and so they're angry over there. A TV program called toxic turfs was aired on CBS, and the article talks about that. And San Carlos youth advisor actually votes against, the kids actually don't want the artificial turf. And they actually require work too, they need to be watered and washed down because of all the bacteria and dirt that adults, children and animals leave behind. They actually need biochemical agents, maybe our biocenter can develop some for them, I don't know. They also require to be cleaned regularly by a trained maintenance crew.

>> Mayor Reed: Sorry your time is up.

>> Sorry, okay please read the.

>> Mayor Reed: Ross Signorino is our last speaker. Your time is up. Ross Signorino.

>> Thank you, Mr. Mayor. Last week, I had an opportunity to talk to I think the assistant Chief of Police, she was sitting right here and the question I posed to her was this: In all the cutbacks that we've had on the police force, did we eliminate that particular unit just to deal with cyber crime if you will or computer crime? She says those three men that were sitting here young men that were just going to concentrate on that in law enforcement, and she says to me, yes, that has been eliminated. Which was a great disappointment to me because I think that's an important unit to bring back to the police force and let them work and let and also it's good for business. Because if they see you have a unit, particularly devoted to that particular type of crime, then that will attract business. San José has a unit that they -- that takes care of that. So again, we're going to run across crimes we haven't even heard of yet. So been again, we have to have trained people, people that understand these particular fields and

bring that unit back. Even if you have to go to some of the manufacturers or companies that you have here and ask them money wise if they would help sponsor a unit of that kind. And tell them that it would be to their benefit not only to the benefit of company but also to the people here of San José, who knows what crimes are going to come across. We ran across this business of swiping of credit cards at Lucky supermarkets. So again, that is a unit, you must bring back and concentrate on it. I see my time is up almost but I will bring that subject up again. Thank you.

>> Mayor Reed: That concludes the open forum, concludes the afternoon session. We will return at 7:00 p.m. for evening session.

>> Mayor Reed: Good evening. I'd like to get the San José city council meeting back into session. We just finished a dinner break after the afternoon session. We still have an item or two that got moved from the afternoon to the evening agenda. And several things on the evening agenda. But we will start the evening with some ceremonial items. So I'd like to do that by inviting Councilmember Kalra, Councilmember Constant and representatives from St. Gabriel church to join me at the podium. Tonight we're going to recognize St. Gabriel's church for their spiritual and social services to meet the needs of the Ethiopian community in the City of San José. Councilmember Kalra and Councilmember Constant have some details. [applause]

>> Councilmember Kalra: So it's a great honor here to have with us members in leadership from the St. Gabriel's church which is located in my council district. Of course, it's an any credible honor to have archbishop Melka with us today. It's a great honor. And priest. So please thanks for helping me with the name. And we have of course Mayor Reed, Councilmember Constant has a close relationship with the Ethiopian community and all of us would like to recognize St. Gabriel's church, has been a presence in San José, and they have a great community in South San José I had an opportunity to go out there as they celebrated their anniversary. It's such a wonderful, warm feeling you get, I think the Ethiopian church in general really embraces the idea of family, the idea of faith, and really is such great contributors to our community. When I was at the church the music and the spirit that was there was something that was unparalleled, and of course, I enjoyed the incredible food was well that was homemade food, and really we like to do these recognitions just so everyone understands that the City of San José is made up of people from all around the world and that's what makes us so great, so strong. St. Gabriel's Church is an example of being in the community of serving the community and bringing the community together, it is in the that spirit that I want to thank you for your church's presence in the community. Mayor if you could present the recognition to St. Gabriel for their great recognition of the City of San José. [applause]

>> Councilmember Kalra: And archbishop we would be happy to hear from you.

>> Honorable mayor of San José, and loved people, I feel a great honor to attend here in this great municipality building. To receive the gifts of the city of San José. Your Honor, we brought to you the ancient church and ancient people, and you welcomed us. We thank you very much. [applause]

>> We thank all of you, thank you.

>> Mayor Reed: Councilmember Constant is going to stay here and we're going to invite people from the harker school to come down to commend them for winning an Inventeam grant from the Lemelson MIT program for their aquatic thermo electric generator project. We have all or part of the team here.

>> Councilmember Constant: Thank you, mayor. As they're making their way down I'll introduce them. Come on down here guys. With us we have Anthony silk, and (saying names) I would like to brag about the students in district 1 oops because we've got quite a number of high performing schools in district 1. The Lemelson-Mit program is dedicated to honoring the acclaimed and unsung heroes who have helped improve our lives through invention. The program was established in 1994 at the Massachusetts institute of technology by one of the world's most prolific inventors, Jerome Lemelson. The goal of the program is to inspire and encourage great inventors through various outreach programs such as the Lemelson MIT inventeams. This is a noncompetitive team based national grants initiative for high school students. I'm very happy to say that the harker school was chosen as one of the 16 Inventeams nationwide for their aquatic thermoelectric generator project. I don't know anything about this technology so I'm going to let them explain in more detail, but my understanding is that it's a solar generator that is cheaper than solar panels, so that's got to be a good thing. Eureka fest at MIT in Cambridge Massachusetts. Please join me as the mayor presents them their commendation and congratulate harker and this group of talented students.

>> Last spring we had an idea. What if there was a device that could harness waste heat and convert it into useful electricity? Since then we've worked tirelessly toward making this idea into a reality. That same spring we submitted our first proposal to the InvenTeams challenge and received feedback. Two proposals and a \$9,000 grant later here we are today. We call our device the aquatic thermoelectric generator. In a nutshell it floats on water and harnesses the heat from sunlight to generate electricity using the surrounding water as a natural cooling system. Since thermoelectric panels are about half the price of conventional solar panels we believe that our device could serve as a cheaper source of alternative energy. Maybe one day we will have thermoelectric

farms on water as well as am we are optimistic about the possibilities and we're grateful for all the support we received from our school our team advisor Mr. Silk and our mentors at Cal Tech and the Colorado school of mines. With the growing energy crisis, we believe it's more important than ever to consider multiple alternatives. Solar cells and windmills are great but we hope to add thermoelectric devices to the picture. Thank you.

>> Mayor Reed: Now Councilmember Pyle will join me. We'd like to invite Priscilla Carrasquilla to join me at the podium.

>> Councilmember Pyle: Registered nursing program at San José's Evergreen college and receiving a BSN from San José State University to become a nurse. For 15 years Priscilla ran the clean slate tattoo removal program, in partnership with the City of San José's mayor's gang prevention task force. The program removes gang tattoos which can inhibit young people from trying to get ahead or search for jobs. Prior to her recent retirement Priscilla Carrasquilla managed several aspects of the program including nursing, organizing volunteer doctors, participating in the community-based steering committee, coordinating with the city of San José, working with the community partners, and securing funds for the purchase and maintenance of laser removal equipment. Priscilla was one of three recipients of the 2011 California peace prize award from the California wellness foundation. And unlike many of us Priscilla is going to turn around and donate the \$25,000 award to the mayor's gang prevention task! What a generous person you are! And so mayor, would you present Priscilla with the award.

>> Yes, thank you very much, but I have to give credit where credit is due and I'm a Christian and when I got this \$25,000, I really prayed about it. And it was quite obvious to me that the lord wanted to bless the City of San José. There are so many wonderful workers here, the mayor's gang prevention task force is a very, very wonderful group, Mario, Sam, Juan is here, so many are here, I would like for to you come up for a picture when we're ready for that. I'm really impressed for what the City of San José has done. I have worked for them, for years, they are very, very frugal they love these kids. I have seen it for years. They could get more money elsewhere, and they don't. Because this is just a priority. And mayor, I just want to congratulate you, and the city council, for putting at

risk youth at the top of your priority list. Because it's a great investment. We see these kids when they first come into the program, clean slate a two or three year program. The tattoo takes two or three years to come off. So we have a great opportunity to have a relationship with these kids. While we are doing that they have to do community service, go to life skills classes, they are hooked up with a lot of programs with the City of San José. It's just wonderful, we see them come in with a chip on their shoulder and I wouldn't hire them. At the end of the time they are transformed. Yes, their tattoo is off, their face, their demeanor is different. It is such a wonderful program and I'm so honored to give this money to them. I know the lord Jesus wants to bless them. I would like them to come up so they can have their picture taken with me. There's a lot of them!

>> Mayor Reed: Start our business tonight with item 4.6, administrative hearing on appeal of certification of final environmental impact report and people of approval of a conditional use permit for the proposed project Moe's stop gas and service station. This may seem familiar to some of you. We've had a previous hearing or two on this. And we're hearing this again tonight. In order to allow everybody to participate. Any additional staff presentation on this? You want to explain the noticing issues, Joe.

>> Joe Horwedel: Thank you, Mr. Mayor. Staff did receive a recent correspondence from the attorney representing the appellant. Staff has reviewed the issues that were raised in that correspondence and staff feels that the response that we provided previously both through the environmental impact report, the public process on that as well as the Planning Commission certification and our staff report responding to the appeal, is an adequate response to the issues raised.

>> Mayor Reed: All right, I have some people who want to speak on this. I have only two cards, anybody else wants to speak please get your card in so I can keep track of everybody. So this is an appeal. So we usually start with the appellant.

>> Joe Horwedel: That is correct.

>> Mayor Reed: Which is different than the applicant typically not always. We allow five minutes on administrative hearings for the appellant and however they want to allocate it between individuals or experts or professionals, whatever. So five minutes. And then we'll hear the other side, or from the public. Yes, sir.

>> Good evening. My name is Jim Dombrowsky. I want to reserve one minute for rebuttal. Including staff for the Planning Department. At the council meeting on November 29th, Councilmember Liccardo indicated that this case was similar to the Hatfields and the McCoys, I wanted to respectfully disagree with that characterization. What this case stands for is compliance with the laws, compliance with due process and equal protection. And I submit that the decision we obtained in favor of my clients from Judge Murphy clearly pointed out that the City of San José failed to proceed in a manner authorized by law, in ignoring the expert testimony that we offered at the last go-round on this issue and they're doing the same in this case. We've offered two expert opinions. One relating to hazardous material and the other relating to traffic. Both of those opinions were ignored. They attempted to bootstrap the opinions formulated by the applicant's own well service analysis with respect to hazardous materials. But they failed to address this issue that we raise which is those reports have to be stated under penalty of perjury and they failed to state those opinions under penalty of perjury and I submit that at the very least the city should require that those opinions that they're using to justify ignoring the EIR pertaining to the hazardous materials those opinions should be stated under penalty of perjury. They're not being accountable. The city's not being accountable and if we're correct and our expert is correct, there is a leak on the property. Albeit on my client's property at the very least there should be accountability and responsibility, the county of Santa Clara clearly requires that in order to give any efficacy to an opinion with respect to this issue about hazardous waste it has to be stated under penalty of perjury which under this case they failed to do. And we pointed that out in my November 1st letter to the planning director and its staff and we submit that that's additional evidence that we submit indicates that the city is not proceeding in a manner as required by law. And as required by judge Murphy's ruling. Furthermore we have offered evidence that the city has retaliated against my clients for raising these issues by filing frivolous claims, administrative citations for cones that were placed on their property at the request of the Planning Department's own staff and Department of Transportation to deal with the traffic issues and now they're being retaliated against for raising those issues for attempting to comply with the cones that the city clearly required them to utilize. And we submit that that constitutes a denial of equal protection, it's depriving my clients

with their due process rights with respect to raising these issues before the city council, before the courts in obtaining a favorable ruling initially by judge Murphy that required them to comply with the laws that have to do with how you evaluate and consider the requirements for an EIR. And I reserve my one minute for rebuttal, Your Honor.

>> Mayor Reed: I think the only other person that wants to speak is Gary Wesley. If anybody else has got a card, this is the time. Mr. Wesley, you represent the applicant?

>> That's right, your honor, how much time do I have?

>> Mayor Reed: I'll give you five minutes.

>> Thank you, your honor, Gary Wesley for the applicants. Mr. Dombrowsky in his letter does not appear to respond to my November the 28th letter to your honor and the rest of the city council. And I prepared a declaration which I'm going to present to staff tonight just to make the record complete and which I have served on Mr. Dombrowsky, and I have a proof of service attached. And included is my November 28th letter to the council with all its attachments and there's nothing new that I'm presenting that you haven't been given before so there's nothing new that you need to read. As to Mr. Dombrowsky's latest letter he seeks to confuse the matter of evaluating evidence and deciding whether an EIR is required on the one hand and evaluating the project in light of an EIR which we have and all other evidence presented. The council is not required to believe anything that Mr. Dombrowsky or his paid experts have presented but this council surely is considering everything presented in evaluating the project. The truth is, that Mr. Dombrowsky's own contamination expert, Bob Clark Radell claims nothing in his report that even bears on the desirability of this project. Clark Radell's report was written for another purpose but it does not even come that anything involved in this project could spread any contamination anywhere. In fact I cited in my letter to the council something better than Clark Radell's unsworn report and that is his sworn deposition testimony in which he confirms that digging, even so deep as to reach and remove contaminated dirt, does not cause any contamination to spread anywhere. That's their expert. So there isn't any

environmental impact here. Everything has been evaluated. The only question is whether this project is in the public interest, and the answer is: It is in the public interest. Thank you very much.

>> Mayor Reed: Thank you, Mr. Dombrowsky, you get the last word.

>> Thank you, first, I think if you look at the testimony that was offered, you'll see that that -- the testimony doesn't at all contradict anything that our expert, Mr. Bob Clark Radell said in his expert opinion said, in the letters as the two opinions that we supported. What he's trying to do is really a question of distinguishing various parts of the property with respect to other parts of property where the leak does occur. I submit that's not the issue. The issue here as I've articulated in my letter and as I articulated previously before judge Murphy the issue really is whether there's any evidence that supports a fair argument that the Shirazi project may have a significant adverse impact on the environment which valley the relevant standard as judge Murphy indicated. I submit we do offer that evidence 50 way of the testimony or the expert report that we've offered and at the very least that has to be examined in context of the EIR for all the reasons that the county of Santa Clara requires that any statements that are offered have to be under penalty of perjury. Thank you.

>> Mayor Reed: Sorry your time is up.

>> Thank you very much I appreciate it.

>> Mayor Reed: That concludes the testimony on this item. Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. Just a question for clarification. Joe, the -- signed it there were two central grounds rased, hazardous soil and ones related to the TDS traffic report. I recognize having read judge Murphy's order for petition writ of mandate, that clearly on page 5 judge Murphy describes his concerns about whether or not there has been some issue raised in traffic analysis but there's no discussion whatsoever about the hazardous materials. Is that your understanding?

>> Joe Horwedel: That's my understanding also, councilmember. That the issues were around the traffic circulation to the site and that we did not have an issue that was to be resolved related to soil contamination.

>> Councilmember Liccardo: Okay, and then by you attempting to address the issues related to traffic impacts and circulation by moving a driveway South, on 1 side of the property, and moving another driveway further, I believe, to the West, if I'm not mistaken away from the intersection --

>> Joe Horwedel: Yes, we did work to relocate some driveways away from the intersection to try to minimize the potential for congestion right there at the intersection.

>> Councilmember Liccardo: Okay, so with that I'd like to make a motion to approve staff's recommendation, fanned there is particular language I need to read into the record I'd be happy to do that.

>> City Attorney Doyle: I do want to make some comments though based on the testimony. First I just want to make it clear for the record that nobody's due process rights have been violated here. We have a full hearing, people have an opportunity to present their case and that's been done. And the same is, this isn't an equal protection issue. This is a CEQA case. This is a CEQA case that went to judge Murphy because the city initially issued a negative dec. There's a fairly low threshold under CEQA, the traffic standards the judge determined that the potential traffic impacts at least there was a fair argument raised that there could be adverse impacts. Your standard now is whether there is substantial evidence in the record to support your determination and you don't have to rely on different experts. It's not uncommon that you're going to get differing experts and what you have to say is in making your determination did you have evidence in the record, substantial evidence in the record to support that decision. In our view you have the staff report and the EIR and we're prepared to answer any questions.

>> Councilmember Liccardo: Thank you, Rick. I agree.

>> Mayor Reed: So the motion includes the staff recommendation. Two items one is regarding the administrative hearing on the appeal and the resolution to uphold the Planning Commission certification and then the appeal of the conditional use permit, and a resolution approving a conditional use permit. So that's the motion in front of us. Any questions? On the motion, all in favor, opposed, none opposed, the motion is approved. I'm sorry. Okay, clerk, you have the motion and second? Okay. I wanted to make sure we had it properly identified. That concludes item 4.6. Item 11.2. Would be the next item, street renaming to change a portion of old bay shore highway. Motion is to approve.

>> Councilmember Liccardo: Mayor, I should disclose I believe I've met with Eric swallow or at least I had a conversation, it might have been over the phone.

>> Mayor Reed: All right on the motion Councilmember Campos.

>> Councilmember Campos: I also want to disclose I have had a conversation with Mr. Swallow on this issue also.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Closure to help.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: Same.

>> Mayor Reed: Councilmember Nguyen.

>> Councilmember Nguyen: Same.

>> Mayor Reed: My staff probably talked to them, too. I'm not really sure. On the motion. All in favor? Opposed? None opposed, name change is approved. Item 11.3, rezoning property at the South side of Paula street. Motion is to approve. On the motion, all in favor? Opposed? None opposed, that's approved. 11.4, a rezoning of property southwest corner southwest expressway, motion is to approve. On the motion, all in favor? Opposed? None opposed, that's approved. Open forum, no cards. Concludes our work. We are adjourned. Last meeting of the year don't come back next week.