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>> Councilmember Nguyen: At this time I'd like to call the Public Safety, finance and strategic support committee to order. We will begin with item B, review of work plan. I believe we have two corrections and that is on B 3 and 4, which we were requested to forward to January 2010 rather than February 2010. There are any other corrections?

>> Ed Shikada: No, that's it, Madam Chair.

>> Councilmember Nguyen: Okay.

>> Councilmember Constant: I'd like to make a motion for all of section B and add in item D6, a deferral of the executive home loan program until January 2010.

>> So moved.

>> Councilmember Nguyen: We have a motion and second to defer all those items. All in favor? Opposed? Hearing none, item carries. Thank you. We can do that when we get to the reports to committee. Okay, we'll move down to items on the consent calendar. I actually have a -- someone who wants to speak on C 1. Mr. Wall. Welcome.

>> David Wall: First of all, it is very good to see you the last meeting of the year. There is a question about this report that I would like to see, personally like to see at your own consideration for next reports would be the addition of vacancy rates of all RDA high density living projects in relation to their ability to service their debt. And at what point will the service of their debt be irreversible insofar as heading towards bankruptcy? And keeping in mind the effects of the possibility that Senate Bill 88 will pass. Thank you.

>> Councilmember Nguyen: Thank you. Are there any other questions on the consent calendar?

>> Councilmember Constant: Just want to make a comment. Right before I make a motion. I know I had made comments in previous meetings about cash balances, and I've had discussions with Jennifer with the budget office and I know that finance is closely monitoring. But if you refer to I guess it's page 1 of the finance report, where you have all the charts that start, we continue to see an extremely low cash balance. And I just think it's important to this committee that we continue to keep a close eye on that one particular issue, as these reports come forward. And with that I'll make a motion to approve the consent calendar.

>> Second.

>> Councilmember Nguyen: Thank you we have a motion and second to approve the consent calendar. All those in favor? Opposed? Hearing none motion carries. We'll move down to item 3, reports to committee. On item D-2 it's requested earlier that Team San José would go last. I think the representatives are currently in a meeting so we can take that last on the item. So the first item we would hear would be fiscal year 2008-2009 audit of the Hayes mansion. Welcome, Scott.

>> Scott Johnson: Good afternoon, Madam Chair, members of the committee, Scott Johnson, director of finance. We don't have an enrollment presentation. I will say that there are representatives of Dolce that are here today that are under contract to manage the Hayes Mansion. In addition, the auditor from Macias, Gini and O'Connell is here as well, and is here at the pleasure of answering any questions the committee may have in relation to both of the reports related to the Hayes Mansion. Actually, three reports, there's the financial report, the agreed upon procedures report, and then there's also the management letter. So you have three reports in front of you for your consideration.

>> Councilmember Nguyen: Thank you. Councilmember Constant.

>> Councilmember Constant: I have a question on the -- it would be page 3 of the report, which is the at the same time of revenues, expenses and changes in net assets. I noticed that in the operating revenues, we have them broken out by types of services. But operating expenses aren't. And one of the areas that seems a little bit disconcerting is the relatively low amount of income through the spa and gift shop. And I was wondering if we can see what are the expenses related to that line item, and if we're doing anything to evaluate whether that is something we want to continue to subsidize, so to speak, if it's a serious loss area.

>> Scott Johnson: Sure. Councilmember Constant, related to the spa, the spa actually we implemented a new model several years ago. Where we -- Dolce used to run the spa, and it -- we ended up where we were in a loss situation, and the net loss for the spa operation. What we do now we basically lease the spa facility, so a private company actually runs the spa and we receive a net revenue from the spa operations. This shows a revenue coming in as a result of the spa operations. So this is a net of the expenses related to the spa.

>> Councilmember Constant: Okay, good, thank you, because that wasn't apparent anywhere in here so I appreciate that. Just an editorial comment. We had our budget meeting this morning, and I think this is one area where we approach our budget where we really need to look at the business model in our holdings here at the Hayes mansion. There is a lot of money going into this operation every year, with not a lot of tangible return. So I think it's something that we're going to have to continue to keep a very close eye on. And really evaluate whether this is where we want to be spending our scarce taxpayer dollars, when we're not providing all the essential services that we ought to be providing to our residents.

>> Scott Johnson: Councilmember, if I could add a couple of comments related to this. Here I just want to comment and I know the council really has commended Dolce for their proactive center for driving revenues for the convention center. They've done a really good job on that. Unfortunately, based on the economy, the occupancy rates are down as well as the room rates are down. And so finance, we meet can the management team at Dolce twice a month. We look at the operations. They've been really proactive in cost reduction measures. And so we want to commend them for that. But to your point we are seeing where challenges are, where we're seeing where we're not able to cover the operating costs from the revenues that are generating. So one of the items on the city's asset management plan for next year is to -- Dolce Hayes mansion is one of those items. And I'm having a meeting next month with our general services director along with Mr. Diamond from Horwath who is our asset manager for Hayes mansion. So we can look for other opportunities and maybe present some alternatives to the council on how we potentially look at alternative uses or how we continue to look at efficiencies in regards to the conference center operations.

>> Councilmember Constant: And I didn't mean to imply that Dolce wasn't doing a good job with what they have to work with. I'm more concerned about the business decisions that previous councils have made in an investment that is so high and debt service that is so high on an annual basis that the business model itself, I don't think has any opportunity for success in the environment that we have.

>> Councilmember Nguyen: Were there any other questions? Do I have anyone in the audience who wishes to speak on this item? I just wanted to thank the auditors office for -- and Scott your office for putting together such a good report. I concur with Councilmember Constant's comments. I think this is definitely -- it's not an asset to have in the City of San José. Although we appreciate what Dolce international has been doing with the limited resources they have. But I think these are one of the assets that needs to be evaluated as we move forward, in order to make sure that we maintain what we have, but at the same time, looking at the debt service and figuring out if this is the right approach for us. Can I get a motion?

>> Councilmember Constant: Motion to accept the report.

>> Second.

>> Councilmember Nguyen: We have a motion to accept the report, those in favor say aye, opposed, that motion carries. Thank you. Move down to item 3, fiscal year 2009-10 first quarter revenue collections strategic plan report.

>> Scott Johnson: Thank you. This is our first quarter revenue collection report. We have a report that's similar in format to what we've presented the committee in the past. Basically this shows the return on investment that we have in our proactive revenue collection businesses and programs that we are currently engaged in. And we compared to the previous year first quarter. The other thing I do want to call attention to the committee is that per the policy and direction from the council, we are including periodically a review of our accounts receivable, our debts that are owed to the city, and there's a list attached with a recommendation that you forward to the city council for approval the writeoffs in the report that total 126 accounts of approximately \$1.7 million, where we've either exhausted our ability to collect, due to the statute, there are various reasons that we outlined for the purpose of the writeoffs. To the extent that we're still able to try to collect on it, we'll not give up on proceeding in those collection efforts. But to the extent where the statute of limitations has run out or there's a bankruptcy, those type of situations we cannot legally proceed in pursuing collections. So with that, just requesting, we're available for any questions that you may are.

>> Councilmember Nguyen: Thank you. Councilmember Constant.

>> Councilmember Constant: I have a question on the writeoff spreadsheet that we have. There's a significant number of writeoffs from Planning, Building, and Code Enforcement. Specifically in the areas that where the administrative citations and administrative remedies. And when I served on the appeals hearing board, I recall being told that we were putting the liens on the property which I see there were liens but they were unpaid. I read the asterisk. We were informed that the liens were attached to the

property that and that they must be paid upon the sale of the property. And now what I'm seeing here is that it's saying that the liens are on the person, not the property. Or the property owner, not the property. I'd like to -- and I know you may not have the answer today, but I would like to hear, where is that and what can we do? What are our alternatives? Because if you add up these numbers, almost all of them are \$10,000 or more, some of them are over \$20,000. There's a significant A money. I can't add too quickly in my head but probably more than a quarter of a million dollars that we're seeing here is uncollectible. My first question is what is it in the lien process that we are doing or not doing and what are our legal limitations, why they're on the person and not the property and why we're not getting the money at the time of transaction and my second is, if they are on the person what efforts do we take to collect from that person other than just the lien on the property?

>> Scott Johnson: So councilmember, it sounds like you want a comprehensive response. We can work with the attorney's office in Planning, Building, and Code Enforcement, with an information memo that comes back to the committee, specifically why it ties to the person and not the property. We take other proactive measures in regards to skip tracing, we assign to collection agencies, and we also work with our attorney's office and we also go to small claims court. There are a number of different avenues we have in options to pursue the collections. But specifically to the type lien, different liens have different legal parameters to them and it would be probably best to provide an information report.

>> Councilmember Constant: Okay, and I think that would be important for the members of our appeals board commission to know, as well, because I know a lot of times decisions were made by the body because there was a confidence level that the city was definitely going to get its money, but now it doesn't seem to comport with that.

>> Scott Johnson: Thank you.

>> Councilmember Nguyen: Are there any other questions? Is there anyone in the audience that wish to speak on this item? Okay.

>> Councilmember Constant: Motion to accept the report.

>> Ed Shikada: Madam Chair, if I may make this report, I believe this is scheduled or recommended for a cross reference to go to full council.

>> Councilmember Constant: That would be part of my motion along with the request for information.

>> Councilmember Oliverio: Second.

>> Councilmember Nguyen: Okay, we have a motion and second to accept the report, cross reference for full council discussion, and an info memo to be distributed shortly. All in favor, opposed, that passes. We'll move down to number 4, audit of pensional earnings and time reporting.

>> Sharon Erickson: As we get our act together here. Thank you very much. Just to lead this off, the City's pension contributions and pension benefits are based on employee pay and hours. That's why this report was important to us. If you look on page 6 of our report, there's a little flow diagram that shows you the river of information that's flowing from employees entering their time cards through timekeepers through payroll and then over to the retirement system. It gets accumulated before it goes over to retirement. So this was the process we were auditing. And the objective of our review was to look at these processes as they impact the reporting of pensionable earnings and pensionable hours as well. We had three findings. The first was that we had some errors that resulted in higher pensions that should be paid. The second is that time reporting codes are unclear and in some cases duplicative. The third, some pensioners benefit from the city's definition of earnable income and highest salary. The first finding, errors in pension calculations, we reviewed pensionable earnings for employees retiring in 2007 and 2008 in both the Police and Fire and Federated retirement systems. We found some employees received inflated pensions because individual retroactive salary increases weren't spread across pay periods correctly. The system is working just fine when we do a mass retroactive increase. So for a whole bargaining unit or a whole classification of employees. Where it breaks down is where there's an individual increase. We did find four, it's not extensive but we did find four retirees who mistakenly receive inflated pensions because of this. We estimated the potential lifetime difference over their lifetimes is about \$650,000 total for the four people. The second issue we identified was that higher-class pay and its management equivalent were erroneously included in base salary for pension calculations. This was a computer coding error. We did find one mistake in the application of the pay codes but it was a computer coding error in that the list of pay codes included this one ticked off as pensionable so the information was being accumulated and sent over to the pension system. We estimated for the ten individuals that we identified, the potential lifetime difference in pensions for all ten of them was about \$925,000. In addition, the city administration, before we started our review, had already discovered that a portion of

nonscheduled overtime hours were incorrectly pensioned for fire department employees. If you look on page 14 of the report we tried to explain what is still to many of us an incomprehensible situation. But if I could just walk through this one very briefly. In the first -- in the upper left-hand box you have the example of a city painter who worked 40 hours and worked eight hours of overtime. If you follow that to the right, the 40 hours of regular work are pensionable. The eight hours of overtime paid at one and a half times the employee's hourly rate is not pensionable and we confirmed that. For a firefighter it's a little different because firefighters work on the 24-hour schedule. So they work a total of 212 hours over a 28-day cycle. In this case, the firefighter worked 224 hours of regular time, and ten hours of overtime, unscheduled overtime. So this is how it breaks down. The 212 hours that I mentioned previously are regular hours paid at the regular rate. Then there's 12 hours that are regularly scheduled, as part of the 24-hour shift, that are paid at one and a half times the employee's hourly rate, including premiums, and that is pensionable. So both of those are pensionable. The ten hours of unscheduled overtime or filling in for somebody or getting paid back is paid at one and a half times the employee's hourly rate including premiums but that is not supposed to be pensionable. Because of a computer error, again, it's one of these internal systems, things go into the black box and you need to make sure they're correct, because of an internal error, ten hours of that unscheduled overtime was being pensioned. The current estimate for the dollar impact to that is approximately a million dollars in city and firefighter contributions. In February 2009 the city corrected the error going forward and has calculated those amounts that are potentially owed. On the retirement system was waiting pending completion of our audit and the retirement boards had also requested an audit by Macias Gini and O'Connell. And there are some additional potential issues with firefighters union regarding holiday in lieu pay. All of that needs to come together for the correction to happen. We did verify the corrections that payroll had made, and to date we believe those calculations are correct. We made a total of six recommendations in these areas to improve processes, correct errors and clarify pensionable income. The second finding in our report was that time reporting codes are unclear and duplicative. There's Wynn 44 different time reporting codes, 233 earning codes. Those are shown in appendix B of our report. It goes on for a few pages back there. 60% of those codes as we note in the appendix, we don't believe have sufficient clearly documented support, either in MOAs, in the Muni code, in city policies, council resolutions or various other laws and resolutions. So we need to get those codes mapped out. We did find some instances where codes have been used improperly. These were relatively minor instances of employees taking more time than allowed under a city policy for cancer screening release time for example it's limited to three hours per calendar year. We found that some folks had taken more than that. Unpaid furlough leave is limited and we had found certain folks that had taken more than that. We made a total of six recommendations. Those include periodically culling the duplicative or unused codes, ensuring codes are only available for use by applicable work groups, periodically reviewing codes to ensure they are being used correctly, conducting regular training on all of these codes, and providing written procedures to timekeepers and time approving supervisors. The third issue is a broader issue, and that's that during the course of our review we noted two areas where the City's current policies don't necessarily lead to outcomes that are in the City's best interest and are costly. These are agreed upon items, so we're recommending we put them on the table for discussion in terms of a second tier or whichever direction the city chooses to go. First off, employees in the federated plan receive a pension not based on the actual salary that they're paid but based on the salary that's earnable. For example, an employee on a base salary of 32 hours a week who earns let's say 6500 per month in his highest year would have only paid contributions on that amount. However they had an earnable salary of about \$7500 a year or per month, I'm sorry, per month, by using the base salary earnable and calculating pension benefits instead of what they actually earned, this employee would receive a pension that is 16% higher or about \$400 a month more than if they had been paid a pension based on the hours and based on their actual salary paid. Again, they contributed on the lower amount, on what was actually paid to them, but they're earning a benefit at the higher amount. This is agreed upon, it's in accordance with our MOAs and the Muni code. Federated employees also receive a service credit for a year of service even if they miss or are unpaid for as much as eight and a half weeks out of a calendar year. This is the 1739 hours versus 2080 hours. This again is a federated provision. This is not true in police and fire. We found the difference for four retirees that we reviewed in our audit, could have been as much as \$700,000 in the difference in total lifetime pensions for these employees. The second issue, large issue was that basing the final salary on the highest 12 months instead of three years can also result in much larger pensions for some employees. Three employees in our sample received promotions in their last two years of service. Using their highest average 12-month

salary instead of a three-year average increased their pension amounts by as much as 8%. The savings from moving to a three-year average for just those three retirees, we estimate could be as much as \$2.5 million over their lifetimes. That's for all three of them total. We made a total of three recommendations in this area to consider amending the Muni code, to redefine final compensation and hours of credit and to return to a three year average in calculating pension benefits. There are a total of 15 recommendations in this report. As with any audit report, the recommendation stated here represent my office's best effort at addressing the problems that we've identified. The actual implementation, the hard part is within the purview of the administration and actual administration may take a slightly different form than the recommendations we have here. Some of these recommendations are subject to meet-and-confer and may be subject to additional legal analysis. I want to thank the finance department, the retirement services department, human resources department, especially the office of employee relations and the city attorney's office for their time and insight during the audit process. I want to thank Steve Hendrixson, Jasmine LeBlanc and Diana Chavez from my office. I do want to give a shout-out from Dan Katamoto from payroll who is the person down in the depths of the bureaucracy who actually makes this stuff work with a huge flow of information. The administration's response to the audit and the recommendations are in yellow, attached to your report. In general the administration agrees with these recommendations. The office of employee relations coordinated the administration's response is here to provide some comments and answer questions as well.

>> Councilmember Nguyen: Thank you, Sharon. Alex, did you have something to add?

>> Alex Gurza: Yes, just briefly. Alex Gurza, director of employee relations. I don't want to take more of your time. I think Sharon did a great job of going through her office's audit. These are very complex issues, and as Sharon indicated, not until you get into the depth of the programming do you then find things where you know, it's not being done correctly. For the most part everything is being done correctly but I think what the benefit of this audit does is it shows things that we need to fix. And clearly anything related to retirement is quite complicated so we're going to be working very closely with the attorney's office and the various departments, retirement service and finance specifically to implement the recommendations of the audit.

>> Councilmember Nguyen: Thank you, Molly.

>> Good afternoon, I'm Molly Dent, from the city attorney's office. I'm the attorney that works with the retirement board. We did appreciate working with the City Auditor's Office and City staff on looking at the audit. We have a few comments on additional direction that the committee may want to include in their recommendation to the county. We're not suggesting that the committee or the council should not accept the auditor's recommendations at all. Actually, our comments kind of assume that that would be the direction. So we thought that there was maybe some need for some of the -- some direction on implementation because we will be working with staff assuming the audit report is accepted to implement. So our suggestions for additional direction for staff were, in only three areas with respect to finding 1, and that's the higher class pay. We thought there might, council might want to consider directing staff to implement measures to ensure that higher class pay is used only for limited periods of time. If you read the audit report you'd see that there were some instances where higher class pay has been used for fairly extensive periods of time and that makes the situation worse. We also thought there might need to be some direction to staff on the implementation of recommendation number 4, to begin by correcting payroll records for active employees. Because once payroll records for active employees are corrected it will automatically flow through to the pension calculation. And the final additional thought that we had was that we need to work closely with the staff in determining what code amendments are necessary. Our office needs to work closely with staff in determining what code amendments are necessary under recommendation number 4 and we think the code amendments were probably intended to address pay for both represented and unrepresented employees not just represented employees. So that -- those were just our additional comments for -- as we go forward with implementing this.

>> Councilmember Nguyen: Thank you, Molly. Questions from committee members? Councilmember Constant.

>> Councilmember Constant: Thank you. Thank you. First of all, I'm always amazed at how your staff can get in to all these different technical issues, completely unrelated and figure them out. It's pretty impressive. I think the area that concerns me the most, and this is something that has bothered me since I got on the federated board as a trustee, is the crediting partial years for full years and the implication it has, and you know before we had experienced the marketing losses, the federated fund was somewhere in the 80% range. And after the crash, I don't know if you want to call it a crash, but a crash is what I think

it is, it is probably down in the 60s, high 50s, low 60s. And when you have things like this it's no wonder we can never catch up and get to 100% and this is a serious thing. Because not only is the employee not paying their benefit, their contribution, neither is the city. So it's a double whammy. And we come up with quite a huge number. I know it would probably be a actuarial nightmare but I'd love to see just how much this one factor has contributed to the underfunding of the pension plan. But I think this is something that I think no matter who you ask, paying someone a pension on what they could have earned, versus what they actually did earn, it would be surprising to probably 99.99% of the people, that you give this one fact to. So I think it's something we need to address. And as Sharon pointed out it makes a difference of 16%. That is a huge difference. Especially given the length of time we pay pension benefits out to people. So thank you.

>> Councilmember Nguyen: Thank you. Questions? Councilmember Oliverio.

>> Councilmember Oliverio: I just make a motion to accept the report and with the recommendations coming from Molly and the attorney's office and it's recommended that we cross reference this for council, what is the preference from the committee.

>> Councilmember Constant: Second.

>> Councilmember Oliverio: Mr. Gurza.

>> Alex Gurza: Yes, I did have one comment. Clearly, there is going to be a lot of work and discussion. There is one recommendation the City Attorney's office is making that I think could be a little difficult. The issue of higher class pay being a limited period of time. Higher class pay is a creature of the union contracts. It can vary from anywhere from an employee who fills in for their supervisor for four hours to someone who fills in for their supervisor, if their supervisor let's say gets injured on the job and disabled. So to say limited period of time again is I don't want to mislead that there is any definition of what that might be because higher class pay there's very good reasons for that. An employee is entitled to be paid when they're filling in and again it could be for four hours it could be for four months it could be longer. So I just wanted to point that out, we have to be sure that we are implying with who employees are entitled to.

>> Councilmember Nguyen: Thank you, Alex. I guess I have just a general question. Sharon, you mentioned that for the 10 employees who receive payments because of the computer error, which equal to \$925,000, and I think I understood, you mentioned that we're waiting for the retirement board to consider this and what they're going to do after the audit comes out. Are we able to recover that money, or what's going to happen?

>> Sharon Erickson: Are we talking about the FLSA? The one issue is the higher class pay, the 900,000. It is a similar issue to the FLSA issue, where people contributed more than potentially they should have. They may or may not be receiving pensions on that amount, depending on whether they're retired or still active. I'm going to throw it to the attorney's office to how we go about correcting that.

>> For active -- that's why one of our recommendations was to start with the active employees. For active employees it's much easier to adjust the pension contributions on the city side and on the employee side than it is once someone's retired and they already started withdrawing the pension and drawing those accounts down. In both cases it's easier to start on the active side and there has to be some case-by-case looking at the retiree side.

>> Councilmember Nguyen: Okay, thank you.

>> Councilmember Constant: I have one more.

>> Councilmember Nguyen: I'm sorry, Councilmember Constant.

>> Councilmember Constant: On the higher class pay, there's really two ways to look at it, one is what Molly brought up the temporary assignment and limiting how often we use it but quite frankly the other, redefining whether it's pensionable or not. I think that's something we should be looking at, whether a temporary assignment, whether it's four hours, four days or 40 days, should be in the pensionable category. And given the point we are at with all of our open contracts coming up, I think that's something that we should look into and then perhaps if we don't, aren't able to achieve that at the bargaining table then come up with the policy --

>> Well, actually the audit report recommendation and conclusion is that that pay is not pensionable.

>> Councilmember Constant: But it's in the chart as being pensionable.

>> It was as a result of the programming error pensioned. Our recommendation really on the limited period of time, Alex is correct. We're not trying to define it. The administrative policy on higher class pay says that it's to be used for a limited period of time. Our only comment is there needs to be some -- there need to be some measures in place to kind of ensure that that's what happens. So.

>> Alex Gurza: Just to clarify. This is the one area, the higher class pay where the city auditor found what we consider an error. So in the system, right, the way it works is that employees get paid many different types of pay, as you know, overtime, special pay. And pension contributions for those that are pensionable get taken out and in-cent over to the retirement fund. Not until we looked under the hood so to speak that the higher class pay was being pensionable, we agree with the auditor that that is an error. Not something that -- the union contracts don't say it shall be pensionable. Going forward is a much easier fix then trying to look as indicated earlier what do you do with people who already retire.

>> Councilmember Constant: Alex, on the hirer class pay do we know how much of it is temporary in nature like the ones that you just mentioned? Because if the supervisor is sick or on family leave or whatever the case may be versus when there's a position opening and people aren't being promoted into that position and are working higher class?

>> Alex Gurza: No we can definitely run reports for you. It's going to vary because even by union contract in some cases the higher class pay doesn't even trigger until you have done the higher class assignment for a longer period of time. Whereas for example in some contracts even four hours gets that for you. But we can run some reports to give you a sense of what is that very short duration versus, somebody retires, for example, that position is vacant, while if it is a position that can be filled then somebody is going to fill in. That generally is going to be for a longer period of time. We'll look into that to give you some statistical reports.

>> Councilmember Constant: Okay, thank you.

>> Councilmember Nguyen: Is there anyone in the audience that wishes to speak on this item? Okay, we have a motion and second and we will cross-reference this for full council discussion. All those in favor, opposed, hearing none, motion carries. Thank you. We will now move down to item 5, external quality control review of the City Auditor's office, San José.

>> Sharon Erickson: Sharon Erickson, City Auditor. This is the audit of the auditor. Our peer review team came and met with you last month, and we told them that they didn't need to come back this month. So this is their report to you. I'm happy to answer any questions about it, just very briefly, they did find that our system of -- our system is working to provide reasonable assurance of compliance with government auditing standards. They had some nice things to say about our office and they also made a few suggestions. Auditors always have recommendations and here are a few that we need to clarify some language and make sure our independent statements are filled out timely and so on, so forth. I'm happy to answer any questions and otherwise I thought it was good news.

>> Councilmember Nguyen: Wonderful news. I just wanted to thank you Sharon and your team. I think you are doing a really fantastic job but this is really impressive to get a second opinion especially from an outside auditor. So congratulations and keep up the good work.

>> Councilmember Constant: Difficulty toe.

>> Councilmember Oliverio: Yep.

>> Councilmember Constant: Motion to seven.

>> Councilmember Oliverio: Second.

>> Councilmember Nguyen: We have a motion and second to accept, all in favor, opposed, hearing none that is accepted. Item 7, quarterly report on workers compensation.

>> Good afternoon, John Dahm manager. I have a brife presentation on the memo that we sent to you and open to any questions that you may have. Just to start out with, the information is the first report that will be sending you every quarter on the cost of worker comp and claims away e-and what we are doing to control cost and claim. And this report comes out of the audit recommendation this year, that we should report through the committee and to the council to put this issue on the front burner. So with that, I'd like to start with some good news. As of the end of October, 2009, we spent \$5.1 million in General Fund for expenditure and the year end projection is 15.3, versus a budgeted of 15.75. So we are anticipating \$400,000 under budget. It's too early to have fund projection. But if this trend continue we expect to have that saving. Most departments are projected to stay under budget with the exception of probably fire department. We are projecting \$5,000 over budget for fire, and the main reason for that is that the temporary disability and permanent disability payments for firefighters has increased by \$330,000. And the attorney fee that we pay for the claimants also increased by 13%. So those add up almost \$400,000 account for the projected increase in cost in fires. The major components of cost that we pay is the medical indemnity and other. And medical account for 54% of total cost in damages, 45%, in other cost like rehab, printing, copying account for the last 1%. The breakdown, medical cost in damages is mostly true for police and fire, roughly half and half. For other departments, most of the cost is for medical

treatment. Not as high for indemnity. One additional cost is not included in the General Fund, citywide appropriation is disability leave. And this cost is paid out of the department budget. So far this year as of the end of October we paid \$2.46 million in disability cost. As compared to \$2.6 million last year, and the year-end projection is \$7.4 million in disability leave cost as compared to last year, 8.2. So we're projecting a decrease of \$840,000. The next item I'd like to present to you is the claims analysis. Again, good news, as of the end of October we have 325 claims. Half are indemnity, half are medical. So a year end projection in 975 claims, as compared to 1159 last year. If this trend holds, it will be the lowest number of claims we've received in the last ten years. Lastly, what we are doing citywide to control cost and claims, four specific items I want to bring to your attention. This first one, the cost allocation, starting this fiscal year, the citywide appropriation has been divided into six smaller appropriations and assigned to, the first five to the big five department to this fire, D.O.T, General service and PRNS. And the last appropriation for other city departments. We are keeping track of costs right now at the department level and we are having meetings with the department every quarter or more as needed to identify trends, good cause to find way to control cost. So that's the first item. The second one is, we conducted a safety culture assessment as a pilot program to find way to strengthen the culture of safety. D.O.T. was first piloted department. We finished the assessment and D.O.T. is now implementing the recommendation and allowing the recommendation focus on increase accountability for safety from all levels of the organization. Along that line, the next item is accountability for safety. Starting this year departments are now required to report on all safety violations and any subsequent dissimilar actions. The first report is due in January. After that we present the report to this committee. And lastly, we have expended in the work program to focus on claims with high disability usage, to find ways to assist the employee to return to work as soon as appropriate. That includes my presentation.

>> Councilmember Nguyen: Thank you John, are there any comments or questions from the committee? Councilmember Constant.

>> Councilmember Constant: Yes. One of the concerns I have, it doesn't seem to be addressed here in an effort to control cost and I've brought this up before is, managing the requests for treatment in a way that is more effective, so we get people back to work quicker. And I've brought up examples in the past about people waiting for either an approval, for something that might cost, say, \$2,000, but they're kept off four weeks before the approval comes in, so we spend \$6,000 paying them to be home waiting for their approval. And -- or in my case, and I think I've said this before, is I've been through the disability process and the workmen's compensation process with the city, where a doctor will write a note on something that I need or have needed, and it will get rejected by the independence review, the Mitchell corporation, because sufficient documentation wasn't provided when we know we have all the records from an employee from the date they were injured and every treatment they have had and the only remedy seems to be for the employee to go back to their doctor which is another charge for a meeting, another appointment and have that doctor make copies of the reports that we already have and then submit an additional report tying it all back together to go back or the approval through an appeals process, which then they have 21 days to address or you have 21 days to get your approval or your appeal in and then another 21 days. So in the meantime you have an employee out of work for six weeks, and in one particular example, with me, one of the denials say we have no history of lower back symptomology, when the city paid hundreds of thousands of dollars have a reconstruction done on my spine. So we know that I had it, but we don't give that information to the review company. So I'd like to really see in our next report what we're doing in those two specifically areas, making sure that we provide the data that we have, so that authorizations can be approved more timely without incurring the extra cost of additional medical visits and doctor's reports, what we're doing when we know we have people that kind of fit in this last category, the higher risk people in the higher claims, what are we doing the move them through the system quicker so we are not paying them to be home waiting for a phone call saying you're approved?

>> Councilman, a couple of things we are doing now, is that we have same information with the treating physician. So that when they send a request to us they send full documentation. And we can assist the physician to provide information. Right now, when we receive the request from the physician, we don't automatically send the entire medical record of the employee something that could be that thing to Mitchell. That is simply a lot more information that they need, they may only need half of that. We are relying on the treating physician to give us documentation. If the documentation is not complete, we will work with the physician to get the information. That is something we do now.

>> Councilmember Constant: Yeah but we pay a doctor's office to recreate documents we already have. Why do we look at just having a document management system or a electronic file that Mitchell can

access? If they have a question about Pete Constant, because they're looking at my report, trying to find out if I need to have the disk replaced in my neck, they can look through the history without going through that process. Because every time you ask the doctor for something it costs us money.

>> That's correct. The challenge with that that we hope to work on is, we don't have electronic document managing, so everything is hard copy. So Mitchell right now cannot look through that binder to find out what they need.

>> Councilmember Constant: I think that's an area we should look at because I think the return on investment we would see numbers like what we're seeing out of the Clerk's office where we would get a positive return on our investment within the first year. And I think it's something that we not only owe it to ourselves to manage the cost, but we owe it to the employees who are sitting a thome one week, five weeks, eight weeks waiting to get a treatment they know they need.

>> Councilmember Nguyen: Thank you. Any other comments?

>> Councilmember Oliverio: Comment on Councilmember Constant's comments. I think we would still have to budget the time to scan every doctor's piece of paper into the system. So there is inevitably someone's time on our side to do that. How much time that is, I don't know.

>> Councilmember Constant: Most doctor in workers comp already do it electronically. But we don't allow them to submit it. We put it in the file so we go from electronic to paper instead of the other way around. So why could streamline this fairly quickly at least on a go-forward basis. I know a lot of times, we look through this and say we have a mountain of stuff to do behind us. We can keep that mountain and prevent the next mountain from coming. Because we know, 7,000 employees, some doing very dangerous jobs are going to have claims. So you can start somewhere.

>> Councilmember Nguyen: Thank you. Is anyone in the audience that wish to speak on this item? Okay, can I get a motion?

>> Councilmember Constant: Motion to accept.

>> Councilmember Nguyen: We have a motion and second to accept. All those in favor? Hearing none, accepted. Last item, fiscal year 2008-2009 audit of the San José convention center and cultural facilities.

>> Scott Johnson: Good afternoon, again Madam Chair, members the committee, Scott Johnson, director of finance. I'm joined here with Dan Cunningham the CFO for Team San José. You have the audit. I would also like to mention that Craig boyar from Macias Gini and O'Connell who conducted the audit is here as well to answer any questions. You have two reports in fronts of you for your consideration today. The first is the independent auditor's report, that includes the convention center and the cultural facilities ended June 30, 2009, that report includes the auditor's opinion which is a clean opinion related to the financial transactions on the convention center and cultural facilities for the year. In addition there is the committee report otherwise known as the management letter and within the management letter there are a couple of recommendations. That the city has worked with Team San José, Team San José has provided response, and we are available for any questions that you may have in regards to both of these reports.

>> Councilmember Nguyen: Thank you. Questions or comments from committee?

>> Councilmember Constant: I know we're just kind of looking at dollar numbers right now, and it doesn't really talk about visitors but I think it's just important that as we go through this, since there's so much attention given right now with the convention center expansion and the issues that we've been talking about, this week in the budget and things like that, that we talk about the visitors and how many people are coming to San José, and kind of those other numbers. And we know that what, over a million people visited San José last year? So I was just wondering if, from Team San José, you could have any of those numbers with you today to give some context to those numbers?

>> Absolutely. Last year for the fiscal year there was about 1.2 million visitors which represented about 118 million in economic impact to the city. And those visitors heard ail the cultural events, convention, and that's local, and out of town visitors as well.

>> Councilmember Constant: Great. And then what about how we're sitting with fund 536, and any trends there that we should be looking at or talking about?

>> The fund 536, the unrestricted balance from 07-08 to 08-09 actually grew 1.1 million. So we have an ending unrestricted fund balance of 8.8 million which has grown since we've taken over when we started five years ago there was actually a negative unrestricted balance of about 800,000. Obviously as we go into this year we have to be cognizant of the fact that revenue is soft at the convention center because of the economy and also T.O.T. and so we're working to protect the fund balance especially going into the convention -- essential convection center expansion.

>> Councilmember Constant: And then in the last year there was a change in how the center has operated with the food and beverage. Can you give us any insight how that may or may not have affected those numbers, if there's something we expect to see next time we're seeing this kind of report?

>> Absolutely. In June on as a matter of fact June 24th, I remember that very well. We took food and beverage over from the outside vendor which was center plate. We expect to have an additional positive 230,000 in revenue. When center plate operated we received a commission which averaged about 25% and this year through four months we're tracking at about 30% on the bottom line. And so besides the money aspect we actually control the food and beverage and so we can actually provide even better service to the customer by having direct control over the food and beverage in the operation.

>> Councilmember Constant: Okay, I think that's kind of most of the areas I'm interested in.

>> Councilmember Nguyen: Thank you, other committee members? Councilmember Oliverio.

>> Councilmember Oliverio: Scott, on the 6.2 million we donate -- or we fund every year, most of that comes from T.O.T, is that exclusively to T.O.T?

>> Scott Johnson: Yes, this is T.O.T. revenue.

>> Councilmember Oliverio: Then if T.O.T. receipts go down, have they gone down far enough to where other moneys have had to come in? As a source of funds or something?

>> Scott Johnson: As is earlier indicated, the fund actually has grown from previous years. So we still have a positive fund balance in fund 536.

>> Councilmember Oliverio: Great.

>> Councilmember Nguyen: No one else? Okay. Anyone in the audience that wish to speak on this item? None.

>> Councilmember Constant: Motion to accept the record report.

>> Councilmember Oliverio: Second.

>> Councilmember Nguyen: We have a motion and second to accept the report. All those in favor say eye, opposed? Motion carries, thank you. Okay. I any we are done with all the items. We'll now have the open forum. Anyone who wishes to speak on any item that is not on the agenda today? All right, seeing none, meeting's adjourned. Happy holidays, everyone.