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>> Matt Loesch: For the Federated city employees retirement system. Under orders of the day, item 24A is rescinded or cancelled. And other than that I don't have anything else that needs to be modified for the agenda. Anything else we need to talk about? Other than that we go in the order that's posted. 2.4A is cancelled. Okay. So we're going to go on to item 1.1. Approval of staff recommendation to deny change of status to service connected disability, the applicant is here. Margaret Licon. If you would please.

>> Donna Busse: She is 57 years old with 23.47 years of service. Medical report service in your packet. There are no work restrictions given by Dr. Das. And therefore there would be no alternate employment or modified duty memos.

>> Matt Loesch: Thank you, Dr. Das, is there anything you would like to add to your medical packet presently?

>> Dr. Das: No not at this time.

>> Matt Loesch: Ms. Licon, if you would like to add anything.

>> Is this on?

>> Matt Loesch: Speak into that.

>> Okay, I'm a little nervous.

>> Matt Loesch: Don't be, take a deep breath.

>> Any time you want to ask me questions please do, I've got a lot of paperwork to directly go to it. I realize you're revamping the the disability retirement and good disability retirement involves medical review of the records, objective findings, physical examination and diagnosis of MRI X rays and CTs and then you come up with a

diagnosis. I don't know if we're going back to 2008, or are we in 2011? Because I mean it sounds weird but there's before surgery and then there's after surgery. So where are we, are we talking about the whole thing?

>> Donna Busse: Well your application is requesting to be effective February 2nd, 2008. So the disability needs to be established all the way back to that date, or when you last worked.

>> All the way up until 2011? Or just that time frame?

>> Donna Busse: Well, your current status and what it would have been as of the 2008 as well. Well, I understand, okay. It's once you became maximum medically improved that's relevant, your current status and whether or not if you're disabled as of when you became maximally improved and all the way back to February 2nd, 2008.

>> It -- well I'll start out with, I had many injuries and a lot of them were falls, falling backwards on my tailbone, my coccyx area. To where I couldn't do my job. They gave me a modified job at City Hall. It wasn't really a modified job, it was modified the time I had to be there. I still had to bend over and pull weeds, empty 55 gallon garbage cans. Have backpack lowers on my back, mowers you know and I couldn't do it. And it says it in the back of the package. On page 304, it talks about on January of 2007, it says I only went to work six times in January, a total of 30 hours. What was actually happening was, is that I ended up, nobody realized, I mean the supervisor, I told the supervisor I can't have back packs on my back but she wouldn't listen. I told her, I couldn't lift those 55-gallon garbage and throw them over, you know, a six-foot dumpster. So what eventually happened is my doctor put me off, and I was off for another six months or so and then I got a call from Alex Demur, stating that he could find me a job, at City Hall, and I was at that job at City Hall, you know it was a temporary, modified job until they found out if I was permanent, stationary, and my restrictions were permanent. So anyway, I worked at City Hall doing office work. And I worked there for a good three months. And everything that I did, because of my back, because I couldn't do the lower drawers, but I was supposed to put stuff in the lower drawers but I couldn't. So I began building my file cabinet on top of the desk. And I had you know boxes and boxes of files. And I also did checks, and I did opening envelopes. This kind of work that I did. And it worked out well for me. Because it went with my

restrictions where I was allowed to get up and walk around. And I had everything here, and I thought everything was great. Once the permanent and stationary restrictions came in, I came in on a Monday, everything was gone. And they said, you no longer work here. And it was over. It was just over. And what was happening was, that I was, you know, putting in for -- I was putting in for absence without pay, anything to keep me with the city. But once -- once my hours, my sick leave and my vacation ran out, I was no longer working for city, and I got a letter from -- from Allen -- Allen Demur stating that I'm separated as of May 19, 2008. So all along I've been trying to you know just hold on even going as far as without pay. But still holding onto the city. But once that letter came I was no longer with the city. During that time, with Allen Demur, he was trying to find my another job that was going to be permanent. I gave him suggestions that I could work at the pound, I could clean up, you know, after animals and stuff. He said I'll go find out about that and then he came back and he said that no, if there was a 50 pound dog you couldn't handle it. And so we can't find nothing for you. So over those couple of months, I received over four denials of finding a job for me. So there is no modified work for me. What makes me incapable of doing my job or any other job within the city is, on page 26, this is my doctor that I've had for 18 years. And he thoroughly goes through why I can't do my job. He states things that are still wrong with me. Even though I had spinal surgery, spinal surgery doesn't fix my neck and my back. It doesn't cure my severe arthritis of my Sacralic joints. I still have spinal stenosis, I still have a -- it's like you -- instead of being straight up and down, one is over the other. It's the vertebrae is one over the other. It is called Spenodelisosis or something, it means one over the other. Even though I have bolts running down my back to hold me in place, because they had -- they had operated on me. I also, during the time I normally every two years have a physical to do -- for driving, my job insists you know, on page 307, at the bottom it talks about licenses, that part of your employment is to have an A or B commercial driver's license, my driver told me that he would not sign it because of the problems that I was having with numbness in the leg and the foot. That documented -- it's Dr. Hastings' report, talked about -- Dr. Hastings' report page 233 at the bottom it says impressions. They say it was a normal EMG of both extremities. indicating interference with the S-1 arc of the right side. Which means it goes numb. And --

>> Dr. Das: Can I interrupt about the medical issues in terms of -- that's not necessarily a correct statement as far as the interpretation of the electromyogram.

>> Okay, could you tell us more?

>> Dr. Das: Sure.

>> Mollie Dent: I think the witnesses both need to be allowed --

>> Matt Loesch: She needs to finish. She says it's fine.

>> Mollie Dent: If she asks you to go ahead that's fine but I think she needs to finish her testimony.

>> Okay. Dr. Das said that there was no evidence of anything wrong with me, after the surgery. And that's why he gave no restrictions. But there was evidence. On Dr. Wyman's report, page 221, patient is diagnosed as following: She has evidence of lumbar Radipathy. And over 45 minutes he gave me all kinds of tests, to show that there is a problem. And Dr. Hastings reports there at 233, talking about that there is the problem with the S-1 on the right side, Dr. Janie's page 226, also found that there was evidence.of spinal stenosis and root impingement, sciatica and severe L-5, S-1. Dr. Das's report, page 28, that they did an examine on me, that was recently. April 2011. Their objective findings were that I had nerve joint findings, they do these tests on you, they bend you different ways, and they say if it's positive, positive for Patrick's positive for Faber, positive for compression and neurons. And then they also roll like needles down you too to see if you could feel it or not. Also things that are still wrong, even though he said there was no evidence of things wrong with me the bottom ones, a scar tissue is forming over the last bolts and it pulls or tears, ripping and tearing, and it keeps going over. Also, the last screws, one is broken. And that is -- it is documented on page 246. It's Dr. Coe's note. It is dated October 23rd, 2009. This is shortly after -- well I guess a year after my surgery. And it talks here that -- there's a possible screw that is fractured. And then, there was a reading also and there's a picture on the back side of 239 a picture of the fracture, a low last screw. One doctor that read the -- his name was Dr. Tran, he read the myelogram, and on December 21st he noted there was no broken screw. But yet, a leer later, December 6th, 2010. Dr. Coe noted that left confirmed to be fractured. Maybe it might be bent. One is fractured and the other one might be bent. Okay. I realize that workmen's comp has nothing to do with you guys but some of the information that

workmen's comp has does refer to what you should know. After the last surgery that I had in months and months, workmen's comp finally gave me 100% disability retirement due to combination of her industrial injuries. That is hard to get. That's very rare that workmen's comp ever does that, 100%. The X rays, I have been x-rayed all the way from the beginning to the end and you could see how progressive it gets. You can seize how I didn't have something and over the years it was coming and getting worse. Narrowing of the spinal cord. That's why they had to take out the part of the backbone to relieve the pressure off of the spinal cord. In doing that during the surgery, it caused my right leg to go numb. So everything's well documented. There's pictures of severe arthritis. This has nothing to do with my surgery. It has to do with falling, several times. I just can't believe that Dr. Das, he's only said it I think once before about there's no evidence, so he gave no restrictions. I don't see how, if you read through all this that he could possibly say that I could bend, that I could squat. I could reach over my head and throws garbage bags or anything, you know. It's 12 documented. In EMGs and MRIs, CT scans. I just shake my head every time I think of him saying that that I should have no restrictions. He's leaving out the part, he's just going on the surgery. But he's leaving out the severe arthritis, the back, the neck, the fractured screw. These are important things he should have taken into consideration, when he oh, and then when he did a physical on me, part of a good review is taking a physical of the person that you're going to write a report on. He I went into the room and we talked first about just general things. Nothing to do with my back. And then we went into conversations about my back. And everything that I said to him he goes that oh that doesn't sound like that, no it doesn't. And he's trying to tell me something where I have evidence that it is. And then, I try to tell him about the, you know, the 2005 accident that I have that I fell off the back of a truck. I try to tell him that it -- that I fell on my Trapezi and my neck and my back. And he says well if you do that then it's going to have to be delayed even longer. So I left that out. I didn't talk about my back and trapezi but it is one of the components that I have. And the only thing that did he do in the exam was, I guess, lift up the back of my shirt, and look to see if I had a five inch scar on my back. And then that was about it. And in his report that he talks about, how he examined me and he put my ankles were so many plus or anything, he didn't even touch my ankles. I was standing the whole time I had that meeting. To me, you have to do a complete physical just like Dr. Wyman, the doctor that reported on my workers comp case. He worked on me, 45 minutes of torture to come to his conclusions. And that's what eventually came to my 100% disability with workers comp. He did an excellent job. And then the EMG lady, she worked on me for about a half hour, you know, trying to get a reading on this certain nerve, this H-1 nerve. And

she couldn't get a reading. The reading just because it wasn't there. This is the rest of my life. And please ask me questions now, please ask me, don't let it be a doubt that you didn't ask me something.

>> Matt Loesch: Are you done with your testimony? We have a little bit procedure wise that you need to go through first.

>> Okay.

>> Matt Loesch: Dr. Das, anything you would like to rebut? You wanted to make a comment?

>> Dr. Das: I can maybe respond to questions. Or should I -- well, essentially the issue is that in terms of reason why I provided no work restrictions at this point is that previously when she had applied for a disability retirement was spondylolisthesis, bending forward or bending backwards can cause significant pain. And does put you at risk for spinal cord compression if there's a significant motion. She did have a lumbar fusion afterwards in which her doctors say that it is well healed and it is stable. Therefore I removed the restrictions. They also decompressed the area. So as she mentioned, spinal stenosis, spinal stenosis is basically arthritis or bony spurring that surrounds the spinal cord and at some point, times it can touch the spinal cord, compress the spinal cord. So during the surgery they decompressed the area. There is not any reason to have any muscle weakness based on those findings. She mentioned the electromyogram. Insert a needle and look for wave forms that show muscle injury or a constitute muscle injury. Her exam didn't show any evidence of prior muscle injury or current muscle injury so there's not really any reason for a neurologic weakness. Certainly on the exam she may have weakness due to pain but there's no neurologic compromise or nerve damage that would be responsible for the weakness. The H reflex that she mentions is somewhat controversial. S-1 nerve root radiculopathy. It takes about two weeks for the muscle damage to appear, when the nerve is hurt, after a disk herniation. In a chronic situation like hers, it's not -- it could mean that she's got -- that she has a prior injury to the S-1 nerve root. It may mean that there is a current one to the sensory component. The presence of ankle jerk reflexes points away from any significant nerve root injury. So in balance, that's why I didn't provide any work restrictions currently. At the time she left city service, and that's one of the things I think that the board may need to reconcile with the attorney's

help is in terms of if the surgery is what's responsible for her current problems, and this is occurred after she left city service, is that something that needs to be examined separately, as compared to her disability or her injury at the time she left. So -- and the spondylolisthesis is not present. And the other issue is in terms of work relatedness, none of these findings are related and the medical literature shows that none of these injuries are related to the type of work that she's performing and even the falls would not result in the spondylolisthesis. These are preexisting conditions and the issue is whether these were aggravated or not. According to her treating doctors is plausibly resulted to a fall on your buttocks. In my opinion it is plausibly related to that. In terms of a disabling injury, I don't believe it does.

>> Matt Loesch: Any response to that? Other than that we will call for questions of the board.

>> He calls it pain, I talk about how I'm off balance, how I've fallen. The documents here show how I've fallen at home. That doesn't have anything to do with pain, that has do with off balance. My right leg has no balance. That's why I can't drive. My doctor told me I no longer have a commercial driver's license which is part of my work -- my work criteria, part of it is you have to work, drive, operate heavy equipment. You have to be not on any drugs and I'm on Vicodin. And it's off balance, Dr. Das, it's not pain.

>> Matt Loesch: Okay. Comments or questions from the board?

>> I'd like to just start with a no review. Dr. Das, if you could explain briefly what an agreed medical evaluation is.

>> Dr. Das: In the workers compensation community when there's a disagreement between represented individuals like the city has its legal representation and the applicant or the claimant has its own representation, there are two processes to mediate the final disability or the medico legal issues, one is to get a qualified medical evaluation where you submit for -- there is a panel of physicians in the state, you submit the specialty that you want, they give you the list of three, and you can determine that. But if both parties are represented they agree on a doctor that will provide a description of the permanent disability.

>> Arn Andrews: So in essence it's an independent review board or an independent review of the medical situation?

>> Dr. Das: It's -- I don't know. I mean, it's agreed upon by two attorneys, the doctor that they -- yeah --

>> Arn Andrews: That acts as an arbitrator, sort of?

>> Dr. Das: More of an arbitrator.

>> He goes over the medical records, the X rays and comes up with his opinion and that was Dr. Wyman. Dr. Wyman had a great evaluation of the problems that I'm having.

>> Arn Andrews: And actually that was going to be my next question.

>> Okay.

>> Arn Andrews: Because there does appear to be a bit of a disconnect unless I'm misreading all these documents. It appears on page 227 under causation and apportionment, that this independent report does call the injury of 2005 the specific causation and does apportion I believe it's 75% of the current condition to the injury of 2005. And yet when I read your report, you appear to be apportioning zero to the injury of 2005. So can you walk me through that?

>> Dr. Das: Yeah, I rely on the medical literature and so when I have a opinion there is a study of Eugene Karagy, the chief of orthopedic spine surgery at Stanford, that specifically looked at minor trauma and these kinds of specific findings. In the general community if you are not familiar with the literature, everyone says if people do moderately heavy labor they are going to result in degenerative changes in the spine and have these results. When they looked at the findings and compared people who did this kind of work with a guy like me who doesn't do that kind of work we had similar findings. So essentially there's not really any epidemiologic evidence

that would support Dr. Wyman's testimony. There are specific books where you look at causation for these and since the general prevailing view in the medical community is there is a relationship between these two and there's been lots of studies looking at it it would be a fairly easy association to make but they haven't been able to. In fact the only really good relationship shows there's no relationship between the two. And that is 80 have the opinion that I do. I don't know what Dr. Wyman bases his opinion on.

>> He was basing his opinion on AMA -- there's certain criteria for the AMA guidelines and he was going off of that. Studies are studies. You could have studies that say pros and cons. And someone lifting garbage bags for 20 years, and tossing them up in the back of the truck, or heavy equipment, and you're -- you're saying Dr. Das, that me and you are the same?

>> Dr. Das: No, I'm not saying that. What I'm saying is that certainly people who are involved in heavy labor can have lower back pain. There's a distinction between the findings, the imaging study that we're talking about and pain. And as far as having pain by doing -- by performing manual labor, there's no question that you're going to be more prone to experience pain. The issue is whether, number 1, there is a structural deficit or an anatomical reason for this problem, or whether it's something to be treated. I mean the issue to me is, when Dr. Wyman describes pain he's basing it on a patient's tolerance. If there was appropriate medical treatment and those things were provided would she be able to tolerate it and work a little bit more? I'm basing my statements on the medical injury that's described and not addressing the subjective nature of the pain complaints because that varies. Because in my job someone of her findings wanting a job I could not disqualify from hiring based on those findings alone if the person said they were doing well. So --

>> Yes but I'm telling you I'm not doing well and there is findings. And I wasn't talking about pain. It was talking about X rays, telling you that over the years you could see that there's degradation of disks. They had to take two of my disks out. I'm talking about findings, findings in the X rays, Dr. Das.

>> Dr. Das: Yes, and they were there, the findings were there. The issue is whether there were findings that would cause a structural deficit that would incapacitate you and those findings are not incapacitate being, not related to work.

>> Enough to give me surgery to repair the damage that was done of the heavy lifting and things that I did in my work. Because my work was, they call it a man's job but I was in the field and I was expected to work harder than any man if I was to succeed. And so I worked through any pain that I had, no one ever knew it. But the findings showed, the X rays showed that I was over a 15 year period you could see how degradation of the disk, to where eventually at the end they had to take them out and put fake ones in they had to bolt my back to straighten me, they had to pull out the backs of my vertebra to stop the impression.

>> Arn Andrews: Dr. Das can you speak to the surgery? Do you feel the surgery was the result of the 2005 accident or other --

>> Dr. Das: That the spondylolisthesis is not related to any -- that's a congenital or an -- and a condition that is -- with that individual, it's independent of work activities. And so the surgery was done to address that. Whether it was successful in alleviating her pain or not is another issue. She is considered to have grade 1 spondylolisthesis, questionable whether a person would have to have a fusion done but a person complaining of a lot of symptoms or a minor instability like that a lot of physicians will fuse its. And according to the physician at least the vertebral spine is solid. Whether her symptoms have improved is another issue but the spine is solid. So from their reports, they're happy with the outcome.

>> Solid means that I'm rigid. The disks were taken out, that degradation of disks that were taken out, that has nothing to do with the Spond -- you know, the wear and tear on the disks, two of them. And then they stabilized me. Stabilizing me Americas me stiff. The part of the screw being fractured in there, I could feel it moving. I feel like electricity sometimes. The scarring, the -- the -- when I tried to lean over or bend over, I can't do it. I can't bend back. I can't drive. I lost my commercial driver's license. It was very hard to get that. Not too many women have it. And now I don't have it. So my doctor felt that it was too serious of the numbing of my foot which is the

gas and the brake. I used to drive a van that had over 15 people in it. He didn't want to take the chance. I used to drive a big deuce and a half truck. He didn't want me driving that truck.

>> Matt Loesch: Mr. Andrews, more questions or comments?

>> Arn Andrews: Just one more question and I'll turn it back to the rest of the board. Dr. Das, it sounds as if part of your diagnosis is based on literature, research. Is the research that would refute the research that you're using as the basis of your decision?

>> Dr. Das: No, there isn't. I mean I'm not going to say that I -- every single time that I go through and do a complete search, scan of the literature, but based on the commonly accepted epidemiologic information that I read, there's a spine magazine, there's a textbook on occupational medicine. I believe I've actually included an excerpt from the chapter.

>> Yes you did.

>> Dr. Das: That's what I based my opinion on. Especially if I'm going to disagree on work relatedness, I feel I need to have support for those decisions and opinions.

>> Arn Andrews: And for the opinion, is that the currently widely accepted opinion in the medical community?

>> Dr. Das: Of the people in the literature, yes, I wouldn't say that's widely accepted in the medical community as you can see in Dr. Wyman's report.

>> Also the report he included in the records, there's one paragraph that talks about what happened to me. He has this big long one, and it's really boring. But there is a section in there that talks about me. And if we want to find that, what page is that report on?

>> Dr. Das: Dr. Wyman's report?

>> No, yours, the ones that -- that report that you submitted as --

>> Russell Richeda: I think it begins at 287.

>> Dr. Das: Oh.

>> Mollie Dent: Is that the report you were referencing, Dr. Das?

>> Dr. Das: Actually yes -- yeah. There is also another one after that, I believe. Yeah.

>> Matt Loesch: Question, Mr. Andrews?

>> Arn Andrews: No, no questions.

>> Matt Loesch: Questions from the board?

>> It's in here, talks about how degradation of disk happen with heavy loading. It's in there but I don't want to take up your time. You could glean anything you want out of any report. Any report you could pick and choose, and Dr. Das chose a section. I also chose a section in there that says that degradation of disks are caused by heavy lifting. And it was his report.

>> Matt Loesch: Questions from the board or anything? I'll entertain a motion.

>> Please, anybody, any questions, any more doubts in your head, this is very important to me.

>> I'll just make a comment. I don't -- I think the challenge for the board is that we need to focus on whether or not the job caused the injury prior to 2008. It's not relevant I don't believe what happened postsurgery. Because you're asking for a disability based on 2008 which is prior to your surgery. So I think the only thing we can really consider is whether or not the job caused this -- these back injuries over time. At least, and please correct me lawyers, or others, if I'm misinterpreting that. But it seems to me a lot of your testimony is relevant to what happened post-2008.

>> That's correct.

>> I'm just not sure as a board member that that's a relevant portion of our consideration.

>> On page 2 it was amended. And it talks about how the low back, neck, minor shoulder, from accidents of 2002, 2003, '92, '93, '98, '99, 2004, 2005. These were all before my surgery.

>> I understand your point there. Those were all -- the question is did those accidents cause the back pain that's led to that surgery.

>> Right. Just like some of you guys will go out there and on a weekend and mow your lawn or something and oh you pulled your back. That's once! Try 20 some-odd years of pulling that mower off of a truck or your garbage, guys hate doing the garbage. Well, try 55 gallons of lifting somebody else's trash and they have oyster shells and beer cans and throwing that on the back of your truck. How could you possibly say that you don't think that years and years of that stuff could not cause the disk designation because of the twisting and the falls on my spine.

>> I don't think we're saying any of that. I think what we're trying to ascertain is based on the medical evidence we can make a decision.

>> I hope I did the before and the after. Even if you don't do the after part, the before was well defined in the CTs, the MRI's the X rays, way before my first injury, you could see the progression of it. That was before the surgery. If

you look in here on a time line you could see how now all of a sudden she has this, now it's getting worse. It's the time line is in here.

>> No, I think it's clear at least certainly to me, that there's been degradation of your back over time.

>> Okay.

>> That -- that I understand. It's just -- it's a question of whether the job is what caused that injury during that period of time or not. And that's where we have to listen to not only the evidence that you've presented and your doctors have presented but also what Dr. Das has presented as testimony as well. So that, I think, is the crux of the decision process that we need to get to.

>> Where we are right now. But I think I proved that there was a before and there was an after.

>> Matt Loesch: Did you want to -- Ms. Dent you want to respond?

>> Mollie Dent: Board member Odell, what you're looking for is that there was -- because this is a service-connected retirement, an incapacitating injury or series of injuries, on the job and they did have to occur before she left the city service. So that's -- it's not just that there was an injury, or series of injuries, but those on the job injuries were incapacitating.

>> And because of those injuries I was incapacitated where I couldn't do my eight hours. It was always modified. I was always on some sort of medication. They were -- I was constantly on modified work. But I still worked.

>> Mayor Reed: Mr. Andrews did you want to say something?

>> Arn Andrews: No.

>> Matt Loesch: Further comments by the board? Again I'll entertain a motion.

>> Arn Andrews: First off I'd just like to say thank you for your city service.

>> Thank you.

>> Arn Andrews: Clearly you're you know someone who, throughout your life have been medically impacted. But with that said, our primary threshold is incapacitation. And I don't feel that while there is significant contact with the medical community, when you left city service, in my opinion you were not incapacitated. So I'll make a motion to accept denial of the service connected disability.

>> Matt Loesch: Motion, do I have a second?

>> Second.

>> Matt Loesch: Motion and second.

>> Yes, question.

>> Russell Richeda: If the board would like to clarify, the motion is only based on incapacity. You might want to consider whether you would want to modify it to also deny it that you haven't found any evidence that if incapacity was present, the retirement was not service related.

>> Mollie Dent: I understood it was both.

>> May I have one more statement before I leave?

>> Matt Loesch: We haven't voted yet. Was that the understanding of the motioner? Mr. Odell?

>> Stuart Odell: Yes.

>> Matt Loesch: Any further comments? All in favor, opposed, none, thank you very much.

>> You won.

>> Matt Loesch: Okay, moving on to the consent calendar. If I could please on the consent calendar, before I would like to pull item 2.1. Before we vote on that. Other than that, is there anything else we need to pull on the consent calendar before we go? Otherwise I'll entertain a motion. Motion on consent calendar.

>> Arn Andrews: Motion to approve consent calendar items 2.1 --

>> Matt Loesch: No I'm pulling 2.1.

>> Arn Andrews: Motion to approve items 2.2 through 2.10.

>> Matt Loesch: [Voting.

>> Matt Loesch: I was contacted by the applicant's husband, just as a request as to what the process was and all I did was take his phone number and hand it off to Ms. Busse. I just wanted to make clarification, there was communication on this particular case of which I heard nothing, passed it on to Ms. Busse. Hope that's clear. Other than that I'll take a motion to approve. I'll take a motion.

>> Arn Andrews: Motion to approve a nonservice connected disability.

>> Second.

>> Matt Loesch: All in favor, opposed, thank you. Okay if I could have a moment of silence please for those who have passed. [Moment of silence]

>> Matt Loesch: Thank you. Moving on to old business, item 4.1, discussion and action concerning the analysis of government code section 7513.95 by Russ Richeda on current board members.

>> Russell Richeda: You have a memo from me in your packet that addresses the issues as far as I understand them. Concerning government code section 7513.95. And as you can see, that section is short. I don't consider it particularly snappy. We're left with significantly ambiguities. We're also left with a threshold issue of whether this section can properly lawfully be applied to the retirement system of a charter city. But in terms of any decision that any individual board member would have to make, the ambiguities in the statute are not helpful to that board member. The unresolved legal issue of whether this section actually applies to the members of retirement boards of charter cities effective there are doubts to that, is not helpful. Instead, board members are faced with a quandary of whether or not this applies. We did our best to come up with concrete hypotheticals and did our best to answer those hypotheticals. In order to receive any further guidance, would be to seek and obtain a decision from the attorney general's office.

>> Matt Loesch: Questions or comments from the board especially those?

>> Mollie Dent: So just to sort of let you know how the Police and Fire board looked at this, also, that board was, I think, brevited in possibly obtaining an opinion from the AG's office on the hypotheticals that were in sort of were unclear. If you return through Mr. Richeda's conclusions, it's really only the sixth and seventh hypothetical that get to be really unclear. Now, there may be other scenarios that this board would be interested in. Our office would certainly be willing to look at requesting an opinion from the attorney general's office. You do have to frame the questions very specifically. So that's my only comment. If you're seeking more clarity on what the statute means in terms of the kind of scenarios that it's intended to apply to, you do have to frame the question in terms of specifics. The matter of a charter city, we obviously in San José have, you know, the city has a pretty good history with making charter city arguments. And we could do a more thorough analysis of the charter city argument that

would apply in this case. Any only caveat there is I think you have to look at it from the standpoint of the fact that this code section doesn't just apply to our end of the transaction. It applies to what's happening at the other end of the transaction. The sale of something to a public retirement board that clearly would be governed by the statute. I think that is something that is you know a little unique about this in the sense that it's governing both ends of the transaction.

>> Matt Loesch: Mr. Richeda, follow up?

>> Russell Richeda: One more comment on the charter issue, a Supreme Court decision was handed down in the last 14 days, regarding the charter city issue, continuing to show how these matters are complex. There had been an earlier statute of the same sort dealing with police officers. And providing so-called procedural perceptions with respect to the issue of disciplinary police officers and police officers generally. Prior Supreme Court decisions had said that the police officer act was applicable to charter cities. And the case that came down two weeks ago with respect to San José was to conclude the same thing with respect to firefighters. In other words, that that was a statute of statewide concern and therefore applied to charter cities. So it just shows that this law -- that this issue continues to be complicated. And obviously, the City of San José at that point had internally decided that that firefighter statute was not applicable to them but the courts subsequently decided that the city was mistaken in that conclusion. So therefore, you know, it's -- this charter -- this analysis of whether a statute is of sufficient statewide concern to apply to charter cities is a difficult one. And the -- and it's very hard to predict what the courts will do in advance of their decision. And that's just adds to the uncertainty of the application of this statute, unfortunately.

>> Matt Loesch: Questions or comments from the board? Is there interest in seeking the AG's qualification or comment on this and if so are the scenarios in here the scenarios you would like to get narrowed down and try to get clarification on or what are the thoughts?

>> Lara Druyan: I'd like to hear what the AG has to say, personally.

>> Matt Loesch: Okay. Is that in the form of a motion?

>> Lara Druyan: Sorry, yes I move that we seek an additional opinion from the AG.

>> Mollie Dent: So you would have to ask either our office to do that, or a legislator. The board can't directly ask for it. So if you want to request that the city attorney's office seek a formal opinion on scenarios 6 and seven?

>> Lara Druyan: Yep.

>> Mollie Dent: Does that cover it?

>> Lara Druyan: Yep, since those are the ones that are vague, absolutely.

>> Matt Loesch: Is there a second?

>> Second.

>> Matt Loesch: Any additional questions or comments? Seems straightforward to me. All in favor, opposed. Item 4.2. Discussion and action regarding a board retreat. You know, it's -- there's a bunch of things going on later on in the agenda that we discuss things going on with staffing and the Cortex report. I know under orders of the day I know we'd change the order. Is it too late for you folks to move this one down until after the discussion? Because some of those things may shape the topics on the retreat. Last time we said we were interested on a retreat and maybe we'd shape the topic later on down. If it's all right to you. 5.1, staff presentation on the quarterly performance report as of March 31, 2011.

>> Carmen Racy-Choy: Thank you, good morning. Obviously the quarter was a really good one. Generally, broad markets did fairly well. Unfortunately we've lost some of the positive returns which you see as of the end of March 31st since then. But so far, it is -- the performance is still quite positive. I'd like to take you to page 12 of

96. The last -- the quarter ending March 31st, the fund returned 3.6%, for a one-year number of 13.1. Over the last quarter fundamentally there was no significant manager alpha either positive or negative. There was also no significant deviation from the policy benchmark. This was obviously due to the board's decision to fully implement the commodity allocation. If you look at the one year numbers, again, there's really no significant manager alpha, but there is a slight detraction to the policy benchmark, and the majority of that is, again, due to the delay in implementing the commodity allocation.

>> Arn Andrews: Can we stay on page 12 for one second?

>> Carmen Racy-Choy: Sure.

>> Arn Andrews: Is it possible for this data to be fiscal year instead of calendar year since we function on a fiscal year?

>> Carmen Racy-Choy: Sure.

>> Arn Andrews: Also the one, three, five, and ten year, are those rolling numbers or calendar year numbers?

>> Carmen Racy-Choy: One year as of March 31st.

>> Arn Andrews: The rolling, great. On the inception date is it 1994? Because we haven't done data since then or why is the inception date 1994?

>> Carmen Racy-Choy: This is the daylight of which Mikita had information. This isn't truly the inception date, shouldn't have been labeled as such.

>> Arn Andrews: Is there any way that Mikita can either increase their database to go back further or are they constrained and can only go back to 1994?

>> Carmen Racy-Choy: I believe -- we have information going back further in time. So I'm going to inquire why Mikita only used data going back to '94.

>> Arn Andrews: Good, thank you.

>> Matt Loesch: Any further questions on this page 12 before we continue on? Okay.

>> Carmen Racy-Choy: I'd like to really open it for questions. There are any specific asset classes, I mean, fundamentally what I've -- the highlight is, there were really no significant activity from a manager perspective. The fund is very much structured to look like the policy benchmark. So if there are questions on any specific asset allocations, I would gladly entertain those.

>> Matt Loesch: Any questions you have? No? Seeing as we're almost at the end of Q2, couple of weeks.

>> Carmen Racy-Choy: We'll wait to get the real number.

>> Matt Loesch: Yeah. Any other questions? Yes, exactly. Fiscal year, Q4. All right, any questions? All right, we'll move on. Thank you. Item 5.2, CIO update on investment portfolio. That should have been wrapped into 5.1 but separate item on that.

>> Carmen Racy-Choy: We've had multiple requests in the past from the board. One so I just wanted to provide an update on where things stood. The first one is the risk system. We have looked -- we have assessed alborn's capability relating to the risk system that they provide for free to clients. We've scheduled a meeting with fir track which is another risk system specific to hedge fund. We are in the process, requested a meeting from algorithmics and also in the process of requesting another meeting to assess the capabilities of risk metrics and some of the bearer systems. Once these meetings happen and we feel comfortable with the capabilities of the various

systems we will send out an RFP for our risk system and the meetings are meant to really provide us with insight on some of the capabilities that we should be looking for in the system.

>> I know there's some discussion around custodian later, and I think given that you may want to look at state street's risk system, since your other plan is using state street as custodian if you end up using them, there may be some value.

>> Carmen Racy-Choy: Sure.

>> To utilizing their custodian if you think their risk system is good. I have my person opinions but I'll hold off on this.

>> Carmen Racy-Choy: We'll gladly add them to the list, actually. So this wraps up the update relating to the risk system. My next topic of discussion was consultants. Staff's opinion is that we need additional bench strength on the consulting team. Specifically, on the alternative stay. We -- again, we have scheduled a meeting with albion to discuss their capability. I've scheduled a meeting with cliff water that's upcoming. We have scheduled another meeting with Axia. I've scheduled a meeting with stepstone. I'd like to schedule additional meetings with potentially Cambridge and Courtland for real estate. If there are additional companies that should be considered, please let us know. Once the meetings happen, hopefully we can do all of that by mid July. Once these happen, we'll put out an RFP probably allow one month for the RFP to post. And from then on, the RFP will be really an RFP for alternative consulting but will allow organizations to bid on components, specific sections of the alternative piece. The main reason this is going through this process we think the alternative area is where significant alpha to be had, if we have the right team so it is well worth investing in a good consultant to try and achieve that. So that's kind of the staff's opinion on alternative space.

>> Stuart Odell: Is your assumption that Mikita would stay on as a sort of generalist or is this your plan to transition to an alternative group?

>> Carmen Racy-Choy: General consultant if you feel yes there is value to a general consultant, then yes you can keep them. If you feel the alternative be consulting is mikita would be to have the performance report done externally, just good governance. It's good not to have staff do the performance reports, have an external party. And this is something that can be done relatively cheaply.

>> Matt Loesch: Anything else, is that what she is searching for or what staff is searching for ? You.

>> Stuart Odell: You might add Hamilton lane for particularly the more illiquid alternative side of things.

>> Matt Loesch: We can certainly allow time for thought too, if you wanted to e-mail stuff to staff, isn't like it's your one shot for guidance. They can send out an RFP without our blessing but what we're going to do is based on what's in here.

>> Carmen Racy-Choy: Clearly we want to inform the board. If you don't feel there is need we don't need to spend resources time and energy on doing it.

>> Matt Loesch: Right and this is the path you'd be doing work for Police and Fire at the time. Shared consultant for both of them is that what the assumption is?

>> Carmen Racy-Choy: That's the intent. Can you get a he fees break from the consultants typically by having both plans interpreted at the same time. Asset allocation, staff has received requests to bring in some thought leaders on this topic. So we're trying to line up actually meetings with some endowment forecast. I currently don't have good representation from the pension plan side. So I'm trying to put just -- I haven't really welcomed the board's input whether they'd like to hear the thoughts on asset allocation for example at the board meeting or in a separate meeting. Clearly, at the board meeting things are public so generally, the presenters might be less open about their investments. So holding it in a nonpublic meeting might make more sense, so that the presenters can actually talk about where they're putting money, where they're seeing opportunities, without fearing that their asset allocation would be in the press.

>> Matt Loesch: And we'd talk about anything but 5.4, put a pause on commenting on that, seeing the lawyers gearing up. Lubricating getting ready -- (inaudible).

>> Matt Loesch: But I understand your point and I knew this was coming on the agenda as well.

>> Carmen Racy-Choy: So bottom line is we're trying to actually bring some individuals that can present on asset allocation.

>> Matt Loesch: It is something we deal at a board retreat typesetting, whether we deal with it here on our monthly meetings, that's why I want to move the retreat conversation to the end. Anything else?

>> Carmen Racy-Choy: So that's it. I think the question -- we'd welcome comments either at the meeting or through e-mail on when or where or how you'd like to have that come to you.

>> Matt Loesch: Okay. Any other questions for Ms. Racy-Choy? Item 5.3, approval to hire state street as the system's custodian and for the secretary to negotiate and execute an agreement with state street for a term of three years for a not to exceed amount of \$800,000.

>> J.P. Morgan, to the current custodian in state street. At the recommendation from staff, and Mikita is to hire state street, because of the plan service and accounting resources that they have. If there are any questions, I can --

>> Matt Loesch: Any questions?

>> Stuart Odell: This is the same client service person that's servicing the Police and Fire plan?

>> Yes, it is.

>> Stuart Odell: You know this person, you have been working with them for a while? You are comfortable with this team?

>> Arn Andrews: As long as the synergies are good, I'd be inclined to make a motion to hire state street as the system's custodian.

>> Lara Druyan: Second.

>> Matt Loesch: Any further questions? All in favor, opposed, thank you. Item 5.4, discussion and action concerning legal analysis of the public records act, Ralph M. Brown act and private equity and private real estate contracts concerning the disclosure and discussion of information pertaining to private equity and private real estate investments. There's an oral comment first and then discussions.

>> Mollie Dent: I'll start with the public records act. The public records act does have an exception for information related to alternative investments. There is certain information that has to be disclosed under the public records act related to private equity, and there's certain information that you don't have to disclose. So there is certainly a way to get the board in a confidential format, the information that does not have to be disclosed publicly. The board when it gets that information has to be very, very careful though, not to disclose that in a public venue. Actually reference that public records act code section so there is a way to get the board information in a confidential format, but the board has to respect the confidentiality of that information. You use it for only the purposes which you've been given it, which is for this board. Now that takes us to the Brown Act. Under the Brown Act, there isn't -- there isn't such a broad exception for discussing information related to private equity. The Brown Act does have an exception that would allow you to discuss, to have a closed session if you're considering buying or selling your private equity interest. But that's it. Only if you're considering buying or selling it, not just to talk about it. And so -- and you also would have to notice it that you're considering buying or selling it. Which may not be something that you would -- unless you're seriously considering buying or selling you may not want to put out a public notice that that's what you're considering. If the full board wants to discuss

private equity, you can't do it, except in a public meeting, unless you're buying or selling. And you've noticed it as buying or selling.

>> Arn Andrews: Can I ask one question right there? Is the due diligence that would be required in order to determine if you want to buy or sell, covered?

>> Mollie Dent: You're going to notice it -- yes, can you discuss the due diligence material but it has to be in connection with a decision to buy or sell. So --

>> Arn Andrews: A decision or a potential decision?

>> Matt Loesch: Purchasing or deciding.

>> Arn Andrews: You don't make a decision unless --

>> Mollie Dent: That's fine you could consider not to. You could notice that you're considering selling, and have a closed session and decide not to, but you have to notice it that way.

>> Arn Andrews: That you're contemplating it. As long as you're contemplating.

>> Mollie Dent: That you're considering a sale or a purchase and you are considering the terms and sale or a purchase. (inaudible) buying or selling, I mean each time that we would have that topic we would say should we buy or should we sell?

>> Mollie Dent: Except with private equity, your ability to buy and sell is often limited because of the way those contracts -- so you may not actually even be able to consider selling. At certain junctures that's the issue.

>> Okay.

>> Mollie Dent: I didn't run through all the private equity contracts but some of them are still in the call-in capital and so I don't know that you really can consider selling them at that juncture.

>> You could sell them in the secondary market.

>> Mollie Dent: I talked to the outside -- I talked to Scott Smith who is your outside consultant, the outside attorney for the alternative investments. And he did say that the -- some of the companies will -- are willing to work with you, if you are really -- if you are really interested they're really willing to work with you. So there is that exception. There is also an ability to have an ad hoc committee, which would be less than a majority of the board, and it has to be an ad hoc committee. You can't have a standing committee. If you have a standing committee of the board it has to be a publicly noticed meeting. But if you had an ad hoc meeting that was less than the majority of the board that meeting did not need to be public. There can be pressure to have that public but under the Brown Act it doesn't have to be public. So those really are, I think, the -- address the manners in which you can get the information and discuss the information amongst yourselves if you want to.

>> Stuart Odell: And when you say private equity are you referring to any sort of lockup vehicle some is that what's defining it? There could be real estate --

>> Mollie Dent: Alternative investments is the way it's defined in the act.

>> Stuart Odell: What's an alternative investment?

>> Mollie Dent: Goodness I didn't bring the definition, hedge funds, private equity --

>> Real estate? Or sit a separate piece?

>> Stuart Odell: How about commodities?

>> Mollie Dent: Yes I think so, this amendment to the Brown Act goes back a little ways but I think they would be included within the sort of broader definition.

>> Stuart Odell: Long-only equities would not?

>> Mollie Dent: No.

>> Matt Loesch: I'm sure there are people kind of wondering what the heck this discussion is about. Last month we had a discussion, our interest of behind the scenes of these private equity firms and what they were investing in. We were advised by counsel, we could not discuss those publicly. The board we can't even see what we're investing in. You can see it but -- how do we see this stuff and so how do we understand, how do we have this discussion about whether we're interested, not interested, happy not happy about anything about our private equity portfolio if we can't have a discussion with it as a group. And so this is the genesis of this discussion. I just want to make understanding of why in discussion so people aren't -- what's the heck is going on here?

>> Mollie Dent: I want to go back to the private real estate for a minute. There is a bit of a problem with the private real estate. And when you looked at the information that was presented last month, most of the private real estate firms did disclose their underlying holdings. The reason there's a problem for calling that information not public is that every state that I know of requires real estate to be recorded. There is a public record of the real estate they own. And so I think the private real estate firm, most of them recognize that, but you could easily find out what they hold anyway. And I think most of these did disclose so --

>> Lara Druyan: The issue was in the fund to funds, at least two of which were completely opaque to all of us.

>> Mollie Dent: Yeah and I -- there was some information that country of the funds refused to disclose, that I think is a mandatory disclosure under the public records act. I actually went through the presentation and compared to what they were supposed -- what we would be able to require them to disclose and what we would

not be able to and there was at least one fund who had left out who said no they didn't want disclosed informing that is a mandatory disclosure, there is that issue too.

>> Matt Loesch: What is the interest of the board, is it to -- Mr. Smith says that we could -- that they're willing to work with us, about getting access to the -- the managers are willing to work with us. What does he translate that to mean?

>> Mollie Dent: That was more related to whether or not you were interested in selling, basically. So in terms of possible actions for the board. If there was specific information, that you wanted from the manager, it -- again, it can -- and staff has it. Or the consultant has it. It can be provided to you individually in a confidential format. That's certainly something that can be done. Once you all have the information that you think you're missing, then I suppose you can -- you might want to revisit how you want to -- or whether you feel like you need to have some forum for discussing that information. So I would say that it's a two-step process.

>> Matt Loesch: I was kind of looking along the lines of Mr. Dirks here, that if we set forth a policy that quarterly, we are going to review and consider the possible sale or purchase of any of our managers, and then we would be considering and that would allow us a provision to have a closed session discussion in a very detailed fashion on these things and it's not to be -- to play fancy with the rules. It's that I mean that's really what we would be doing. Because along with Mr. Dirks, if someone is completely bailing on us I have serious problems, we would want to sell them possibly but we would need to have that discussion in order to make that decision. If we set that policy that we established, report out that we list that we're considering selling all of our private equity holdings and we have to list it on our agenda, we're going to sell, what would be the issue around that legally?

>> Russell Richeda: Depending how that pens out it's going to be risky. If we have a record of eight to ten quarterly meetings, and we never sell anything, then it looks like you're going into closed session to monitor your investments. Monitoring your investments is not purchasing and not selling. This act is liberally interpreted by the courts. If some requestor came in or some individual came in to participate or to attend that closed session and was rudely told to exit and it was say a reporter from the Mercury News I think there wore consequences.

>> Mollie Dent: I think that it certainly sounds like you're just coming up with a scenario to avoid the Brown Act. And the penalties for violating the Brown Act are, assuming you didn't do anything in the closed session, the main penalty would just be a big attorney's fee award against the plan. Because that's what happens, people sue you for violation of the Brown Act.

>> Arn Andrews: I would recommend establishing a temporary ad hoc committee comprised of a minority of some of our subject matter experts to do some of the initial due diligence to look into some of these fund to funds and some other areas where we have questions and report back to the board and at that time it can be determined if we need a closed session to discuss whether there's potential sales or purchases based on their evaluation.

>> Matt Loesch: Was there a motion, is there a second?

>> I second it.

>> Matt Loesch: Any discussion or questions or thoughts about the motion? Seeing none -- all in favor? Opposed? Okay now as a matter of who would be on that?

>> Arn Andrews: My motion says subject matter experts so that precludes myself. [Laughter]

>> Lara Druyan: Having been in venture capital for over a decade I'll volunteer to be on the committee.

>> As will I.

>> Matt Loesch: Why don't we do this. As chair, I can establish the committees, we'll establish it as Ms. Druyan, Mr. Odell, and Mr. Dirks, chaired by Ms. Druyan. So that will be my motion. All in favor? Opposed, thank you. Okay. Let's take a quick ten minute recess, please. [Recess]

>> Matt Loesch: Call the board back to order, please. All right, next up is the item 5.5, this is the contribution rates and amounts for 2011-12. We'll take this item by item. So if there's comments or questions, and I think what will end up coming out of this would be setting the rates for contributions, effective June 26th, of this month. We'll have the discussion item by item but what I'd like to do at the end is just so it gets in the record very clearly what the contribution rates are for next fiscal year. Sometimes it gets very confusing. So item A this is the adoption of resolution 6734 setting the new city and employee contribution rates and the amounts for Federated members to be effective June 26th, 2011. If we discuss this memo and we'll vote on what the rates will be. The rates aren't much of a discussion but that way we can get through the item because there might be a discussion on each individual memo and report.

>> Arn Andrews: We are holding off voting on each individual item until full discussion?

>> Matt Loesch: That's what he I would prefer.

>> Arn Andrews: That's what I would prefer also.

>> Matt Loesch: The resolution is written by Ms. Dent. Do you have anything to say?

>> Mollie Dent: Actually I didn't prepare this resolution. Staff did.

>> Staff drafted it.

>> Matt Loesch: I had two comments on the resolution.

>> I just wanted the board to note that when the board approved the two valuation reports one for pension one for OPEB they implemented a funding policy so that the city contributions would be the larger of the dollar amount shown in each report, or the dollar amount determined by applying the rates in those reports to actual payroll. So

this ordinance implements that policy. Also, wanted to note that the third section of the ordinance -- the resolution, I'm sorry, talks about a prefunding dollar amount. And just wanted the board to note that I think the last two or three years, the city has paid its required contributions at the beginning of the year and thereby they get a small discount for the time value of money. So the third section of the resolution shows the dollar amounts if the city prefunds. And we received a notice from the City Manager dated April 18th that the city intends to prefund the dollar -- prepay its dollar amount on or around I think it's July 2nd.

>> July 1st.

>> July 1st, okay.

>> Matt Loesch: Anything else Mr. Maley.

>> I just wanted to point out the board adopted the funding policy, it directed the city attorney's office to implement changes in the Municipal Code. To put into effect that funding policy. And as of yet, that hasn't -- that change has not been made. And just point out to the board that if that change is not made by the end of the 11-12 fiscal year the city could come back and if something takes credit for some of the dollars it's going to prefund, if payroll is lower than was expected. So I think it's still important for the board to direct the city attorney's office to make that change to the municipal code. And that should happen before the end of the fiscal year.

>> Matt Loesch: Do you want to hold off to item C on that? That is sort of addressed unless you would like to respond directly to that.

>> Mollie Dent: I just had a couple of comments on the resolution. The new section 3 which sets out the amount for the prefund, is new to your rate resolution because we thought that it was important, the code does call for the board to set the prefund amount. In the past that's been done at a staff level. But -- so this is going to set a precedent for the board to actually set the prefund amount. The only other comment that I have is, the footnote about rate adjustment by the budget office. I can't really say whether that will happen or not. And the board -- the

board can't direct the budget office to do that. I -- if the budget office has said they're going to do that, that's fine. And it is my understanding that the city has budgeted for the prefund amount.

>> Matt Loesch: I have two comments, one is a grammatical thing, I apologize. On page 1 the last whereas section, third line in, the very first word in I think should be or. So the --

>> Yes.

>> Matt Loesch: Is that correct, instead of of?

>> Yes.

>> Matt Loesch: Since my autograph goes on this, I'm a little picky. The first whereas, it says the advance payment to the plan and the plan's medical benefits account. My understanding is starting fiscal year 11-12 the City's contribution goes into the new medical trust that is being established.

>> That is my understanding that the City's dollar amount for the medical plan will go into the new --

>> Matt Loesch: Not that our accounting staff would mix that up I just wanted to make sure does it need to be stated as such?

>> Mollie Dent: In the city's notice you notice it is stating what the City's notice is. You're correct that the health trust will be in place and the money -- the city side money will go into the new health trust.

>> Matt Loesch: Not that that doesn't make things confusing or accounting but wanted to make sure that was in there. Any further discussion on item A? Item B is a memo from Michael Moehle, regarding fiscal year 2011-2012 contributions, dated June 7 2011. Any questions there? Okay. Item C, this is the memo from Mollie Dent, senior deputy City Attorney regarding setting contribution rates, dated June 8, twin. Any discussion?

>> Mollie Dent: So the only question I would have is Mr. Moehle is correct, the current code does provide for a current true-up at the end of the fiscal year when the city prefunds and the current true up mechanism would be back to the city if the rate drops. So the statement in his memo is not correct that the true-up will be required if they are less, it is actually the opposite. The true-up can work both ways, if payroll were to increase above the amount that had been prefunded then city would owe money. But if payroll drops under the current municipal code, there can be -- there is a right to a credit back. I can't speak to whether or not the city would take it or not. In terms of the direction to our office, this board can't really direct our office to do an ordinance. The city council can direct our office to do an ordinance. The city council has been made aware of the board's desire for an amendment to the municipal code on numerous occasions. There hasn't been any direction forthcoming. But the board can directly communicate to the council. Can you have staff prepare a memo asking that our office be directed to prepare an ordinance. I mean the board can directly communicate your desire to council. So -- and if that's done before the close of the fiscal year then the credit wouldn't happen. That doesn't necessarily fix the floor amount issue. Other changes would have to be made to the municipal code for there to be a floor amount. So there are a couple of areas of the code as you can see from the memo that would have to be changed, if you wanted to truly have a floor amount. Because the way the code is currently written, the employee -- employer dollars are supposed to match on a percentage basis.

>> Matt Loesch: Mr. Moehle?

>> The memo that I drafted that talks about additional amounts would be required from the city that's true according to the board's funding policy. If the dollars shown in the resolution are not received, under the board's policy, funding policy, the city would be required to make additional contributions. My comment was not with regard to the municipal code, it's with respect to the board's funding policy.

>> Mollie Dent: The problem is, the board can't have a funding policy that's not consistently with the municipal code. It is not enforceable. If you want to be able to enforce it it's to ask the council directly and tell them as a policy matter you want the municipal code changed. The -- and there's no problem with the board communicating

that directly to the council, but it's a policy decision on the part of council whether or not they want to make that change to the code.

>> Matt Loesch: I know it's probably clear as mud but basically it sounds like we can create any policy we want. What you're saying is it might not be enforceable.

>> Mollie Dent: If it's not consistent with the municipal code.

>> Matt Loesch: Right.

>> Mollie Dent: And the code is pretty specific on contribution rates as I've set out here. But the code gets changes. The code's been changed before.

>> Matt Loesch: To include certain thing?

>> Mollie Dent: Yes it has been.

>> Matt Loesch: Any questions of Ms. Dent or the background material on this memo?

>> Arn Andrews: I did, I had a couple of questions, because I thought the concept in here that started to come out about the city potentially paying more than an 8/3 split was interesting. So I just wanted a little more clarification on it. So what we've done is, we've established the floor, for the employer's portion and yet, because of the code I'm guessing, maybe I'm wrong, the employee's portion is still fixed at a contribution rate. So in the event if I understood this correctly that we lock in the floor amount we have a declining payroll situation, the contribution rates on the employee side will start to be deducted yet we're still locked in at a fixed rate and that's since we've disturbed this 8/3 --

>> Matt Loesch: 8/11, 3/11.

>> Arn Andrews: 8/11, 3/11, it seems as a board we should discuss this because it contributions rates we're doing and it seems as if this would put an additional burden on them. So I just want to walk through some of these concepts in this memo before we establish rates. So that it's clear what we could potentially subjecting our sponsor to so we don't have another unintended cost implication associated with the decision we make. Mollie if I understood your memo correctly, it also sounds as if, if we think well, on the budget that was passed yesterday, if we know that there's going to be a declining payroll yet the actuarial report don't assume a declining payroll, your memo makes it sound as if the board can choose a number different than is in the actuarial evaluation.

>> Mollie Dent: Yes, for the payroll assumption you can. What the -- the end result of the memo really is that when the city prefunds, the board has the authority to pick that payroll that you're using. And so the payroll that's been used for this prefund amount is the payroll that's used in the valuation report, okay? So that's the prefund amount. That's the amount the city has budgeted for. As I understand it, they budgeted for the prefund amount that's based on the payroll in the valuation report. When you set the rates, though, when you set the rates, which is section 1 of the resolution, and section 2 of the resolution, you are supposed to be doing it based on the actuarial valuation. And the other thing I do want to point out is that the code does allow you to set a floor amount for the UAAL cost which is a large component of the cost. Because that is entirely borne by the city. There is no 8/11, 3/11 for that. That would be an enforceable amount under that rate resolution, the UAAL amount. It is really only the normal cost and the medical that have these mandatory ratios. Does that help?

>> Arn Andrews: It does. And I guess my question is, I mean we have a sponsor who's made it a policy to pay their ARC. I'm just wondering the methodology we are using knowing the payroll is going to decline are we asking them to pay more than what will eventually be the true arc. And during this budgetary times.

>> The arc is we know the city implements contributions on a one year delayed basis but that's because it has to be that way. The valuation can't be finished in time for July 1 of last year. But our view is that the normal cost that's built into the resolution is already due and payable. For the 12 months that we're -- the current fiscal year

that we're already in. So it's not a matter of -- it doesn't really matter what payroll is going forward. That's a payable amount that's due already.

>> Mollie Dent: So I'll respond to that. For normal cost I don't agree. For normal cost that is the cost of an employee this year going forward. Your unfunded liabilities side, of course, is something that is based on past. But the normal --

>> Russell Crosby: That's not exactly accurate, Mollie. That represents the actuarial facts of what actually goes on in these valuations. And in fact by deferring a year you're creating an additional liability of what, 40 million something? I mean, it -- so that liability was already created by the fact of deferring the implementation a year, which is what basically you need to do in this system in order to budget for it. So I don't understand what you're saying.

>> Mollie Dent: Well, I think every year since the inception of this plan there's been a payment made. There hasn't been payments deferred. Payments have been made every year since the inception of this plan. This is the payment that's due this year.

>> Russell Crosby: Yes but I'm not talking about deferring payments. I'm talking about the way the actuarial valuation actually works and the contribution setting mechanism yes the city paid what came out but the way that mechanism works, it automatically educates another 40, \$50 million worth of unfunded liabilities because of the one-year delay in implementing. You've already created that liability.

>> Carmen Racy-Choy: Let me just see if I can provide a little bit of context. If you remember, the reason the whole -- the board decided to approve the policy change is because the plan's actuary, in their reconciliation of the status of the funding of the plan, for last year's valuation, showed an increase in unfunded liability by the order of magnitude of \$36 million. So there were a lot of positive news but a lot of negative one. So the big one, so the question was asked by the board what is this \$36 million? And fundamentally the \$36 million is due to two components. One of them is the fact that the policy for setting contributions to the city was linked to payroll as

opposed to being a flat dollar and the other component is due to the fact that once the valuation happens, the city only pays that rate really a year later. So there is a lag. So the plan's actuary and staff agreed that it was reasonable just given the significance of the unfunded liability to try and close some of it. And so a suggestion came to the board to basically change the methodology for setting the contribution. What this does is, only fixes approximately half the problem. So in the next valuation, or in the valuation that just happened, you will continue to see significant increase in unfunded, because the City's rate is projected to increase, and the city can implement that rate with a lag. So bottom line, there is -- you can start debating whether the dollar amount is excessive, given the fact that the normal cost component shouldn't be linked to a dollar amount. That assumption assumes that the demographic fundamentals of the plan remain constant. The reality is, we know that the layoffs happen in a unionized environment with the younger employees being laid off, meaning the demographics of the plan will not remain constant. So I guess what I'm trying to convey, under the assumption that the demographics of the plan are constant, what the city attorney's office is saying is correct, the city could be overpaying slightly. However, we know that that doesn't hold. And we know that the demographics, the average age is going to increase which fundamentally means that the dollar amount is a better representation of the real cost, the real normal cost. So on both the unfunded component and on the normal cost we believe that the dollar amount is the right amount to use. This is kind of our rationale and this by the way only fixes half of the big problem that you are trying to fix. So that's kind of the context of the decision.

>> Mollie Dent: I do want to say that I think that it is -- that the dollar amount for the prefund definitely represents staff's recommendation that you use the 2010 valuation payroll. And that's -- and that's their recommendation, that's certainly within the board's purview to do that. There's nothing wrong with doing it that way. The fact that you could do it a different way doesn't mean I'm telling you the other way is better. Just -- I'm just pointing out that it -- the way the code is currently structured you could use a lower payroll number. I'm not making a recommendation that do you. I'm just pointing out that it's there. The piece of this that -- and the rates that are set out under the rates are the rates from the valuation. They have not been adjusted. So my only point is, I don't -- staff is saying that the budget office will adjust those rates. I don't know if they will or not. I can't say whether they will or not. I can say that if the board adopts the resolution this way, whether you and the city doesn't prefund, the city does pay by the percentage of payroll the budget office will adjust the rate to meet the dollar amounts that

have been set out for U ampAL, so I think it's important to set those dollar amounts out separately. And your valuation report sets those out and it gives you a very good basis for saying and the budget office will adjust to pay those dollar amounts if it doesn't prefund.

>> Arn Andrews: Just one other question. So since this is the first year we've implemented on the floor, I know in the past we do a true up process based on a percentage of payroll. If, with the floor amount, the sponsor pays this amount and then next year payroll did turn out to be lower, the sponsor no longer gets a credit, right, based on the floor amount? That amount is paid on the the UAAL, is that the way we.

>> We don't think it's correct to say pay more comparison maybe. Under the board's funding policy there would be no credit given.

>> Mollie Dent: And so all I can say is under the municipal code the city may take a credit under the code is changed. Under the municipal code the city has the authority to take a credit. I can't say whether that's going to be done next year or not. But that's why I -- I -- if you want to enforce a floor concept then there needs to be a request to the council. That is a policy decision on the part of council to do that. And if you want to enforce that there needs to be a request made to the council that direction be provided to amend the code. And again, I -- whether or not the credit will be taken next year or thought, I can't say.

>> Arn Andrews: And so any overpayment would go towards additional UAAL payments, it has nothing to do with the current year?

>> Carmen Racy-Choy: I guess we confess we don't believe there's an overpayment. Part of the reason is, in an actuarial valuation, the way the normal cost is calculated let's say given the current population the average normal cost is 5%. This is an aggregate given your underlying employees. Typically, the normal cost for somebody closer to retirement would be significantly higher. However, everybody's paying the 5%. So when the youngest employees are leaving from the plan, the reality is, your average normal cost should have been a bigger number. So you I guess what we are saying is, there isn't really an overpayment.

>> Arn Andrews: Right so the floor then presupposes experience changes?

>> Carmen Racy-Choy: The floor presupposes that layoffs are happening to the most junior of the organization.

>> Arn Andrews: Right, which will create a experience loss let's say next year and so in essence we've accounted for that now?

>> Carmen Racy-Choy: Yes.

>> Russell Richeda: I would just second Mollie's point. We really need to tackle the issue by tackling the municipal code and Mollie suggested we perhaps have lost some time in this endeavor. And -- but we at least, today, can you know, you could direct staff or whatever, to directly submit a memo to the council, describing the problem, and asking that the council deal with it by either coming back to us, or -- I'm sorry, by directing the city attorney's office to prepare the appropriate conforming amendments. But we're stuck with the municipal code, that's our law. And unless and until that's changed --

>> Russell Crosby: What's the time, does it have to be done before July 1st?

>> Mollie Dent: No.

>> Russell Crosby: It can be done any time in the fiscal year.

>> Mollie Dent: In any year the city prefunds if it's fixed before -- if the prefund piece is fixed before the end of next fiscal year it will be fixed.

>> Russell Crosby: Yes.

>> Mollie Dent: And that's a pretty easy fix actually in the code. The fix related to or for years in which the city might decide to pay based on the percentage of payroll methodology is a little bit more complicated. There's a lot more code language around that. But again I'm assuming the city is going to prefund this year and probably is going to be doing that in the future.

>> Matt Loesch: So let's take a hypothetical and not a motion here. If we just adopted the resolution as written, and setting the numbers that are in there, and they have intended to prefund which they said they wrote, really, we could, as Mr. Crosby has indicated, directing the city attorney's office to make it in the fall and so we wouldn't really be having some kind of push forward battle, at the end of the year, we would essentially be picking a little tussle where it's not really as timely as it needs to be on other things. That could be a timing we could pursue.

>> Mollie Dent: Yes.

>> Matt Loesch: Any other comments or questions on 5.5 C?

>> Arn Andrews: One last question. In a year when the heavens haven't parted and we haven't experienced lawsuits, would the floor be more than anticipated if there was ever a declining payroll that didn't result in an experience loss?

>> Russell Crosby: Except you're always going to have that lag effect and that's always going to be a substantial number.

>> Mollie Dent: So I would suggest under future agenda items we come back in the fall, that staff come back in the fall, we have the specific changes they want to ask you to ask the council about. More from there.

>> Matt Loesch: Does that help you or no? So that's 5.5 C. 5.5 D. This is a letter from Cheiron regarding the contribution dollars and rates dated June 7, 2011.

>> That's simply a memo summarizing the valuation results, the dollars and for the city and the rates for the city and the members. It's just a convenient summary from the valuation reports. And those were -- we took those and put them into the resolution.

>> Matt Loesch: The comment I'll make is, this is where I get to catch the actuary in a math error. The last one, 6.51 should be 6.52. It doesn't jive with what the resolution is.

>> There is a rounding issue. I believe my stay is, they have to use, from June 11th in the end that's their summary.

>> Matt Loesch: 6.51 would be their number, not 6.52. That's the total OPEB employee cost. I'm not haggling about a hundredth of a percent but it just doesn't jibe with the resolution. You do the solution rounding both of them?

>> We took the numbers from the valuation report so somehow when they consolidated numbers, there was a one basis point rounding error.

>> Matt Loesch: The resolutions would be the ones not the letter in 5.5D, is at a what you're saying?

>> Mollie Dent: The resolution number would be your adopted rate. That should be your motion. I don't know what staff's recommendation is on that.

>> Russell Crosby: Personally, I like the cleaner stroke of having Cheiron's number go directly into the municipal code or directly into the resolution so that there isn't a variance between the resolution and what Cheiron is saying.

>> Arn Andrews: I would echo that.

>> Matt Loesch: So the number would be 6.51. Ing yes, okay. Trying to rewind. Any comments or questions further on 5.5D? Okay so let's talk about some actions here. Be so first, shall we set the rates, and then we can have discussions about directing staff to come back in the fall. The reason I wanted to do the rates specifically and get them into the minutes, this is a frequent question, what are the rates, away do we pay? I flag them to the resolution, and they say, again, what are we paying? What are our rates? Hopefully, it makes sense, I wanted to make sure it's clear for everybody what we're doing here.

>> Russell Crosby: And I think what we're looking for too is dollar amounts and rates not just the rates.

>> Matt Loesch: Correct.

>> For the city we want the dollar amount.

>> Matt Loesch: Yes.

>> And the rate.

>> Matt Loesch: And so in summary, then, if we just talk, first talk employees, the employee rates for 2011-12 for pension is 4.68. And for OPEB, it's 6.51. Correct? This will be my motion and then you can tell me voting --

>> Hold on just one second. I would need to add the member rates in the resolution because let me do that first. The Cheiron memo actually had the 6.52.

>> Matt Loesch: Yes, no, the Cheiron memo had 6.51.

>> But if you add those numbers you get 6.52.

>> Matt Loesch: So it should be 6.52 is what you're saying?

>> Let me just check that begun.

>> Matt Loesch: On reason I wanted to get it right is we had the numbers written down in the memo.

>> Arn Andrews: The Cheiron letter 5D that equals 11.19, right? And then the resolution, we have 10.08.

>> Matt Loesch: No it should be 11.2.

>> Russell Richeda: 11.2 is in the resolution.

>> Matt Loesch: If you add up the numbers as Mr. Moehle said, if I said 6.51, it should be 6.52.

>> Arn Andrews: If we are taking the Cheiron numbers and putting them in the bucket, which number should we change by a penny?

>> Well, the resolution adds for members, that's 6.52 as do the numbers in Cheiron's memo. Their memo shows 6.51 but it adds to 6.52. So the totals are consistent. The resolution --

>> Matt Loesch: So the resolution has the right numbers. The Cheiron numbers are off a hundredth of a decimal point. So they have a typo.

>> Russell Crosby: No, it's a rounding thing.

>> Matt Loesch: 6.52 or 51?

>> 6.52.

>> Matt Loesch: Again just for clarity because this is very unclear now. Pension contribution rate for employees 6.58. The pension side on the city we'll do rate first 2834, on the pension side. And on the OPEB, 7.16. And if we talk dollar amounts should we just list the prefunded, because that's what they've stated they're going to pay or do you want both?

>> Probably both.

>> I would say the full amount is the total.

>> Matt Loesch: You mean the prefunding or the full amount?

>> The prefunding.

>> Matt Loesch: Because that's the July 1 rates in Cheiron's letter right?

>> Well actually you should adopt both of them because the numbers in sections 1 and 2 of the resolution are from the valuation. So I think you have to adopt those because they're consistent with the valuation reports you adopted. Section 3 is implementing a prefunded amount and I believe you need to officially sanction that amount, so the city knows what to prefund if they choose to prefund.

>> Matt Loesch: Okay, it sounds like it would be easier to adopt the whole resolution than to state them directly. Would I have to do math of 18, and 94 million, to get the contribution ?

>> Mollie Dent: Yes, I think the resolution should either be adopted as it's presented or if you have a specific number in the resolution you want to change you should call that out and say which you want to change it to.

>> Matt Loesch: In a minute you don't have to read it off but it's fair. I'll make a motion to adopt the resolution as written.

>> Second.

>> Matt Loesch: Any other comments or questions? All in favor, opposed, continuing to challenging, if.

>> Russell Crosby: And when it comes to the minutes we can actually drop the tables into the minutes.

>> Matt Loesch: Please, supper.

>> Russell Crosby: If that's what your goal is to simply have them embedded then we'll have them embedded.

>> Matt Loesch: Good, 5.6, request to San José city council to initiate amendment ordinance to amend section 3.28.1030 of San José municipal code regarding non-assignment for purposes of retiree association dues. Ms. Busse.

>> Donna Busse: Staff met retirees association requested a dues change for those that are getting the dues taken out of their pension checks and sent directly to the retirees association and when we consulted with legal regarding how can we do a change when we weren't authorized to do that, the question came up that the code was not clear on whether we were allowed to do the assignment in the first place. And so we want to make sure that it's clear, in the municipal code, that the retirees assigning -- that it is not an assignment to take the dues out of their checks and send it to the retirees association and in order to assist that we would knee a pension system change that would assist us, if we did this change we could opt out of the direct deposit receipts, which would benefit the plan information is available on a secured Website already. So the opt-out of whether or not a member wanted us to give their address and whether or not we can change dues, that function that would allow us to do that for the retirees association we can do that function to opt out of direct deposit receipts, that's why we're in favor of this recommendation.

>> Matt Loesch: Questions of the board?

>> Seems reasonable.

>> Matt Loesch: Do we know, another question that's come up is, does the Federated retirees employee association make any political contributions with the money?

>> Donna Busse: That we're not sure of. They are a 501 (c) 7 organization. I don't know what restrictions there are under the code did you --

>> Mollie Dent: I haven't looked into that. You sort of have to remember, this is post-tax money, retirees money, not planned money in the sense that it's their -- it's their pension and it's post-tax. So the only -- the cost to the plan per se is just the cost of being able to program the function in. And so you do have to find that there is some benefit to the plan to do that. The staff has felt there is some benefit, because the retirees association, they think they can program another function in at the same time, and I think they feel they can use the retirees association to communicate with the retirees about this.

>> Matt Loesch: Sort of connected nonrelated issues. Are we still sending out physical checks to people or is there all direct deposit?

>> Russell Crosby: No there are some physical checks.

>> Donna Busse: There are ten people that maybe physically come in and pick up their checks.

>> Matt Loesch: I know there's issues about pensioners, A we all get direct deposit, we don't get direct deposit notices anymore, we have to get to a secure Website, as a result of saving a tremendous amount of money. I don't know what these organizations class four people get out of the direct deposit notice mode, I know that's what you're trying to do but we are being gentle about it.

>> Donna Busse: We want to be cognizant of older employees who may not have the ability to go online. Right now we're treating it as an opt-out that that was kind of what the retirees association requested on a go-forward, we can request it of the newer retirees.

>> Arn Andrews: The city wanted to address this issue, providing people with two options so the city has the direct deposit option and also a pay card option where the money gets loaded on a debit card automatically and that way we're paperless and yet we still provide two options.

>> Matt Loesch: How much does it cost to send out checks? Roughly?

>> Donna Busse: Oh, the checks are a little bit -- I didn't bring the check price in but we probably spend it's like 55 cents a check, about 55 cents a direct deposit reseat.

>> Matt Loesch: Are there any charges aside from the actual check itself and the postage?

>> Donna Busse: That includes the staff time check print, it doesn't include any reconciliation work. It does include the time for the staff to physically print the check out. I just wanted to add one more thing that I didn't mention, is we do have a couple of other organizations that currently are having dues deducted out and we want to kind of stop everybody and only change the code for the retirees association. So there's a management association and an employee foundation which I'm not established what the employee foundation is.

>> Matt Loesch: Have you received requests from them to continue on or to fight this or have any kind of --

>> Donna Busse: We have not. One of the groups the employee foundation I believe came to you guys several years ago asking for addresses and we declined that or the board declined that and I think just administratively if we didn't have to send checks out to different organizations then --

>> Matt Loesch: Are we going to provide addresses to the necessary associations?

>> Donna Busse: Again one of the reasons for the change, we can provide for the address, we specifically asked that on the application, can we provide your address, we can provide it the first time right when they retire. But we don't have a mechanism to allow us to know who in our system has enabled the change.

>> Matt Loesch: Add my name to the list as well.

>> Russell Crosby: If that happens my recommendation would be and we've crossed that bridge with Police and Fire to a certain extent, is the retiree association has a very strong hand in the election of trustees to each of the boards. So in my mind, that makes them somewhat different from all the other entities out there and a reason why we circulate have a relationship with them and do something with them. With those other entities they're just vendors.

>> Mollie Dent: Yeah, I would say that for the combined -- the city combined giving program, retirement doesn't participate in that anymore, because it just wasn't worth what it was bringing in. And so you do need to have a reason for providing the service. And have it not be burdensome on the plan to do it.

>> Matt Loesch: The memo in the action area is to have the city council amend the ordinance. Is there a motion to that effect?

>> Arn Andrews: Sure, I'll make a motion to approve staff's recommendation.

>> Second.

>> Matt Loesch: Motion and second. Any further discussion? All in favor? Opposed? Thank you. Item 5.7, discussion and action regarding the city's revolving door ordinance. Memo here.

>> Mollie Dent: So this is really just information for you. It's Mr. Crosby mentioned that this kind of -- it goes hand in hand a little bit with the government code information that you looked at earlier. It's city policy relating to what you can do after you go off the board and relating to what you can do in your board capacity. So it's information-only.

>> Matt Loesch: Any comments or questions? Otherwise note and file. Item 5.8. Consideration of a resolution referred by the city council of the City of San José to the board on May 17th, 2011 to amend and restate are resolution 75635 regarding the supplemental retiree benefit reserve of the Federated city employees retirement fund to suspend the distribution of funds from the reserve during fiscal years 2011-2012.

>> Mollie Dent: So this has been -- this resolution has been referred to you under the SRBR section of the code for your input, the council wants to suspend distributions for another year while discussions are ongoing with the bargaining units about the SRBR. And so it -- and I believe it's scheduled, I believe that it's scheduled to be adopted by council next week pending your input.

>> Just wanted to point out to the board that this does not prevent the transfer of funds to SRBR at the time of the valuation. But it just -- it would prevent any distribution of funds from SRBR.

>> Arn Andrews: I think I remember from last year's conversation we have to transfer the funds, right, so the transfer will happen, it just won't be a distribution.

>> That's my understanding.

>> Matt Loesch: So really it's not an action item, it is more of unless we have a request to change or comment back to council, correct? Is there a comment back to council from us? Otherwise note and file. 5.9, discussion and action regarding the Cortex report.

>> Russell Crosby: At the last meeting Ed had requested to put this on the agenda. It was a study done by the city, I guess almost three years ago now. That led to the reconstruction of the boards and the outside board members being on the boards. And I believe that he wanted to talk about some of the other elements of the report that hadn't been adopted by the city yet.

>> Matt Loesch: Right. Other comments or questions from the board? Particularly the folks who might be the first time they've seen it.

>> Well I've read it and I think at some point this board does need to discuss these other recommendations that are in here. I mean there's some pretty specific recommendations that have been made. And they certainly at least on the service seem to be consistent with sort of the best practices of what we see in the industry. So I would like to start to address these at some point.

>> Matt Loesch: Would you like to discuss any of them now in particular, or kind of focus the discussion on any particular items?

>> Arn Andrews: My main question you know in Ed's absence is, is there anything happening administratively currently to move forward with any of the recommendations, since the new board members have arrived? There's no discussion or working group or anything happening at any level?

>> Matt Loesch: No.

>> Arn Andrews: Because I would agree, that you know, it appears that we've taken one step in what was outlined as a comprehensive iterative process and it seems like we took the initial step.

>> Matt Loesch: But step 2 wasn't contemplated or scheduled. It was contemplated but not scheduled.

>> Arn Andrews: Right.

>> Matt Loesch: I guess the thought was there would be a step 2.

>> Arn Andrews: Right and so who -- I guess who has the ownership for initiating --

>> Matt Loesch: Interested parties. Whoever those interested parties are whether that's us the board, whether it's the city or the city council who wants to truly make retirement reform, whether it's the bargaining units involved whether they want or initiated it in some of this retirement forum, because this is the beginning of retirement reform, this stuff here and then the next phase really would empower a lot of us was how is that then played out in this phase 2, whether it's the direct election of employees which is one of the things contemplated here, independence of staff, one of the things contemplated here.

>> Arn Andrews: Eventually on the city's side to create a new department or find functionality within -- so do we direct a communication to the council saying we would like a status of where we are in the governance report? How do we kick-start this again?

>> Matt Loesch: I think we want to be a little bit more aggressive than that, I think we'd like to consider it, when the phase 2 and also it happening? What is in phase 2 and when is it happening, that is my person opinion. Mr. Odell.

>> Stuart Odell: I was hoping someone could systematically go through this report and indicate which of these we have implemented and which we have not and why. Some of the things we have done, the board's been -- there is a recomposition of the board, let's kinds of check the box there but let's go through each and every item and if action hasn't been taken, then we should discuss it. And we should decide whether this is something we want to recommend to city council that we start to address, specifically. But there's a whole laundry list of recommendations here. And I don't think right here, in this meeting, I want to go back and forth, you know just sort of arguing the item. But I would like to at least start with, here's what we've done, here's what we haven't done and that's not in the report. I mean this is just the list of the recommendations.

>> Matt Loesch: This is actually the report itself, not any kind of summary. We could certainly request that of staff of a summary of what's been put in place and the recommendations that are still out there. Maybe that is appropriate, away we understand from this report, council what are you doing? What is the status on these things and what are we doing moving forward? Is that kinds of what you're leaning towards Mr. Odell?

>> Stuart Odell: Yes, I think let's ogo through the list.

>> One thing that really stands out to me is the recommendation to establish operating budget regarding the system. As things stand I don't think we have that role and that's really important in order to attract and retain the right people. And having the right people can change your performance a great deal. And it's a large asset base and that means it's a lot of value that we could bring to this system by having a really good team. And as we'll probably talk about later we need to attract good people and retain good people.

>> Matt Loesch: Any more thoughts or comments?

>> Arn Andrews: Just, in summary, it sounds like we're directing staff to take the Cortex report and put it into a summation of recommended items, and then check off the items that have been accomplished and the ones that haven't and then, I guess, we will pass that report to council at the next meeting and ask them to start to address the items that haven't happened yet.

>> Or do we discuss the items --

>> Matt Loesch: We might not say we want you to do 2 through 8, 2 through 8 we see as critical should certainly be included in phase 2. Because other ones will require charter amendments and need to go to elections and so fort.

>> Arn Andrews: Once we see the report we can prioritize .

>> Matt Loesch: Is that renal for staff to do? So form of a motion.

>> Arn Andrews: That's what I was wondering.

>> Matt Loesch: To direct staff.

>> Arn Andrews: I make a motion to direct staff to summarize the recommendations of the governance model to indicate which items have been completed and which ones haven't and for the board to evaluate that staff report and prioritize the items so that we can bring that to council's attention at a later date.

>> Matt Loesch: And your hope is to get this at the next board meeting in August?

>> Arn Andrews: Scheduled board meetings.

>> Matt Loesch: Any other comments or questions? All in favor? Opposed, thank you. Okay. 5.10. Discussion and action on staffing and compensation issues.

>> Russell Crosby: Veronica how about the trustees first?

>> Mollie Dent: Yes, so since this is agendized for discussion and action, if the board is going to take action you'll need to waive sunshine for the handout. If it's just handed out for discussion --

>> Matt Loesch: For a sunshine on this.

>> Russell Crosby: I'm not anticipating action. It's really just an update at this point. You have two pieces in front of you. One is a positional organization chart the other one is a functional organization chart that shows the activities in the department. On the positional org chart what we have indicated are the positions, particularly in

the investment area you see investment officers that are vacant. And then in the other -- it didn't come out very clearly, but we have both a reorganization for accounting that the board has approved that is on hold with the city. And then two other positions, the analyst in benefits and if positions that are being impacted 50 City's reduction in force. So this gives you an overall picture of extensive vacancies in investments and then what I consider a fairly high risk area in accounting that the board has approved adding staff, and upgrading positions within the accounting section.

>> Stuart Odell: So I understand these are vacancies but you have the positions budgeted?

>> Russell Crosby: Correct.

>> Stuart Odell: My first question is, what are you doing to fill those positions?

>> Russell Crosby: Carmen.

>> Carmen Racy-Choy: I've stated to fill the positions for almost three years. I've interviewed 50-plus candidates for the positions. There were a lot of people interested from, you know, the moment you describe the work we're doing, they immediately find it very interesting. The moment we would mention the salary range, pretty much everybody would drop out. So this was before the city has recently reduced everybody's SARs by 10%. This was before that reduction. So funnely out of that huge recruiting effort we recruiting Dr. Amiry, and Rhine Jeffco. We weren't able to get anybody else. That happened over almost a year and a half. That wasn't one month or two months, it was a very long time. Since that time, the city has decreased all the salary ranges by 10%. We've determined it is pretty level 1 investment officer and below there we don't have any issues. But more senior staff we have significant issues in our ability to recruit. So currently, we -- we're considering people, if we see anybody qualified that could potentially be a good fit we're definitely proceeding along that path. But we vice president done recently any major recruiting effort for the reasons that we think the salary range is too low for the current market.

>> Russell Crosby: And at a meeting last Friday with the City Manager and the new director of human resources, there was a commitment to review the classifications of the investment officers and the deputy director for investment. So I'll have to follow up with them to try to move that process along. But there is a commitment from the city administration to look at how these jobs were classified originally.

>> Stuart Odell: Is there a time line to get --

>> Russell Crosby: At this time there is no time line. The new director doesn't go into his position until July 1st.

>> Mollie Dent: Russell, I wanted to highlight, did those get documented in the council budget?

>> Russell Crosby: Yes.

>> Mollie Dent: Those are there.

>> Arn Andrews: One more question on the retirement officer. I know on the posting you require CFA. Do all those positions, is CFA essential? If we're up against salary constraint certainly somebody with CFA certification is going to want a premium. .

>> Carmen Racy-Choy: I think CFA or some other in order to justify recruiting externally. Ultimately I think the -- somebody who's going to come in if they don't have a CFA but have the relevant experience that is ultimately what counts. We don't have any problems recruiting someone with CFA, Heidi Poon sitting among staff has a CFA, she is completelying the CIIA, that criteria is not a problem at all. The issue then becomes when you have people with alternative expertise, they're immediately out of the salary range. So we can get really good generalists, CFA, CIA with the experience they wouldn't have alternative say expertise.

>> Russell Crosby: And that's where the premium comes in is with real institutional investment or with alternative side.

>> Carmen, could you help us kind of frame the value additive? If we have a plan that's performing in the 25th percentile, and having a great staff would bring it to the 75th percentile, or even if we're in the middle of the pack and bring our performance to the 50th percentile dollar wise what does that mean to the plan?

>> Carmen Racy-Choy: I mean, I think the potential for alpha exists, is very significant in both public markets and private markets, the private markets especially. There is a huge distinction between being a median performer and being a top quartile. And I would say that over the entire plan you are really talk about potentially to the extent that you can staff well, and develop good alternatives program, as well as good -- I mean we have currently a truckload of mandates that are passive but that should be active. But we've fundamentally just the lead forces aren't there to fill them up. I think impact on the city, the city could be foregoing easily one to 2 percentage points every year. One to two percentage points on \$1.8 billion, I mean roughly you're talking something in the -- in the range potentially of \$30 million.

>> And that's just for the Federated plan?

>> That's just for the Federated plan and that's a very conservative estimate. The reality could be significantly larger and that's annual.

>> And it would seem to be appropriate to want to staff up with good people to try to get that, as opposed to limit the salary opportunities by, you know, some tiny fraction of that. I mean, it just doesn't seem sensible.

>> Carmen Racy-Choy: Absolutely. I mean really, common sense would indicate that if you can spend a few hundred thousand and get, of a few million in return or dozens of millions, that that's what would happen. So I would say absolutely, the -- the potential return on investment of that expenditure is so high that it absolutely makes sense.

>> It's the best investment we can make.

>> Carmen Racy-Choy: Yes. .

>> Mollie Dent: And how can we make that?

>> Russell Crosby: Cal PERS and --

>> Mollie Dent: I think the dialogue does need to be at this point with the city management to have the pay classifications --

>> Russell Crosby: Reviewed.

>> Mollie Dent: -- reviewed. And because the pay and benefits for people in retirement services are paid for by the plan, there should be an ability to move that through. There are other city departments that are having difficulty too that also have very special expertise and are having trouble in the workplace getting people to fill specialized job but under the city charter, the employees are the employees and under the direction of the City Manager. I realize the Cortex report makes a different recommendation but that's not the current structure. I think what Mr. Crosby is doing is the correct thing to get the city to recognize that these classifications need to be -- have pay associated with them, that reflects what would be out there in the market.

>> I was really going for a somewhat different question some there's certainly some feeling among some trustees that well, they can control that compensation and I think there have been some court cases on point on that subject. Go ahead.

>> Russell Richeda: And this has been presented to prior boards and the background is, the California pension protection act, which was an initiative to the California -- amending the California constitution that was passed by the voters in 1992. So it's a big deal. And in that just to give you a little shorthand, it assigned to you whether you like it or not plenary authority over administration of the plan. And investments. And then it was subject to fiduciary

responsibilities. Okay, it is constitutional language, big bold stuff. But then we fast forward to 2003 and actually a few years prior to that where Cal PERS attempted to set up its own parallel pay and benefit system including for investment, internal investment staff. And they issued kind of a, I call it a fact based fiduciary report as to why that was appropriate and why they needed it. Well, the state controller refused to issue the warrants to implement that and sued Cal PERS. And the then controller, when the decision was finally handed down, an appellate court decision only but review was refused by the Cal Supreme Court, the controller was Steve Wesley, and so it's the Wesley decision. And the court in I think an unbelievably poorly reasoned, poorly evaluated that misread or misrepresented employee history, be that what it may, came out to be a clear and unequivocal position as to what Cal PERS had done. As to this time that is the last word, the holding could not be clearer, by analogy it could apply to us, under that analogy, you cannot set up your plan and yes, you have available to you the unsafe arena of possibly relitigating that, and in 2003 the California Supreme Court refused to accept review of that case. Even though --

>> Russell Crosby: Well but there's something else to the story too because the reality if Cal PERS does pay outside civil service and does have a separate salary structure of some kind that still exists today.

>> Absolutely do.

>> Mollie Dent: You have to kind of -- that's why I was getting into the issues of the charter and the municipal code. Because Cal PERS is statutorily governed again going back to the issue of the charter city and certainly charter cities normally have complete control over what they pay their employees. So that's 80 said that under the current structure, under the current structure, that this plan operates under, where there's a Department of Retirement services that is set up within the city, and the people that are in the that Department of Retirement services are city employees, the way that you're going to get pay raised or different benefits or anything, is going to be through having those pay classes changed.

>> Russell Richeda: Well, just more fascinating tidbits of jurisprudence under the California pension protection act, the California attorney general has issued opinions saying that supersedes contrary opinions in the city

charter the AG does issue opinions in this charter city issue. And that was relatively recent, on this precise point of the application of the California pension protection act.

>> Mollie Dent: Except that the court has held that the pension protection act, that the pension protection act doesn't address the compensation and benefits piece. So it's --

>> Matt Loesch: Thank you. So we get the battling lawyers part.

>> Russell Richeda: No, no, I thought we were totally consistent. And it's just put you in a very serious bind. Because that -- there still are the real life fiduciary issues that you've been -- that Carmen has mentioned to you. So I think you have to push as hard as you can and get mandates, get updates, have this on the agenda every meeting to find out what has happened. And at some point this may be significant enough to try to take on later, that is a judgment call you are going to have to make. Hopefully just your persistence can solve the issue.

>> Russell Crosby: For the trustees okay if you can only go a certain distance with staff, then do you contract with CIO in a box, do you up the contractual relationship with outside consultants? There are other ways for a fiduciary to deal with this problem than straight head-on hire staff and pay them an amount.

>> Russell Richeda: And I think that is very smart because any judicial inquiry of this issue can show what reasonable alternatives you have. And if you have not investigated a reasonable alternative such as contracting out, that is going to hurt you. And as a way of managing the system, that is something you would have wanted to consider on your own anyway. But Russell's definitely right.

>> Mollie Dent: Well and back to the discussion earlier about looking for a consultant. Specifically in the alternatives space, that definitely does go to that, your currently consultant, Mikita does have an element where they're supposed to be doing alternatives. But that you know, I mean, you -- there are apparently a recognition that that needs to be upgraded too.

>> Stuart Odell: In order for you to have a discussion about the pay rates it seems to me you ought to be able to show them if you don't do something about this, there are sort of our other alternatives as fiduciaries. And you need that information, actually I think before you sit down with the city, and show them that, you know, the cost of hiring a full-fledged consultant with fiduciary authority to monitor and make investments may be significantly different than the cost of, say, hiring a general consultant who, you know, gives you quarterly performance reports. I think, you know, same thing sort of outsource CIO. You really want to have some solid data behind you to show them the numbers. Because ultimately, this money comes out of the plan. At the end of the day. And if they say here's one route that we can go and it cost the plan five basis points, here is another route we can go and it's going to cost the plan 50 basis points, I think the city will have a -- you will get a very different reception I suspect from the city if you have that in your backup. But I think you need that before you go talk to them.

>> Russell Crosby: Well at this point and certainly based on last Friday's conversation with the City Manager there is recognition that there is an issue and it needs to be resolved as quickly as possible. I don't think there's any attempt by the City Manager to delay or to ignore the problem or thought to recognize it. There was genuine, call it concern at that meeting about the ability to hire staff, and a recognition that something has to be done. So -- and that's a great leap forward from where we've been.

>> Lara Druyan: I assume not only hire, retain.

>> Russell Crosby: Correct, yes.

>> Matt Loesch: In the line of the retention, obviously we've lost two key staff members recently in the last month. And is it just pay? Is it -- you know in my mind, is it -- I can't imagine, they knew sort of the pay coming into it. And yes, some things have gone down been hit recently.

>> Arn Andrews: Mr. Chair, I'm not sure if everybody is apprised of the recent defections. Maybe staff can speak to that.

>> Matt Loesch: They didn't go to another side.

>> Mollie Dent: And I do think we want to keep it pretty general and we don't want to get into specific employment information. I think it's fine. Obviously the board can --

>> Russell Crosby: I would say that there were yes, compensation is an issue is always an issue with all the investment staff. There were other issues at play as well. And I wouldn't say that at least in the two cases, Ali Amiri and Brian Jeffco, you can't say that 100% of the reason they left was the salary. And they didn't just leave to go someplace for more money. There were other issues as well. I think that's enough.

>> Arn Andrews: I just wanted you to name the individuals, that's all.

>> Russell Crosby: Ryan Jeffco was an analyst, younger guy, excuse me he was an investment officer, younger less experienced than Ali.

>> Carmen Racy-Choy: He was a level 1. Ali was the only level 2.

>> That you had.

>> Carmen Racy-Choy: That we had.

>> My understanding these are people that we did not want to lose?

>> That's correct.

>> Russell Richeda: Matt.

>> Matt Loesch: Yes.

>> Russell Richeda: I also think it's relevant that you keep updated and express some sort of understanding ever issues of in-house chief investment officers, particularly Cal PERS. The most recent report I reported on earlier of some of the misdoings of high level chief investment officers and then there's increasing press reports of sanctions that may -- you know it's just reports at this point but at least an investigation by the fair political practices commission of lots of gift-giving or receipts of gifts improperly under the political reform act of the investment staff of Cal PERS. And obviously we at least want to know that's in existence and indicate why there are appropriate steps that we can take to fend that off. In turn -- if we are going to pursue this kind of staffing at our level. But you know there's sort of a cloud over some of this and the cloud may be getting grayer in the next few months.

>> Carmen Racy-Choy: I'm not sure actually how that fits into the discussion.

>> Russell Richeda: Well, we're trying to do the same thing. So we want to show people that we are going to have in place protections, so that those negative results that occurred in something similar is not going to occur here. I would think.

>> Stuart Odell: We have policies in place.

>> Matt Loesch: We have policies in place and so fort.

>> Mollie Dent: I think we have in place what we need to make sure that our employees are ethical and that our consultants are ethical. You know I --

>> Russell Richeda: But so did Cal PERS. We need to understand what happened elsewhere. Maybe there isn't anything else we can put in place but I think this is -- you know we -- this is obviously germane information to an overall analysis of what course of action the board's going to think is appropriate.

>> Matt Loesch: I guess the reason I had brought up other things besides compensation is I often get -- I get questioned a lot but we get as employees monthly or biweekly e-mails with open perpetually. How do I fit, it's like you don't. Number one. Unfortunately, and to try to help them understand, to try to help folks, what is going on here? Why ask this continuously on there. Why can't we fill that position? I try reinforce the importance of those positions, they get paid a lot, they are going to be reduced 10% like everyone, and compared to what they would make outside is like half if you're being generous.

>> Lara Druyan: A lot less than half.

>> Matt Loesch: I say generous. Those are the kind of things what is the critical nature of these positions and what do they bring, Mr. Dirks, what do they bring to the system, we as employees and looking at the system and vested folks should be looking at they bring serious return either haggling for lower fees those alone you could save millions of dollars or greater return, again, millions of dollars, for really a pittance of what their salary would be or what their compensation would be.

>> Russell Crosby: Again we're not going to hire the next warm body coming in the door. But the review of stacks of resumes that come in with the idea that yes, we are screening a lot out of you've got to have CFA or CIA, you have got to have relevant experience and on and on. And when somebody does come on interviewing with other people at the same time. And then we get outbid. And dramatically outbid. It's not like we're just sort of in the ballpark and well okay lifestyle and other kinds of things can I go work for the government, no, it's so far out of the realm that people are saying well you know, I love San José and I love living here but I got to relocate my family to New York. I don't want to do that, but the money drives them away.

>> Arn Andrews: And in your discussions with the administration would it be helpful to have an expression of support from the board or are you comfortable --

>> Russell Crosby: Oh I think they're probably watching this show as we speak. They understand. I don't think that something specific is needed from the board at this point. What I see is a willingness to work with us and to try to make something happen.

>> Matt Loesch: My only other point was on staffing is what our current staff is doing that is not related directly to stuff that we need to hear on the pension. On these funds. Are there -- you know, and ways that we could support in you know, it's talked about all the time, you hear it at council about, we'll ask retirement services to get us some data and it's talked about quite frequently. I guess it's understandable, if they have no other way to get data, or get actuarial reports, those kinds of things they obviously take time, they obviously take money. If we have a dwindling staff and the retirement services is supplying support to city administration and not to these funds is there an issue there? Especially on -- with the staffing that's dwindling? I mean I can't put you on the spot necessarily because obviously you report to these folks, you report to the City Manager you would be speaking up against your boss and so forth, I understand that's complicated and it would be with my boss as well.

>> Russell Crosby: Let me say, having worked for other trust funds like this, not quite like this in government but certainly in the Taft Hartley, the private sector, in each one of those cast cases the plan sponsors, in the Taft Hartley you might have 125 contributing employers. The employers do ask questions very similar to and require analytic support very similar to what we get here. Our problem is we're so small that okay, Mike has been fairly heavily devoted, pretty close to 100%, for maybe the last six months, to the City's, call it back and forth negotiations with the labor groups. And in fact, providing support to some of the labor groups, when they have had scenario requests and they've had analytic requests as well, bought ultimately I want us to be the source of all the numbers. It -- having been in environments where you got dueling actuaries and dueling analysts and dueling everybody, it makes a whole lot more sense and it's better for both the plan sponsor and the trust fund to try to consolidate that as much as possible and not have a bunch of different numbers in the mix. And if that means we've got to be stretched in order to provide that actuarial support we've been there. Now having lost that institutional guise, the only senior investment person we've got now is Carmen, Heidi to a certain extent. Heidi is very new, coming on board and not in a fully productive state at this point. So you're down to two people who can carry the boat in terms of investment. There will be special requests, look at a pension obligation bond, that will

take a fair amount of staff time and effort and analytic and then meeting with the city staff and back and forth and around we go. That gets to be a problem. Now we try to balance it as much as we can. I mean you're our primary entity. We've got to support the trust funds before we do anything else. But the reality is we do get pulled in various directions to address today's analytic need either from the city council, the city administration, or excuse me, one of the outside bargaining groups.

>> Matt Loesch: And I want to be clear though. My question or my comment is not necessarily that there's lack of professionalism or that you're playing sides or that you're -- my -- all my experience, you've been a straight -- you staff have been a straight shooter saying these are the data points that we understand to be factual. But I wanted folks to know that you are getting pulled quite a bit and it is common quite frequently, that we'll try to get retirement to do this, we'll try get retirement to do that. That's primarily my focus. Especially with small staff that is what happens.

>> Russell Crosby: This is been the discussion point that the City Manager and the director of HR is that issue. And I can tell that they are trying constrain the number and types of requests that we get as a result of those conversations. But the reality is, the city and the trust fund and the unions are all in the middle of a huge change. And the only people who really understand what all those negotiating points mean and what the outcomes will be and how to analyze the question are sitting right here. And it's the same little crowd that's got to do your investments and everything else to support you.

>> Since your staff for this has gone from four people to two people, it would seem that you need to raise a hurdle in terms of what other projects that you do work on. Would it be helpful if we as the board reviewed those projects and made sure that the image of the plan was actually accomplished before you take on these other roles?

>> Russell Crosby: I would submit that it is part of the managing if plan that when you have got a group of contributing employer, the contributing employer has a right, a responsibility to ask questions, to understand, and all that takes time. So it is a balancing act, that we probably have more kind of contact with the plan sponsor because we are part of the plan sponsor, than other trust fund staffs who are more isolated and more separate in

other places in the state. But -- and through these conversations with the city administration, there is a recognition that our first responsibility is to the trust fund because ultimately there's real money to be had here and to the extent that we're focused on that we can generate potentially tens of millions of additional money. Where you know an analysis is nice to have but it's not going to make perhaps that much difference. Now, right now with the negotiations that are going on and the restructuring of what the benefit package is going to look like, there's tens of millions to be had in doing that analysis, too.

>> Arn Andrews: Around I would actually just make one comment. I think you're right, I think it's very important the work we do to help support our sponsor and the bargaining groups to understand the dialogue that's going on but I also get concerned about the capacity constraints. And while it may not necessarily be the role of the board to try to prioritize and determine how capacity would be used, as a board member, other than hearing, you know, comments either made at a council presentation or reading them in the news I any I would like to be more apprised of the type of work staff is doing, for what entities, and the type of analysis, as opposed to reading it in the paper or something. So while I'm not necessarily interested in determining capacity I would like, you know, especially in an environment like this, where these conversation U.C. they talk fairly specifically about the solvency of the plans around things like that, I would like to be apprised I think a little more of the type of background work that's happening you know for the different parties so I understand it better also so that would just be one of my comments on it.

>> And our responsibility to make sure that the plan is cared for and that the other projects are at least second in that important role, so if there's a way we can filter, screen, put a hurried many up, I would like to do that.

>> Matt Loesch: I keep saying, more comment, I have more comment. It's the glare column to the right of the blue voids is the accounting end. I had the opportunity yesterday to do the annual report, inquiry with the outside auditors asking about my concerns about what's going on here if I had any and so forth. And the one main concern is not necessarily about things, I couldn't think of anything in the past but it is looking forward and it comes to staffing and in particular when it comes to accounting. It is not that I doubt our accounting as it exists. But adding two new trust funds that they have to account for.

>> Russell Crosby: Three, three new trust funds. Police and Fire, and you, police, and fire, and you.

>> Matt Loesch: Three separate trust funds, even more. The vacancy is there and really, the staff we have is Veronica, she has support staff but really to do the true accounting principle like she is there's a single person. And that is -- that is in my mind one of the biggest risks we have in addition to the investment staff. And we've spent how long, 45 minutes or so discussing the investment staff voids and there's a lot of space there that we need to fill in --

>> Russell Crosby: And in my mind your greatest risk is in the accounting area right now because with investment we now have half of each board is qualified investment people. There's enough intellectual capacity sitting on the boards now to help carry some of the investment activity. Accounting on the other hand -- and then there's also the structures you can use consultants more you could use a CIO in a box, there are other ways to attack that problem. The accounting issue is very different in that we are rereiant on just really the intellectual capacity of one individuals. And if anything happens to her there isn't somebody from the city who can just be wheeled over and say take over the accounting function for retirement. It isn't going to happen. And I've met also with the external auditors yesterday as well, had exactly the same speech that you're looking at risk, here's our biggest risk right now in these trust funds is in the accounting area. And the support over accounting. And it really just comes back to the fact that we do have intellectual capacity within the trustees for investments. I don't want to ignore the investments by any means because I do believe for relatively modest investment of thousands of dollars, you get hundreds of millions back. There's various reasons to spend the money and get that going. But right now short term our biggest weakness our biggest area of risk is really in the accounting area. Thank you.

>> Matt Loesch: Any other comments? I'll stop adding my comments because I think I've exhausted them. Any other comments? Right after this we are going to deal with the item 4.2, board retreat concept and maybe some of these ideas could be pushed to discussion there. Any final things on discussion, action, things we need to have Mr. Andrews were you asking about a certain report on nonplan activities or plan activities?

>> Arn Andrews: I don't know if it needs to be a formal agenda item or more just a discussion item.

>> Matt Loesch: Thank you.

>> Arn Andrews: In the sense that just being a little more apprised how the capacity is being utilized and the type of efforts that are being extended on behalf of retirement employees to benefit whetherrist the city administration or other parties. You know just --

>> Matt Loesch: So like there is a CIO update on investments, you are requesting quarterly meeting or report on --

>> Arn Andrews: Sure, CIO discussion on capacity utilization or something like that.

>> Matt Loesch: Does that work for folks? Things you would like to add to that?

>> Russell Crosby: We'll take care of that. Mr. Mayor okay. Other comments or questions or discussion on that? It's kind of belabored but very important. This is item 4.2 now. Discussion and action --

>> Russell Crosby: You skipped 5.11, update on retiree health care trust.

>> Matt Loesch: We'll get to that in a mom. 4.2, discussion and action regarding board retreat, the reason I wanted to move that, we might have further discussion to a retreat setting, there was a desire to have a retreat, is there still a desire to have a retreat, is it July, August, what would be included or not included by the retreat setting? .

>> Arn Andrews: Did we ever decide what is meant by retreat? Is it Brown Acted or --

>> Matt Loesch: I think it's clearly Brown Acted.

>> Mollie Dent: You could have an educational presentation that was not Brown Acted but you can't have discussion of any items that might show up on the agenda without it being Brown Acted.

>> Russell Crosby: And recorded.

>> Mollie Dent: Typically they have not been, it's a special meeting and it doesn't have to be held here, for example. They have typically been held in a more private location if you will, the public could attend in they wanted to.

>> Matt Loesch: It would be posted, who is speak egg would be posted.

>> Arn Andrews: Was it talked about being a dual board?

>> Matt Loesch: That some our retreat would be held with the Federated board. Obviously that means 16 schedules that needs to be -- in addition to staff and everybody else.

>> Russell Crosby: And we're having great difficulty just scheduling the Police and Fire one.

>> Matt Loesch: In July, lots of people have vacations scheduled, business meetings scheduled around this stuff. There are going to be common issues especially around staffing, that is one of the discussion items that we're concerned with, which would be common, both of us are dealing with the same staff but that doesn't necessarily have to be together, we can do it together so what are your thoughts?

>> Stuart Odell: You know having a retreat just for the sake of having one to me is not that useful to me personally. But if we have a specific agenda item that we want to address, certainly, fine. I mean as I see a retreat it's just a -- spending a longer period of time together somewhere. But not necessarily any different beyond that. So I'd like to kind of know what is the problem, what are we using the agenda, the retreat for, what problem

are we trying to solve or what are we trying to work towards? I don't have a problem conceptually with it. I think July is too close a schedule for us to get our schedules together, maybe that's how I would approach it. Maybe that is the compensation issue maybe that is the number one concern of the two boards and maybe that's what they want to do at the retreat. You about I think you have to know what we want to accomplish.

>> Russell Crosby: That's certainly what -- I wasn't at the Police and Fire meeting but my understanding is that was the main driver for the item was they wanted a joint session with the Federated.

>> Mollie Dent: I think something that has changed, with Plaintiff and Federated, you have had the conversation with the manager. You can have a retreat if you want to have a retreat but you're absolutely correct. Normally you decide what you want on the agenda before you decide to have a retreat.

>> Matt Loesch: Some of the initial thoughts to have the retreat is we have the new folks, and we create a not that we have a adversarially one now, but it is quasiless formal, closed door secretive type meeting that some people might envision. Is there value to have that kind of setting do you think we can accomplish what we need to accomplish?

>> Stuart Odell: Again I'll give my view, I think there's value board members spending sometime together outside a formal board meeting and getting to know each other. If that means we're always being recorded et cetera, you know it's really hard to be yourself when you're on television. But I do think you know getting to know some of the other board members, the staff better, in a less formal environment is valuable.

>> Matt Loesch: We could structure it by having some folks come in and make presentations on particularly topics and then have further discussion on that. That could be the formulation of that.

>> Stuart Odell: If it is interactive, fine. If it's someone speaking to us and we're sitting in a room listen going information, you're not going to learn more about me probably if I'm sitting there listening but if I'm sitting next do

you at dinner for two years, you're talking about your kids or my kids or whatever, I'd probably get to know you better than I would in a speaker setting.

>> Matt Loesch: Thoughts? Go, no go, retreat, no retreat?

>> Lara Druyan: I think one of the -- I don't -- one of the other things we talked about was having some of these groups that might either augment our investment function present and I don't know whether that is appropriate venue for that or not. And notwithstanding also some of the -- I don't know how the CIO of one of these you know \$15 billion outsource you know organizations is going to feel about having everything recorded and potentially reported. So I don't know if that then has to be another ad hoc committee or how that would work or if this is appropriate for retreat ors. I know that's one of the things that's gone back and forth here.

>> Russell Crosby: I guess it's good to know early on the they have a problem being recorded. They can't work for us if they have a problem being recorded.

>> Lara Druyan: Right, understood.

>> Matt Loesch: What do you think Mr. Dirks?

>> Martin Dirks: I'm open to the idea. Getting to know each other and discussing different issues would be good.

>> Matt Loesch: The direction is to what you would like to do? I don't want to drive to have it not to have it, because obviously, we have talked a lot in these meetings but to have a lot of the discussion about topics we're going to be deciding here, I think it's great, public meeting, everybody gets to decide, there's no hanky-panky, what we're doing here. But to understand why you're driving in a particular way, what your perspectives are, if we have a presenter, discussion arounds that I can understand better your line of thinking and where you're coming from either both staff and the trustees. So if we had a session and -- and it's just us. Sounds like we're kind of Federated oriented right now. If we had particular topics, maybe two, three folks come in had them present, I don't

think you're saying present like a sales pitch type present, present as a topic of -- I just wanted to make sure some people would construe that having somebody come in presenting a service, have them present, provide a service, but a topic oriented type thing. And I would be comfortable staff coming up with what the topics ought to be, would you?

>> Lara Druyan: I think this is partly an outgrowth of a discussion we had at a previous meeting where we talked about getting some really smart people who know even perhaps more than this boards does of the state of the market being as dynamic as they might be, you've got potential defaults in Ireland and Greece and other areas, what does that mean if you are the professor of hedge funds at Wharton, is one person I contacted, he advises and manages money for people. He gets some benefit out of doing that but we also benefit greatly from borrowing a Eugene Fama trained brain.

>> We might have folks from industry who want to attend as well.

>> Matt Loesch: August, is that too early?

>> Lara Druyan: Depends when in August.

>> Stuart Odell: I think to plan it and to get everyone there you're probably going to need more than July and August. We're on vacation, things are already planned. Certainly my summer is already pretty well booked up. I would suggest your thinking, probably September or October before you get it.

>> Matt Loesch: So we'll find a September date, as initial run, then we'll push it out to October if it doesn't work.

>> Lara Druyan: Best we can do I mean typically, my experience kids going back to school so people are at least around sometime after Labor Day.

>> Matt Loesch: We need more direction than that or --

>> Russell Crosby: And when we're trying to set up the dates we'll ask trustees for topics as well. If we can get that back together, we'll see you back in August and you can decide what you like and don't like.

>> Matt Loesch: 5.11, update and status on retiree health care trust.

>> Mollie Dent: The health care ordinance was adopted by council and the ordinance will be effective towards the ends of the month and so it's ready to go.

>> Russell Crosby: Veronica. Yeah, Ron and Veronica are also on this topic, that's why it's really here.

>> As far as establishing (inaudible) for the trust, accounting for the trust that we need to work out. There is a whole idea differences between the way that we're accounting for the trust, right now the (inaudible) talked to Mollie about getting the needs of some other California plans that may have the same type of --

>> Mollie Dent: San Francisco has a similar type situation where they are running a 401 (h) and a 115 in completely. So I --

>> Haven't been done (inaudible) I haven't had the opportunity to kind of look into that yet. But that is going to be - the health trust plans are going to come in at the same time that full blown in audit. So you it's going to be a balancing act trying to get the trust of the money coming in on July 1st and the audit at the same time. I believe contact our facility and could get the accounts set up.

>> (inaudible) (inaudible) contact right now, (inaudible) (inaudible) (inaudible).

>> Carmen Racy-Choy: So on the investment side staff is trying to implement the same allocation that we currently has on the pension health care account. Our challenge is the minimums, obviously, if you want to invest -- if you want to invest just 100,000 in hedge funds it doesn't work very well. So wherever possible, we're trying to

be as diversified as possible. We're trying to implement the exact same allocation but there may be some limitations in the terms space.

>> Matt Loesch: Maybe the recommendation would be, once that's thought out and put into place, a report coming back how those were implemented .

>> Mollie Dent: We'll probably care this on the agenda for a little while as a standing item.

>> Matt Loesch: I think next time since there may be a written report so we could understand.

>> Arn Andrews: And with the prefunding to happen on July 1 do we anticipate an asset allocation on July 1st or how do we perceive that happening?

>> Carmen Racy-Choy: We're actually trying to be ready before then, wherever the allocation comes in, the manager will be aware and for the trades to close.

>> Arn Andrews: And similarly to current we're overweighted in fixed income, it's hard to do allocation because of the minimum dollar amounts. Do we anticipate doing similar overallocation? I believe at our last board meeting we decided to reallocate the overallocation to the proportional asset class. Are you going to utilize a similar strategy for the --

>> Carmen Racy-Choy: We might. The reason I'm saying we might and not we will is for example, we don't have access necessarily to TIFs. So some of the implementation is going to have to be approximated. I think we can get as close as possible to the current pension assetting allocation but I'm not sure that we're going to be able to have the exact structure just because if the structure that accommodates \$2 billion, if you try to slink it to 20 million, the mandates on the equity side we have physical ten specific mandates. We're probably going to approximate and just go with a global mandate and some additional emerging markets and other emerging market mandates. So we're probably just taken down the structure to something a bit more simplified.

>> Matt Loesch: Okay, all righty, thank you. I'm going to do this. I know that others would like to take two breaks here i'm going to take a five-minute because there's food over here, it looks like and we're at noon. Five minutes, folks use the restroom, get back to eat, my recommendation is we'll take just a few minutes, quick five-minute.

>> Matt Loesch: A bevy of things to talk about here. From the subcommittee to the board with recommendations for changes. Improvements, modifications, both to us, and also, to city administration. So as you step back and to remind folks as to what happened here and what's the purpose and why was this ad hoc committee convened, last year, the board undertook a bit of a study of what's going on, disability-wise, and disability in general, and we had several presentations -- we had a special meeting to talk about those items and we also had at one of the board meetings a presentation by the attorney's office, we decided to discuss what's going on to try to figure out where our limitations and where our boundaries are to see if we can improve. And so we have here a staff report, a summary really of what was done on that subcommittee, and I'd like to subcommittee. so there's A through H as far as recommendations. I think it might be prudent, mr. Andrews and I were the only ones on that submeat, to make sure we are understanding what those recommendations are. Some are pretty straight forward, some involve some discussion I think. And the intent was, I guess this was kind of our guiding principles was we wanted to make the process for disability similar to get through the process and understandable. Not necessarily simpler to get approved or simpler to get disapproved but make it clearer what's going on behind the scenes and what's going on in front of us. Never to make it simple decision but to make sure we get to our conclusions as easily as possible with the most information as possible. We had, what, four meetings if I remember culminated in May here with our report-out here. So you have this not necessarily an attachment to each one of the items. But there are sections insides the memos that do address in the analysis under each one of these items. So my recommendation if it's all right with you is that we go through and either -- do you want to accept all of these entities as a whole and do one full motion or would you like to do each one of these items in case there's discussion or further conversation on one of the items before -- what is the thoughts of the board? Take it as a whole or just kind of make individual items out of them? Does it matter?

>> Arn Andrews: I was on the committee so I don't want to speak for the members who didn't participate. But I think it's more sense to take it in its totality because it was part of a process that you know some of these individually flow into other ones and so I think if people are comfortable if we want to just walk through what we did and if people are comfortable with the you know, the methodology we took and why we took it then accept everything in its totality.

>> Matt Loesch: I know there are folks here that have expressed interest to speak on some of the items, that's the reason if they express interest to talk, we might want to hold off, based on the discussions that we hear here or some of your comments here. Ms. Busse would you like me to walk through the report? You sure? There's a microphone right in front of you. The fun part of the job. Mr. Andrews, if there are things that I miss, this is the report out in it. I'm trying to the no give any inflection one way or the other. Items A, quarterly board disability hearing. One of the discussions we have, we have these things every month and sometimes we have large amounts of investment things we need to do when it comes to asset allocation or investment reports plan reports and other times we have heavy duty actuarial things where there's valuations and so forth, those reports coming through. And sometimes it makes for sitting in this position our brains are having to flow through all these different elements tame. Our thought was maybe if we could consolidate the disability hearings that the board has to a quarterly process we could be a little bit more focus and kind of have a single mind and possibly shy those meetings to when we didn't have the actuarial reports or the investment reports so we could be single minded on these issues. We asked the consideration for you know an emergency case that could obviously be heard and pushed through and not have to be hemmed to just quarterly but the goal could be to have our hearings on disabilities be a quarterly process and then we have months there, February, may, August and November, in which those hearings would occur at least initially. Any -- miss anything, any comments or questions on that?

>> Arn Andrews: It's mainly to make sure that the board members are focused on specific topics given a board meeting and to your point I mean if a disability meeting needs to be scheduled we will schedule it but to the extent that we can control the scheduling we want to make sure that board members are focused on specific topics at specific times.

>> Stuart Odell: Only comment I would have, just having four additional meetings a year that we have to attend or is this --

>> Matt Loesch: During these meetings, during our monthly meeting. So in February we would have a February meeting which we'd try to funnel the disabilities, if they do lap, that much.

>> Stuart Odell: That's fine.

>> Carmen Racy-Choy: I guess one word of caution, typically the deadline for actuarial evaluations is in November. I mean the word of caution is, I'm not sure that we can hold back necessarily certain items in August and November. So you might end up with agendas where you have disabilities and you still have actuarial items and investment items coming forward.

>> Matt Loesch: I think that's understood. That was at least understood by me. The goal is to try to funnel disabilities to these four months with the chance that maybe we'd miss most of the other setup the bigger reporting periods not missing entirely, being able to push but on the back end the disability subcommittee hearings would happen at a regular pace, there would be no change to what happens with the staff end, the disability hearings that happen currently. So if you look at it what does the applicant seize, they would go through the subcommittee as they would trickle through normally and there was a decision and coming to the board for an additional hearing, we would try to funnel them to these particular months. Yes, sir.

>> Russell Richeda: Matt, I couldn't tell would consent calendar items like item 2.1 today, would those also be delegated to the quarterly, or because they're recommended approval --

>> Matt Loesch: We did discuss that briefly, I don't know that we came to a decision. We got a full hearing and.

>> Mollie Dent: For the consent calendared items if they came forward sort of out of sequence, then if they were pulled from the consent calendar, they would go -- they could roll to the next.

>> Matt Loesch: So for example if one was on January and one of us wanted to pull it, the hearing would happen in February know for those four slotted months. Does that work? So that's now the understanding, of what the intent is. Okay? Any questions or comments further on item A? Item B, formalize the disability hearing before the board. There is an attachment 1 that is submitted and this has gone back and forth. This was actually much shorter than the first versions, we tried to simplify it. Attachment 1 the title is Federated disability hearings script for the board chair. And it's a way to help the boards chair, whoever is chairing these meetings to kind of step away, not legally covered but a more formal process of asking for evidence, I'm not going to read the whole script, you can read it for yourself, ask the applicant to formalize the hearing a little bit. Mr. Andrews? .

>> Arn Andrews: Hearing after hearing we follow a more similar format.

>> Matt Loesch: Correct. So the feeling of every hearing would be identical, this chair or any other chair would follow this script to go through this hearing, also make for a tighter legal document, also make for a tighter legal document. Any comments or questions there? Okay. Item C. Improve the communication regarding the disability process for the applicant. One of the things that we have often heard is that the applicant doesn't know what's going on, they're confused by the rules or staff would say we told this to the applicant they're unclear about it. We say well what does the applicant receive upon requesting for a stability. They provided what was there and so we provided guidance as to what we thought might be an improved checklist for the person. State the rules, state what policy we're going to be making our decision on. And so under attachment 2 to this memo, is that checklist. And so it broke down you know what you need, to whom you deliver it and what the process is. You kind of check off as you go enthuse that this is the process by which you'll flow through the system if you are going to be applying for a disability.

>> Arn Andrews: And most of the applicants when they arrive here they've probably come through the workers compensation process and we want them to understand that whether they arrive here this is a very different

process. And so we hope, by doing that and differentiating the two processes, it will help them conceptualize how they want to proceed.

>> Matt Loesch: Anything further? I didn't look at the Website. I presume all of these attachments are hyperlinked to the agenda. If folks wanted to seize the actual checklist, if we approve this today, the next person, this is the checklist they're going to receive.

>> Donna Busse: I think we added within the workers comp process a limb clearer definition of what the disability process under our process. We added a paragraph regarding the burden of proof on the applicant, those are the areas where there seems to be the most confusion as far as differences and work restrictions that are required by your treating, during the workers comp process how it might be applicable during our process.

>> Matt Loesch: We did a little different formatting. If this is approved as such you are going to go through all your old Analysis, scrub through, so there's no blips through. They did want to talk on particular item if you want to talk on item C, please introduce yourself and speak into the microphone.

>> I'm Jerry Shapui, I'm take the information back. I believe that Linda didis spoke to this issue last year. She was our business agent and has retired. I believe this has fallen through the cracks for the unions. But for us, I think the weakest link is when an employee comes in like we saw today, and they try to address this board they're so unprepared. They so don't know what it is that you are looking for. So sometimes, they sabotage themselves, they don't know how to stay on track and they walk out of here so humiliated and defeated and I -- sometimes and I don't mean to question your decision, but sometimes, often, I think if they had only had representation would it have come out differently? Would you have looked at it differently, would you have looked at it a little longer. So I just see this huge weakness here. So what I would like to do is take this information back to the union leadership, and see if we can't participate in communicating to the applicant what happens when you come here, and how important it is that they have representation. So I just -- I don't know, I did look at the checklist.

>> Matt Loesch: Okay.

>> It's very perfunctory. But it in no way prepares them to sit at this table and address the doctor and their charts. They still don't know, the further represents just to show how unbalanced it is, G-2, the work you're recommending working with the CAO and ABC in opposing disabilities retirement application. And then it goes on to say City Manager's office consider asking the City Attorney's office to provide legal representation for the city administration in opposing disability retirement applications.

>> Matt Loesch: Can we have that discussion when we get to G?

>> I know but that's what I'm comparing it to when you look at that 23-year-old workers that sits at this table and doesn't have a clue away they're up against. They think all they have to do is prove to you that they're disabled, they don't know how to put it back on, it happened back at work. That's the weakest link. I'd like to take this to the unions to see if they applicants clearly understand what they're up against when they want to go up before the board try to get their case turned over.

>> Matt Loesch: Take this checklist back have folks look through it and I wish you folks had come to the disability subcommittee hearings that we had. They were publicly noted and listed in our agendas as to when they were going to happen.

>> I didn't put two and two together, it was my fault, I apologize.

>> Matt Loesch: This is going to be our working copy if it's approved this doesn't mean this is written in stone. If there is stuff we can do to improve our process I think we've shown a willingness to adapt and make things as consistent as possible.

>> Arn Andrews: I would just add, this document is not intended to be the only items we think need to be addressed. These are the items that are in our ad hoc committee we discovered and thought were things we wanted to address. And I think item C the intent there is to clearly get the most educated applicant before the

board, before they get here. And so to the extent that you want to participate in that education process, that was the intent of C. is to have the most educated applicant before the board.

>> All right, thank you.

>> Matt Loesch: Sure, did you have something you didn't understand I didn't see?

>> Good afternoon, my name is Bill Pope, I'm a business representative for the operating engineers local 3. And along with C, I think there should be some emphasis having people like Jerry, having a better call the union office say what do I do, we can at least do something to guide them. What I do is say, go to retirement service, that's really all I can say. Tell them it's going to take six months for you to get your hearing too. If we had more knowledge we guide them, because that's the first call we get. You know especially when their workers comp runs out and they've been told to apply for disability retirement by HR they go okay, that's what they go to. So if we could have more knowledge with the bargaining groups we can help guide it, maybe help you streamline the process.

>> Matt Loesch: We do have a representative from OER here, maybe I can request in particular three documents get e-mailed out to bargaining units and Federated. So you know you can take it back and see if you want to do that. Any more items on C? Did I miss anything, mischaracterize anything? Item D, increase the training regarding the disability process for the board members. We have four new board members now, you're six months in some of you, little less than six months. And still, I'm only three and a half, little more than three and a half years in. And these are daunting decisions because we obviously have an individual we're affecting. I think that's what a lot of us feel we have an individual. Where we are deciding a manager, they drive Ferraris who cares. By our human concern of the folks who are here, we take these in heavy hearts, these decisions though sometimes they seem cold. So the hope was to have some formalized training for the new folks as they come on and detailed there, in item D. We had these first things we're going to do is we were going to have the presentations that were done put together and put on the Website so folks can access them. Number one, easy, they are done, require that new board members have to sit down with staff to get kind of a walk through of the disability process. Before they

come to the hearing so they themselves know what they were going to be deciding. Again I was appointed in November, first week in December I had my first disability hearing, with no discussion whatsoever about that. I don't think that's not fair to the trustee, I think it's certainly not fair to the applicant so let's improve that process. We talked about redoing some of the presentations when staff can get the technical and the Website done, had the folks redo their presentations, video record them so they could have a video presentation of the same thing. We're not there technology wise but that is one of the goals we talked about also possibly having an ongoing component for your training, I don't know quarrel or so, I don't know if it was addressed yet, I thought it was, having an ongoing disability component, you don't get one shot, it's continued.

>> Would those additional materials be available for applicants as well?

>> Matt Loesch: It would be on the Website.

>> It would be another tool to understand the process and the criteria?

>> Matt Loesch: Yes. Did I miss anything, does that characterize it?

>> Arn Andrews: 80.

>> Matt Loesch: In my mind one of the biggest things, a tool for us although it might not feel that drastic, not something the public necessarily seize, in our board packet, disability hearings is the cause eye inconsistency of the board packet, how do we make it more efficient so that things are in the same place every time, the same type of reports are in the same place so we can -- I know that's in section 2, when you're looking for something as your memory's jogged and how that section 2 is structured. So under item E is the reformat of the disability case packet and provide additional information to facilitate board member review. So the point was to re structure it place it into sections where you have the background information of the applicant themselves, then the employment status and reports book, the medical information, then the we structured it is each section would be numbered separately so let's say our attorney supplies more documents, it would be easier for our staff, the oat

thing we are thinking is we want to make this easier on our staff to print these consistently, what do I do, do I staple it to the back, we have a section, we know where to put it in, we know how it is going to be numbered so, and on Dr. Das's report we spent a good deal of time speaking about his report and how it's structured and what would help us understand going through the medical in his report more fully some things come to mind that were included, whereas a restriction, medical reports so we can break down by body part of what the restrictions are, in kind of the matrix form. Sometimes when they have a single body part it's simple you don't need a matrix. But multiple things going on, this thing to the arm, this thing to the leg, this thing to the back, to try and weed through. Then in the medical report you often had listed them not always in the same exact order. We have asked them to be chronologically listed with the page number reference so if you wanted to flip to the actual report, for example I'm on his report page 5 you know doctor report, dates, type of doctor it is, occupational medicine, spine specialist, sometimes it helps characterize what type of doctor they are, instead of simply M.D. You could read what he wrote here as a summary and read what the report actually says, kind of help cross-reference and it's done chronologically from the beginning to the end of the reports that we have. Did I miss anything in the packet?

>> Arn Andrews: No, structuring the packet in a way that parallels the way a board member is supposed to think about this process, too. You know our primary threshold is incapacity, you know, so make it clear in the way the packet is combined, that we actually get to a determination of incapacity. And then we start to think about causation and things like that. You know oftentimes the way the packets are I think board members can lose sight of what their primary first determinate is supposed to be and then the subsequent determinants based on that initial thought process for each board member.

>> Matt Loesch: To that point and I'd forgotten one of the things we want front and center of each packet is the disability guidelines, what was presented from the legal end and what the definitions are. The second page of every packet is going to be this disability guideline. For us if we're doing this quarterly, let's sit down again and remind ourselves how we are making this decision, this determination of what we're determining. Separated, little blue sheets to separate the sections for you so you know where section 2 is sort of visually. Ms. Busse as I missing anything? Dr. Das am I missing anything about your report improvements?

>> Councilmember Rocha: .

>> Donna Busse: Then there was some assumption on the disability committee recommendations to put a little.

>> Matt Loesch: To beef up your report coming out any other thoughts? Am I missing anything now? Okay. Item F, this is to require the applicant to proceed with subcommittee hearing within six months from when the medical director's report states that the applicant has achieved maximal medical improvement. Would you like to address this Ms. Busse? This is one of the items that you had -- was in area.

>> Donna Busse: Right we oftentimes have a situation where an applicant is ready to move forward in our process and for some reason is requesting a deferral, many times it is for medical but then no medical reports follow or the medical reports we receive are not new reports. And it delays the processing of these cases for years. And we continue to work these cases, we continue to ask them continue to follow up on them where is your medical that you want to submit, you know are you ready to move forward on an agenda. So in order to kind of alleviate some staff time, when those case are ready to go forward, to make it mandatory that they have to move forward, we're going to put them on an agenda and only if there is new medical evidence that Dr. Das can substantiate is new evidence, if there are extenuating circumstances we will not move forward but those are the only reasons to not move forward when a person's case is ready to move forward.

>> Matt Loesch: When all the paperwork is there and the person is at maximal medical improvement, this is just requiring within six months that the subcommittee hearing happens. Because there is the -- you use the word often, the way you express it is sort of four or five trickle through. It's not like 20 or 50% of these cases are trickling through. It is a handful of them, requiring staff to reach out to them to make sure everything is done. Everything is done as far as the maximum medical improvement. There's no you further documentation. If you want us to proceed, if you want to hold this thing open you have six months that we're going to hold the hearing. And so it gives them six months if there's new medical evidence, if there's things that would change they could present that but other than that they need to come forward and actually have their hearing.

>> Arn Andrews: And just to reiterate, this does not necessarily dismiss a case. It just says once you enter the process we would like you to missile complete it within six months. If you do not complete it in six months, they can still apply again. We are not dismissing cases we're saying missile if you enter the system, complete it.

>> Donna Busse: If they feel they are not ready to proceed, they can withdraw their application and reapply.

>> Arn Andrews: Right.

>> Matt Loesch: Russ.

>> Russell Richeda: I guess it goes without saying the six months starts when, assuming if applicant hasn't withdrawn a body part but the last one has received MMI.

>> Donna Busse: It triggers the report when Dr. Das says they're ready to move forward.

>> Russell Richeda: Claiming william.

>> Donna Busse: Absolutely.

>> Matt Loesch: The intent is not to cut someone off early, it's get your medical stuff done, get your information in, and let's go forward with a hearing if you desire a hearing. Any comments or questions on that? Okay . Item G. There's two points to item G. Recommend to the City Manager, so some of the things we had -- these things A through F we believe that we could do. By our decision, by our actions. Item G was something we believe we have to request the city to do or someone else that we don't have the power to make that decision. So we'll give some background. Recommended City Manager's are following, early medical intervention by employee health services and workers comp process. Would you like to elaborate on item I?

>> Dr. Das: I think some of the board members have noted and I've noted in my evaluations as well, some people have medical treatment options that are available to them and they're in considerable pain. And they've been through the workers compensation process and they're done but unfortunately there's a lot of good medical care that probably would have made a difference for them. And so the key is to try get people a good diagnosis early on. And direct them to physicians that are good at diagnosing and good at treating and hopefully we'll stop that flow of people that are not catastrophically or incapacitated that are not incapacitated that end up applying for disability retirement because they are still in a lot of pain. And it's not because the injury is incapacitating, it is that they haven't received the best medical care. I think that's the goal, is to try to get the individuals the best medical care as soon as possible.

>> Matt Loesch: The best thing for us is a letter to city administration that we would like to you do this sort of things am item G1, city administration consider doing something like this. Two I or G 2, work with the city attorney's office on securing legal representation for if city in reviewing and as appropriate in opposing disability retirement applications. City Manager office consider asking the city attorney's office to provide legal representation for the city administration in opposing disability retirement applications. And to get to the point of why, ask for the city attorney's office to oppose a disability? I mean it sounds fairly harsh. We're sitting here as trustees as we've discussed in subcommittee as the judges. And so we are to judge whether this case is warranted to go ahead or not, get approved. We, the city brings experts, Dr. Das, an representatives from HR dealing with workers comp to ask questions. I think one of the misnomers is that something that the City Attorney rolls over here is to argue the case, not argue the case as you would consider in the a regular court hearings? These are officials, they make the rules, they are making sure the hearing is held within rules, that's what the municipal code says. So think about the referee to raise a flag or blow the whistle, to say this is the rules by which you judges should be make ugh the decision. So we say, there's often -- oftentimes they bring attorneys sometimes they don't, whether applicants, should or should might not but we don't have control of that so who is the beneficiary of having -- essentially we end up arguing with the experts or arguing with the applicant, which is really the judge's role in the hearing. And so we ask well who would argue that case and really it should be the city. If the city thinks that there disability should be approved they really wouldn't argue. If they think it should not be approved it would be up to the city to argue that that disability should not be approved. It is the city staff, Dr.

Das or whomever representing HR to say that that should not be approved and these are the reasons why. I don't know if I'm characterizing it well or characterizing what I'm missing here.

>> Arn Andrews: I think one of the important points is right in the item it says when appropriate. And to the chair's point if we're sitting as a judge we're not allowed to sit in the other capacity and as we reviewed the process we realized that at the city perspective, nobody was sitting in that capacity. Where appropriate does the city want somebody sitting in that capacity? We are just acknowledging that we realized on the City's side there might be a bit of a void there. So that was the genesis of this.

>> Matt Loesch: And considering who ends up paying if there's a disability approved? Who ends up paying, is it the city, ends up paying because let's say someone works a year and a half and is approved of a service related disability they're obviously going to be bumped up to 15 years of credit and medical, who ends up paying for that? Because contributions haven't gone into the system based on their service. Who ends up paying that? Who in effect it would be the city of paying for that additional cost. So if anyone is going to oppose it, it ought to be the city that would oppose. Because otherwise we end up being in opposition to someone applying as opposed to argue a case or asking Dr. Das to argue the case, when his role is to provide medical evidence or review medical evidence or provide information about the literature that's out there so we can understand the medical part of it not necessarily argue the case which is the role he gets put in very frequently. Something I'm missing as far as the description?

>> Donna Busse: I think what came up at the committee meeting, when an applicant has an attorney, oftentimes the judges will hear the applicant's attorney make the case, there's nobody arguing the other sides or even questioning some of the arguments that the attorney is making. And sometimes we think things get missed in that way because sometimes the other attorney maybe takes things out of context or couches things in a way which is very persuasive but may not necessarily be accurate.

>> Dr. Das: In fact I think a lot of mischaracterization return to work process in terms of what the applicant states happened and what actually happened and it takes a lot of initiative on the return to work coordinator's part to

correct or oppose what the attorney has stated is the facts and a lot of times those -- the statements or the witness statements by the attorneys are presented without opposition. And I think it kind of frames or characterizes the application and it's not necessarily an accurate representation of what actually transpired during that process. And since the availability of a job a lot of time is a critical component of the disability retirement's certification, that it's important to have somebody kind of review the actual chronology and the actual facts.

>> Matt Loesch: And so the thought is in formalizing the process the chair will ask city to present their case, ask the applicant to present their case, whether it's an individual or their representative, and then ask for each to rebut in a more formalized way you would think you would see in a more formal hearing. So the attorneys on this ends don't have to play this game, maybe you should ask this question. So our hearing is legitimate, so if there is a court challenge after that we will make sure we are within the bounds of the hearing properly not necessarily guiding any kind of questions or making sure that they're making any kinds of representation, just as referees and have someone if they are going to oppose it on the city side. Because then it is our frame as judges in that sense, not simpler but clearer. The role's clearer. Did you want to add anything else Jerry? So this is the point you brought up. Mr. Richeda is going to fill in while you walk out.

>> Russell Richeda: I just wanted -- underestimate your ability to ask questions that are helpful. I agree it's better to have it sort of a prepared, more adequately, including the two, the pros and cons of each side as presented by advocates for each side. But you're not judges, trial judges ask questions, appellate judges ask questions, hard probing factual questions, hearing officers ask questions, appeals judges ask questions, members of civil service boards ask questions. I want you to understand you have full you don't want to be an advocate.

>> Matt Loesch: We don't want to have to pull out of Dr. Das when I don't think that's our role if we're trying to get some kind of clarification or get him to rebut something that person said when we should be judging one way or the other.

>> Mollie Dent: Actually, Dr. Das is a witness and that is kind of your -- that is part of your role. So the -- the analogy that I would make is, with our civil service commission hearings. The -- in civil service commission

hearings, the city does have separate representation from the attorney that is the attorney for the commission. So in a civil service commission the employee will have their attorney and the city will have an attorney, too. And so that really is what this is getting at. If the city wants to oppose an application then the city would ask our office to supply the service. I will be quite candid with you, it is mainly really a budget issue. It is really mainly a budget issue. But there's -- it's certainly a perfectly good recommendation to make to the city. What the managers office or our office does.

>> Matt Loesch: Because it almost becomes tacit understanding that they are making no mention of opposing this case, even in letter format, they are almost tacitly improve of it of not opposing it.

>> Mollie Dent: Come forward and testify either Mr. Demers or sometimes a representative of the department. Not so much with this board, most of the time it would be Mr. Demers, but that is the representative of the city administration.

>> Matt Loesch: All right.

>> My concern goes back to the checklist is great. But it's just so perfunctory and I'm just concerned at how naive the employee is and that employee does not understand that they need representation. And I don't -- I'm not suggesting that the city provide it. But there's just -- this just to me is absolutely the weak link here. Because when that employee comes up here and you've gone through the checklist and you've gone through the whole process and I've never gone through it. I'm really an observer and have only seen it from back there. But this is where I just get so uncomfortable is when that employee is sitting here all alone and going up against you guys which is not easy. This is not easy. They don't even know what they're going up against and somewhere in here, they have not been told, if you want to go against it, you can, yes, of course you can go and appeal it. And -- but they just don't seem to ever understand that you need someone here who can really guide you through the process. Because the average employee just can't do it. They can't come here and keep it focused on, it was because this happened on the job that I feel this way. And we've seen it over and over again. Today was a prime example but one of many that I've seen and that you've seen. They come here and they just don't understand this

level of legality that they're up against. And I'm not trying to challenge your decisions. I'm sure that you want to do the right thing. Not challenging that at all. But this is really a weak link and that is C. That is C on here, that's how to communicate this to the employee, when they get to this level. They've gone through whole thing, they've gone to the doctor, they've done all that but then when they come here this is all where it all falls apart. It's this moment when they're sitting right here and it just -- it's just so uncomfortable for everyone. It's uncomfortable for you, I know it's uncomfortable for you, I see it and I see you trying to help them and you can't. And so I don't know what the answer is. I do not know what the answer is. I just know this is weak link. I know this is the question.

>> Matt Loesch: Hopefully today what we're doing is a step in the right direction.

>> It is a step in the right direction.

>> Matt Loesch: We don't claim it is everything.

>> This is a step in the right direction, I will take this back to the union representatives and hopefully we can come up with something. Thank you.

>> Matt Loesch: Item H, request an opinion from legal council on whether and thousand plan itself can secure legal counsel to oppose disability retirement applications, should the city elect not to provide legal counsel to the city administration in opposing applications. When we talk about retirement city attorney's office and their professional staff being decimated, it's similar, so to expect the city attorney's office oh, sure we can just throw anybody at it, they might say we don't have budget, it's great idea, so our request is to have them provide a legal opinion as to how we could -- how the fund could pay for that, how the pension fund could pay for that, really get a legal opinion on it.

>> Mollie Dent: I would say that we viewed this sort of really more broadly than just to oppose. But that if the city is not going to have any legal role in opposing applications, I at least understood the question to be more along the lines of, securing additional legal help for the board. I understand that it's to oppose the applications but I

probably will take it more broadly than that. Because I will be candid with you, there are some due process issues of actually having the board have their legal counsel oppose the applications. That is what we will be addressing in the opinion but there may be other ways that you can get the additional legal help. I viewed this more as like I say a resource issue.

>> Matt Loesch: Okay. Ms. Erickson did you want to comment now before I went further?

>> Sharon Erickson: Yes, Sharon Erickson, disability retirement process but so let me say first, those comments in support. The committee is recommending common sense improvements for managing applications for disability retirements. These improvements are intended to make the process more uniform and predictable for both applicants and the board by better communicating with the applicant, making board hearings more consistent, providing training on all aspects of the City's disability retirement process to new board members, and it appears to applicants as well. Securing legal representation when the city opposes disability retirement applications. Each of these changes make sense to me in my office and should lead to some improvement in the process. However I did want to point out that our April 2011 audit report on disability retirement included a total of six recommendations that were accepted by the city council, and may be proceeding simultaneously with your work. And just not to lose track of those recommendations, they included several that applied primarily to the Police and Fire retirement board. I wanted to point out two that you may want to consider including. So one recommendation was a recommendation to the city council, not directly to the board, but for the city council to take steps to amend the municipal code to reconfiguration the City's process for reviewing disability applications, so that first off, the decision to grant or deny a milks for disability would be made up of a committee made up of expertise in disability workers comp and the medical field. Second, that applicants who wanted to appeal the decision of that committee would appeal the committee's decision to a board-appointed hearing officer, rather than to the entire board. And then, the third part of that recommendation was that the city has its own legal counsel to what we called advocate for its interest at the disability hearings. This last part does coincide with the committee's recommendation and the committee has added that the board itself may want to secure legal counsel and I would phrase it to argue the case circulate the city not elect to provide legal counsel. And my office and I agree completely with that portion of the recommendation. The other recommendation that really does apply to

what you're doing today was, a recommendation again that I made to the city council, and the city council accepted but it's moving its way through the process, would be to require employees to declare their intention to apply for a disability retirement at the same time as they file for a service retirement. As we pointed out in our report, the city charter actually requires employees to apply for a disability retirement with while they're still employed by the city. And I would respectfully ask that you incorporate that into any proposed changes that you make. Again I want to express support for the changes and the hard work you've done to date with the realization that there are additional reforms and efforts on the part of the city in the area of disability retirement as well. So if you ponder additional changes I'd ask that you consider potential use of a specialized disability committee with technical expertise in that area, and then a hearing officer process, rather than involving the board. And that applicants be required to 78th their intention to retire on disability when they retire on a service retirement. So that would be FCD, service connected disability pending. Thank you.

>> Matt Loesch: Do you have any questions you want to ask directly? Since it's not posted here I don't think we can take action on that today by adding those.

>> Mollie Dent: Yeah I was just going to say that all three of the additional items that the City Auditor mentioned do require Municipal Code amendments. So if the council -- the council did accept the City Auditor's report. So assuming that at some point there will be Municipal Code amendments that come forward, then the code also provides for those amendments to be looked at you all and a recommendation made on them. So --

>> Matt Loesch: So secondarily, I don't think so we can act on that because it's not posted as part of our agenda necessarily but we could probably make recommendations --

>> Mollie Dent: It is going to come back to you anyway I guess is away I'm trying to say.

>> Matt Loesch: Mr. Andrews?

>> Arn Andrews: I was just going to say that there seems to be consensus ever what's current before us is a good step. I would say let's still consider this and accept this but one of the key areas is the concept of education both for the applicant and the board so I would ask if the City Auditor has the ability to come back and educate us on the three recommendations that were just provided, as part of our continued education so that we understand conceptually what the City Auditor is recommending and we can deliberate it at a further date.

>> Matt Loesch: She's nodding so I am assuming that the -- Mr. Pope.

>> Hello again. This is probably a day that will go down in history. This is in my -- I'm in support of the City Auditor's recommendation of the independent panel, and the hearing officer. I think that is a better use of your time, and I heard a lot of discussion this morning about focusing on the fund and all that kind of stuff. I don't believe that you're all here to listen to somebody's medical history. I think it's more important for you guys to be dealing with the fund. Thank you.

>> Matt Loesch: Okay.

>> Arn Andrews: So with that I would make a motion to accept the ad hoc disability determination process changes which are items A, small I through what is that -- Roman numeral A through H.

>> Matt Loesch: Move A through H, that will be coming back. These changes that we are instituting here both staff wise and hearing list, the new checklist, the new reporting, I assume that the letter to the City Manager with these requests and then an opinion back from the attorneys on item H.

>> Mollie Dent: Pending what the City Manager --

>> Matt Loesch: Any change drastically, if city council moves that drastically then the whole Kaboodle will be changed.

>> Russell Richeda: Matt -- [audio-only portion of transcript]

>> Mollie Dent: I was going to go ahead and do it and see if we need to do something separate. (inaudible).

>> Matt Loesch: Motion, do I have a second?

>> Lara Druyan: Second.

>> Matt Loesch: Any further discussion? All those in favor? Opposed? Thank you. So this is a sequence 2B, the minutes for the ad hoc committee for April, motion on that item?

>> Motion to accept.

>> Matt Loesch: Second?

>> Second.

>> Matt Loesch: All in favor, opposed, 5C, the motion for the ad hoc committee for May?

>> Motion.

>> Second.

>> Matt Loesch: All in favor, opposed, 7.2 is training notices, so all of item 7 should be note and file. Any future agendas items? Seeing none. Public or retiree comments? Seeing none. We're adjourned.