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>> Mayor Reed: Good morning. I'd like to call to meeting to order. This is the meeting of the San José city council, we have a quorum. We will start with the labor update. And then we'll adjourn into closed session and then be back in here at 1:30 for the afternoon meeting. So I will turn it over to Alex Gurza for the presentation on the labor update.

>> Alex Gurza: Good morning mayor members of the city council, Alex Gurza, Director of Employee Relations. As we do every week we want to remind anybody that proposals and negotiations both those proposals that are made by the city and those proposals that are made by the unions are available on our Website, posted on the day that they are either made or received and you can go to the main Web page and there's a link actually there on the main home page to the employee relations labor relations Website. And one of the things that we have experienced now with the -- all of the information available to the public is a lot of people are now reading labor documents, reading proposals, counterproposals, tentative agreements, and we thought it may be helpful a little bit for people who may not be familiar with the various terms to talk very briefly about proposals and tentative agreements. Because there are different types of proposals, and there are different types of tentative agreements. For proposals, sort of the main categories is, you can have proposals that is made by either side on a single issue. So a single issue that is being dealt with at the table, either side can make a proposal on a single issue. As well, you can have what's referred to as a package proposal. Most typically, a package proposal is presented as a proposed resolution on the entire agreement, not necessarily, however. Someone can make a package proposal on several items but there are differences between single issue and package proposals. And you have seen those, and there is a package proposal in your packet this morning. Tentative agreements. There are also different types of tentative agreements. There are single-issue tentative agreements, so for example as negotiations progress, the parties may reach an agreement on one particular item, that is usually then signed by the lead negotiators of each side, but it is still subject to an overall agreement on a new contract. So it doesn't go into effect simply because you reach a tentative agreements on a single issue. But it allows progress to occur, to then lessen the amount of issues that may still be pending. Then we have tentative agreements on a new contract. Now those are probably the most significant because that is when you reach an agreement on all of the terms of a new contract. Which we have with the San José firefighters local 230. When we say tentative, there are two very important steps once we reach tentative agreements. Tentative agreements are entered into between

the lead negotiators of both the city and the bargaining unit. It is subject however the tentative agreement to ratification by the membership of the bargaining units and also city council approval. One of the things about the firefighters agreement is that a lot of news reports have said that the city council will be approving that agreement today. That is not the case, although we will discuss it because it still has to be formally put separately on a council agenda and compliance with the sunshine requirements allow time for the public to review the details of the agreement and the tentative agreement that's posted. So just as you know that particular item will be coming back to you on March 22nd for formal approval. So this is our sort of a one page slide that we've been showing you on proposals or agreements reached between the last time we met. And most significantly is the agreement we have reached with the San José firefighters that is -- resolves an agreement on a new contract that would be in place as soon as council approves it, until June of 2013. It does achieve the 10% total compensation reduction that we were seeking. As well as a change to minimum staffing, resolution to various grievances and a commitment to continue to negotiate on very important issues of retirement reform and sick leave payout. We will have an opportunity on March 22nd to recognize the work that went into reaching this agreement but I did want to acknowledge that local 230 president Jeff Welch is here, I think probably spent many, many of the last four or five days in ratification meetings and want to acknowledge his work and the work of his team in getting an absolutely amazing vote of 95% voting yes on the tentative agreement. So I really want to thank Jeff and his team for the work that they did. Next is the coalition, the group of five bargaining units that are negotiating together. They have made a significant proposal in that it is a package proposal. Again like I mentioned in the slide earlier. It is presented as a way to resolve the entire contract. Significant thing about that proposal is it is proposing a 10% ongoing reduction. It's before you but as you'll see though, it does -- the 10% that they're proposing is different in the way that they're proposing it then for example the agreement with the firefighters where it's primarily base pay and health insurance. That one is primarily the additional retirement contribution and health insurance. Those are the primary components. It does also include retirement reform, a second tier proposal and an opt-in option among other items. So I'm very quickly going through it but the actual proposal itself is before you and online for anybody who would like to review it. Operating engineers, providing a proposal again that's before you to reduce vacation accruals, that means to reduce the amount of vacation that employees earn in a particular year. In addition reduce how many hours they work per week from 40 hours to 38 for full time employees and continue a

portion of the additional retirement contribution, all of those are one-time savings meaning that they expire. And I will turn it over to Gina regarding the association of legal professionals.

>> Good morning. When we met with the association of legal professionals last week we did receive a wage proposal from them to continue the 5% ongoing compensation reduction that's already in place from last year. And to allow the 5% one time reduction to expire for 11-12.

>> Alex Gurza: The other coalition that we're working with is both AFSCME affiliates MEF and CEO. They provided what we call a preliminary list of interest and issues, similar to how the city presents a list. This is the list of items, topic areas that they would like to discuss during the negotiations. Although we have not received any proposals on any items from them at this time. And lastly, the Police Officers Association, we met most recently with them yesterday. And we have not yet received any proposals from the POA. Around as you see in the right column that indicates the next meeting that we have with all of the bargaining units. So with that, that's the ends of our presentation. Be happy to answer any questions.

>> Mayor Reed: Thank you, Alex. Have some requests to speak. I'd like to take that now. Jeff did you want to go first since you're closest to the microphone? I figured that's why you put the yellow card in there. And then Nancy Ostrowsky and Brian Doyle.

>> Thank you very much. Thank you, Alex. Thank you very much for the city staff for working so diligently hard in such a short time frame to come to answers that work out solutions for all of us. His staff worked a few days overnight, I'm sure they put in long hours. And thank you council for supporting bringing those tentative agreements before us. We really appreciate that. We know that every day San José firefighters sacrifice a portion of themselves to save lives and properties and overwhelmingly, 95% of us are supporting just about unanimously supporting keeping firefighters on streets and making the financial sacrifices necessary to make that happen so we can continue to keep the public safe and keep ourselves safe. And we're hoping that in combination with the chief's operational model savings, changes that he is going to be proposing, we can work towards keeping ourselves status quo, avoid any layoffs, and take advantage of a SAFR grant that is potentially possible for \$15

million. If we don't spend it here, it's going to go elsewhere. And I know it's a tough decision but we are going to bring all resources to bear that we have to help you assist in getting that done. Thank you very much. [applause]

>> Good morning, everybody. We also appreciate the open, honest and professional guidance from the city at our bargaining table. And as you know with our coalition, we have 17 coalition union members on our side of the table. So we do have to structure some caucus time and the city has been very, right there for us in understanding. We're happy at the way it's been working through. They do work very hard for all of you and us, as well. And we've both accomplished a lot through the negotiations as you see in closed session when you have a chance to review our settlement proposal dated March 4th. We did meet, we were the first nonsworn miscellaneous unit to offer 10% total compensation. So we've met your demands of your ask. Pension reform proposal, again, the coalition, we're the first nonsworn unions to offer pension reform for new hires. Now including retiree medical. And this proposal exceeds the city council direction for reforms. Pension, vested member opt-in option and it's voluntary. We did offer voluntary opt in option for current vested employees in the pension plan. Health care savings, now you know this was -- has been very difficult for us, it was difficult for us last year. This year we met the city council's direction regarding concessions in health care in all four areas that were on your issue list. Simply, we've agreed to each and every health care change. Sick leave payout, we understand you are continuing dialogue with local 230's fire regarding sick leave payout reform and pension reform. We too also stand ready to continue those discussions. SRBR, we also offer to negotiate and continue on that reform. And then status quo was our total proposal. In closing I'd like to say that we, the members of this coalition, we're hopeful we can TA on these items this week. Our employees, our members feel strongly that sacrifices should be shared equally across the departments, across all the bargaining units. It's about fair and equal treatment, and everybody shares the pain. So we are hoping to reach this agreement because we know you have to finalize your budget. Thank you so much.

>> Mayor Reed: Brian Doyle.

>> Good morning, Mr. Mayor, councilmembers, I'm very encouraged by all the agreement that's going on arounds here so I'd like to continue in that spirit for arguing as well. But there have been several impediments for us to be

able to get this moving forward and one of that has been the failure to supply us with dollar figures of what it is you want the 10% from. We have just received some figures, it's not clear what you're asking us in terms of what the total dollar figure is. To the extent that the city could put its request in dollars and cents so that we can bargain over dollars and cents just like the rest of the collective bargaining world that would really be helpful to us being able to move forward. So far we are not getting those figures. On the sick leave payout, proposal that the city made which was not mentioned in the summary, again, I reiterate that it's very nonproductive to continue to request that from us when it is in our minds very much a vested right, and it also has a extremely disparate impact on our unit and it is not likely that anyone would ever agree to this. We asked your bargaining team what rational person would agree to this proposal, and for reason? And they were unable to supply us with any reason. They were also unable to supply us can any dollar figure as to what you were trying to achieve with this proposal. So again, we're just trying to deal with dollars and cents. I can't give you more percentages when we don't have a dollar and cents figure to apply that to and we just urge your team, urge you to urge your team to simply supply us with that kind of information and I think we can move on thank you very much.

>> Mayor Reed: Thank you. Alex anything to add?

>> Alex Gurza: No mayor thank you.

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

>> Mayor Reed: (gavel strike) Good afternoon, I'd like to call the San José city council meeting to order for March 8, 2011. We're going to first start with our invocation, and I think Councilmember Liccardo is going to introduce the invocators.

>> Councilmember Liccardo: Thank you, Mayor. Symphony Silicon Vally of course needs no introduction, because since 2002 they have become one of the region's great features for cultural appreciation here, and certainly the premier orchestra in the region. Artists are nationally recruited for this organizaiton. The average performer -- and there is no average performer here but the average performer has been in San José for over 20 years. There's a strong commitment to the city. I know that Andrew Bales also needs no introduction. He's the founder and president of symphony Silicon Valley. The results of his leadership and his balanced energy can be seen throughout the city and heard throughout the city. He created the co-venture for ballet San José between Cleveland and San José. For those of I who saw swan lake in the last couple of weeks you would have heard symphony Silicon Valley in the pit as well. He spearheaded and fund raised for the construction of the veterans memorial and we know that we are going to do everything we can to restore that beautiful monument. He's been instrumental in the city's Arts Express program for school aged children to attend arts events. He created the city of San José's multicultural arts series and the San José summer pops festival which of course features symphony Silicon Valley, a wonderful free event every summer here in downtown. Gaylon Lemon is joining Andrew today, the principal percussionist for the symphony. Playing a nonsymphonic instrument, the steel drum, to open the session. Welcome. Symphony Silicon Valley.

>> I am going to be quite brief. Just thank you, and symphony Silicon Valley is about to embark upon its 10th anniversary season. And we have a musician who has been in this town for close to 40 year, who will play as we say a nontraditional symphonic instrument to open your session today. Gaylon lemon. [əmusicə] [applause]

>> Mayor Reed: Thank you very much. We enjoyed the random act of culture. Somehow I don't think it was random. Seems a little bit rehearsed to me. Thank you very much. Great performance. Our next item would be

the pledge of allegiance. We're joined today with Lynhaven elementary school third graders are going to help us in the pledge of allegiance. Please stand. [pledge of allegiance]

>> Mayor Reed: Thank you, Lynhaven elementary school third graders. Under orders of the day, are there any changes to the printed agenda that we need to discuss? I'd like to note that the initial meeting of the San José Diridon development authority will be heard immediately following item 8.2 on the Redevelopment Agency agenda. And then item 8.1, the Bay Area UASI memorandum of understanding, we'll add to our consent calendar to take that up early so the staff can go back to work. Any other changes to the agenda? Motion is to approve orders of the day. All in favor, opposed, none opposed, that's approved. This meeting will be adjourned in memory of Sal Sunseri, who was a beloved resident as well as youth baseball and soccer coach in District 9. Councilmember Rocha has some additional words.

>> Councilmember Rocha: Thank you, Mayor. Sal was a District 9 resident who was born and raised in San José. He grew up in downtown and graduated from Santa Clara University with both his undergraduate and law degree. He started a law practice in the area and continued to practice law in San José as he raised his two children, Samantha and Scott. Sal was a man of integrity. He was nominated and accepted as a member of the American board of trial advocates, a group which seeks attorneys who display skill, civility and integrity to help younger attorneys achieve a higher level of trial advocacy. Sal was also an avid Giants fan and a devoted coach of youth sports in District 9. This is where I met Sal, at Cambrian Park little league. Our sons play together, and I had the honor of coaching with him. At opening day, at Cambrian park this past Saturday we recognized his contributions and his spirit and let me say he was missed that day. This is why I brought this item here today because I wanted to follow that day and take a moment to remember a man that added a lot to the lives of youth that he coached. I believe that youth sports are incredibly important in leadership and physical development and Sal was a great role model to the children and parents who worked with him over the years. A short story that I shared at the opening ceremonies was, when my son made the all stars. We got a call from the coach first, to let us know but then lo and behold a call came from Sal. And he wanted to talk to my son. And he congratulated him. And when my son hung up and we talked about it what I walked away was so impressed that this man would go out of his way to call another child and congratulate them on achievement. And that moment was one that will

drive me in my involvement in youth sports. A reminder that it is about the children, and everything that we do is for the kids. I really learned a lot just that one moment from Sal. He was embraced by the community, unfortunately passed away before he could see the Giants win the World Series. Sal's wife Barbara and members of the family are in the audience today, on behalf of District 9 and the City of San José I just want to offer my condolences again and sincere thanks to Sal for his dedication to the community. Thank you very much. [applause]

>> Mayor Reed: Our next item is the closed session record. City Attorney.

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

>> Mayor Reed: We'll now take up the ceremonial items. I'd like to start by inviting Councilmember Herrera, Juan Valencia and some folks from animal care and services to join me at the podium. Today we're commending San José resident Juan Valencia for his courageous efforts to rescue a woman being attacked by two pit bull dogs. Councilmember Herrera has some of the details.

>> Councilmember Herrera: Thank you, mayor Reed. I want to welcome Juan Valencia and also our team from animal care and services. We have Captain Leslie Tisdale, Sergeant Jay Torado, Officer Michelle Metcalf I guess is not here, Officer Jennifer Garner, and Officer Marie Anendale. On Monday, December 20th, 2010, Juan Valencia demonstrated heroic measures in the community. He -- many people when faced with a situation where they might be put into danger might run away. Or might not want to take action that could put themselves in danger. Especially when you're not being paid to do so, you're not -- this is not your regular job. But Juan Valencia that day selflessly and courageously came to the aid of his neighbor as she was being viciously attacked by two pit bull type dogs in front of her home. Juan had just arrived home that day when he heard the victim's screams and note that she was defenseless on the ground with both dogs on top of her. He took immediate action to rescue her from the attack, as he intimidated the dogs by yelling and hitting them with bricks and stones. As soon as Juan saw an opportunity he pulled her away from the dogs, and proceeded to tend to her

injuries in order to stop the bleeding before she was taken to the hospital. She suffered serious injuries, no was alert released from the hospital. As animal services sergeant Torado told the press, Juan stepped in and saved her. He risked his own safety and thanks to his own efforts he prevented the victim from suffering other injuries. Juan pledges this was not an act of heroism, as any good samaritan would have done the same for any -- someone else. He would definitely do it all over again for anyone in danger. So today, I want to thank Juan Valencia, a great District 8 resident and a resident of City of San José and also the animal care and services team for assisting with this case, their dedication and commitment, they were able to round up at least one of those dogs immediately, they did incredible work out in the community and I want to now invite Mayor Reed to present the commendation to Juan Valencia and Juan will have a few remarks. [applause]

>> Thank you very much. They've asked me if I was to do this again would I do it any day for anybody. I am -- I love my family, I love life. I am -- I'm thankful for the animal control people, they do such a great job every day. They, wow, I'm amazed. Like I say I love my family, I love life, I love God, God is great to me. He's really great to me. Thank you, everybody. [applause]

>> Mayor Reed: Thank you all.

>> Mayor Reed: Now I'd like to invite councilmembers Chu and Kalra as we commend the Tzu Chi foundation for its partnership relationship with orchard school on education and community service.

>> Councilmember Chu: You're all welcome to come down and join us for a group picture. But first of all, I'd like to thank my colleagues and mayors in commending Tzu Chi foundation whose Northern California headquarters happen to be in District 4 in San José. For this continued contribution for the City of San José and beyond. Tzu Chi foundation of San José started in 2000 with its foundation principle of compassion, love, kindness, integrity and honesty. I want to commend Tzu Chi for their effort to work collaboratively with Altra School District, which is also in my district, District 4, to develop school activities that promote teamwork, and respect, and care to our students. Tzu Chi work hard to create a more sustainable community through their environmental programs, of waste reduction and recycling. Tzu Chi also provide medical and homeless support for our community here in

Santa Clara and beyond. In addition to their work in San José, Tzu Chi is here today for their global effort in encouraging the greater community to live in peace, unity, harmony, and share with others. We are honored today to have Tzu Chi's very own Sheila Klides Nakima if I pronounced your name correctly, and Tola Kali Ukeda, they're from south Africa, volunteer from south Africa, who are touring the United States this month, to present at the United Nations commission on status of women's panel and several local governments for women's awareness month. I just like to point out today happens to be the 100th anniversary of international women's day. [applause]

>> Councilmember Chu: Woman power. As victim of violence from the segregation law, both are living examples of overcoming challenges. Both have served Tzu Chi for more than a decade. In particular, Sheila is Tzu Chi's South America commissioner. Leading her community to provide for the sick and the poor. Here today, to accept a commendation on behalf of Tzu Chi commendation is Dr. Weylon Kai, CEO of Tzu Chi. Dr. Kai.

>> Honorable mayor and councilman and ladies and gentlemen, on behalf of Tzu Chi foundation and our founder, master Su Jen, and Tzu Chi foundation in Chinese means compassion and relief, is a faith based volunteer charitable organization. And although most of our volunteers are Chinese, but the people we serve, is no matter as nationality, and color of skin, and culture, even religious, we all serve them. And we also invite all different type of religious people to become a volunteer. And to us, volunteer is like enjoying this work, personally, I'm very happy to be a volunteer, a full time volunteer. I invite everybody to join us. Thank you. [applause]

>> Mayor Reed: I'd like to invite Vice Mayor Nguyen and Ariana Lena to join me at the podium. Today we are commending Ariana Lena for being the student ambassador for the 2011 people to people student ambassador program. Vice Mayor Nguyen has more.

>> Councilmember Nguyen: Thank you, Mayor Reed. I'm extremely proud to recognize a young and very talented student in our community. Ariana Lena who I believe will be a great leader and role model for young people in the future. Ariana is currently a freshman at Mt. Pleasant High School and is a proud American Indian tribal member of the Seminole, Creek, Sioux and Yaki tribes. Ariana was recently chosen to represent the Bay

Area as student ambassador for 2011 people to people student ambassador program and is being sponsored by the American Indian education center which is located in District 7. This is truly an honor for any high school student because the program offers a selected group of students an extraordinary opportunity to travel to different parts of the world, to learn about various cultures and political issues in different countries. Ariana will join 18 student ambassadors from California and Texas to visit Australia this summer. Acceptance into the program requires a rigorous screening process as well as an outstanding demonstration of leadership. As an ambassador Ariana will represent her community her city and hers community throughout hurry travel and participation in the program. At the same time, she will have the opportunity to provide her own perspective on global issues that are important to her. I'm very proud of Ariana and her accomplishments as we all should be. But I also want to thank her family who are here today for their strong support of her endeavor and I'm sure they're proud of her achievement as well. We need more people like Ariana in our community and I hope she will inspire her peers to be active and engage in issues that affect us not just locally but also globally. At this time I'd like to ask Mayor Reed to present Ariana Lena with a commendation and please give her a round of applause. [applause]

>> I would like to thank the mayor and the city councilmen for presenting this award, and I want to thank my family members, for supporting me. And yes, and I'm looking forward to go to Australia, and support our country and city in San José. Thank you.

>> Mayor Reed: Thank you. [applause]

>> Mayor Reed: We'll now take up the consent calendar. We've added item 8.1 to the consent calendar. There are a couple of clarifications just on the agenda language. 2.12, authorization for travel of councilmember Pete Constant. And excused absence of Councilmember Kalra. The agenda language has got the names intertwined between 12 and 13. There's only one for each.

>> Councilmember Constant: Mr. Mayor, I want to make sure mine is clear, mine is not new travel, it's an extension of already previously approved travel.

>> Mayor Reed: Okay. We have a motion to approve the consent calendar. Any that counselors would like to pull for discussion? Councilmember Chu.

>> Councilmember Chu: 2.5 please.

>> Mayor Reed: Any others? Have no requests from the public on this on the balance of the consent calendar, that would be everything except 2.5, we have a motion to approve, all in favor, opposed, none opposed, that's approved. Item 2.5, Councilmember Chu.

>> Councilmember Chu: Mayor, I wanted to report, the league of California cities had emergency teleconferencing, during the board meeting we approved support of a legal activities joined by CRA to protect RDA funding. And also, there is another campaign called my vote counts, CA. My vote counts CA. And you can -- this is kind of a signature drive, and you can sign on to [www.myvotecountsCA](http://www.myvotecountsCA.org), one word, .org. Thank you very much.

>> Mayor Reed: Thank you. That concludes the consent calendar. Next item is item 3.1, report of the City Manager.

>> City Manager Figone: Thank you, mayor, members of the council. I have one report. Yesterday Fitch ratings agency affirmed the airport's current A minus rating on all outstanding debt at the airport. Which is roughly \$1 billion of revenue bonds and more than \$500 million in commercial paper. This is excellent news that maintains a low cost for the airport's commercial paper program and shows Fitch's confidence in the ability to pay its debts. Fitch's decision to maintain the A minus rating reflects well on the proactive decisions that have been made by the mayor and city council as well as the great work by the airport and finance departments to keep the airport on a solid and a competitive financial footing during this very painful recession. As part of Fitch's review of the airport's credit, the negative outlook remains in place. That reflects the effect of multiyear declining passenger traffic combined with the proportionately high level of debt for the recent completed terminal area improvement program. As the council is aware, over the past several years the airport has made significant reductions in

expenses, and has reduced staffing by levels of 50% from 400 to 200 positions. However, the airport also faces increased annual debt service payments through 2014. Consistent with the airport's competitiveness strategy Fitch noted that sustaining cost controls over the next several years will be necessary to maintain the current bond rating. There is some good news. Certainly, which is what we need, in that passenger traffic recovery appears to be under way. So far in this fiscal year traffic is 1.3% higher than this same time last year, and the airport now estimates that annual growth for the current fiscal year will be at 2.5%. The airport will be receiving additional ratings from Moody's and Standard & Poor's this month as we prepare for a bond issue to replace short-term commercial paper debt with long-term bonds this summer. And that concludes my report.

>> Mayor Reed: Item 4.1 is our next item, annual status report on the citywide capital improvement program. I believe we will have a presentation. Sorry, I skipped 3.3, we'll come back to that as soon as we get done with 4.1.

>> Mr. Mayor, members of the council, I'm David Sykes the acting director of Public Works. I'm joined by Barry Ng also from Public Works. We're here today to present open the annual CIP report. As well as make some recommendations on streamlining. This report used to be a quarterly report, and we've now transitioned it into an annual report. The report really focuses on the status of individual projects that were previously approved in the annual budget process. The report also establishes commitments to the community in terms of the time frame for the delivery of projects. And of course, the base budget for each project. I am proud to say that the vast majority of the projects that the city delivers are delivered on time, and on budget. I also want to take this opportunity to recognize the fact that it's a team effort to deliver these projects, with virtually every department in the city involved with the delivery, and in many ways Public Works is supporting those departments in the delivery of their projects and programs. I'll move on, as Barry gets the next slide up. We are using this report to in essence close out the decade of investment. It's a term that we've used to describe the last ten years the investment in infrastructure and projects. In that time frame we've delivered almost 1400 projects. And that, I can say, is more than any other jurisdiction in the state, being involved with other cities across the state. Along with that investment came a lot of job creation, and certainly, the new site, the CIP is transitioning to a smaller CIP from what we've seen in the past. And the project types are changing, with the bond measures we saw a lot of vertical construction, the the construction we are transitioning to is more horizontal, more infrastructure related. And

certainly the projects we will be seeing will be more focused on reducing operational and maintenance costs. I did want to spend a minute on the bond programs. Although we are closing out the decade of investment the vast majority of the bond work is done, each of these programs still has projects left to do. And we'll carry on in the next couple of years. I think it's important to highlight some of these successes. We have 17 libraries that have been completed, 86 parks, trails, community centers and regional facilities, and 27 fire stations and police facilities. Overall, the bond programs have been a huge success, and we have been able to deliver on the commitments to the residents who approved those bond measures. I think one of the most remarkable things about this, many of you may remember this back in '07, '08, '09 we had unprecedented escalation that we had to overcome and deliver these projects and we were able to do that. We made some adjustments along the way but we did achieve the objective. And as I mention in the next couple of years we'll have all these projects done. I think that our track record on delivering these projects as well as other projects bodes well in terms of our credibility, if we're ever to return to the voters for bond measures in the future. So far this current fiscal year we have awarded 25 projects and amounting to almost \$30 million, which creates with our formulas about 300 jobs. Next week the council will be making a decision on moving the convention center forward, within this last year we've had another four buildings become LEED certified, and we've greatly increased our investment in energy efficiency projects. Next I'm going to hand it off to Barry and he's going to discuss some of the streamlining recommendations that have stemmed from our busting bureaucracy work.

>> Thank Dave. Streamlining implies that we are doing improvement, and the best of all improvements that we can do involves all of our stakeholders and involves win win stuff. So this first of our three proposed efforts that we're going to mention to you today is the transition to bid sync for all of our professional service procurements. By professional services we're talking about architectural, engineering or similar type of services. Bid sync has been used successfully by the city for a little over three years since 2007. Moving to bid sync is going to eliminate the Public Works bid hot line which we used to procure consultant services and construction contracts in the capital improvement program and it's going to create a one stop hub for all of our service providers to come to and hear about all our procurement opportunities. I want to point out that it will also include those construction contracts that we advertise. So because we have so many subscribers to the Public Works hot line it would be a phased transition where we could outreach to all those subscribers and get them to

transition to bid sync effective July. So effective July. Our second recommendation is to rescind the qualifications-based consultant selection policy and use the citywide RFP process. We call the qualifications-based consultant selection policy the QBCS. And going to this citywide RFP process we will maintain transparency and openness in our procurement processes. It upholds the same -- the citywide process upholds the same principles as the QBCS, considering outreach, methods, and a qualifications-based system, and we also use the small and local preference policy. So while we eliminate a separate process for procuring professional services it will also provide an option that we currently don't have which is to include cost as a factor in selection criteria. It's important that when we talk about this subject we note cost won't always be used as a factor. For example, on federally funded projects we have to use a strictly qualifications based system, and it won't be a determining factor. Meaning that the points that we would award a proposer for cost would be far less than what we use for qualifications. And we're going to be working with the consultant community to develop a process that's mutually acceptable and so we need a couple of months to do that, so we would implement this by July. And our last slide today is kind of a no-brainer, in a certain sense. It's that the City Manager's authority be increased to award professional service contracts from the current existing \$100,000 to \$250,000. Which aligns with the manager's existing authority for other nonprofessional and professional contracts. This would become effective as soon as the ordinance is adopted. So that concludes our presentation. We are open to questions on both the capital improvement program report and the program streamlining.

>> Mayor Reed: Thank you. I want to congratulate David Sykes and the entire department, as well as all the other people that put together the decade of investment with 1400 projects completed, that certainly is a record that we as a city can be proud of and the Public Works department leading the way. It was no small task to do all of that. I had one question about the budget because I don't want people to get confused that we're talking about hundreds of millions of dollars, almost all of that are funds that are set aside specifically for capital projects. Special funds and not available to pour into the General Fund. I don't know how much of this year's budget is coming out of the General Fund but I can think of the majority of it is probably for fire vehicle replacement. Maybe dollars to pay down the debt on the central service yard acquisition, and after that, it's pretty small potatoes that come out of the General Fund to support the capital improvement program. But I'd just like to

make sure that everybody understands that these dollars are not money that we could just take and use to pay police officers, firefighters, libraries, community centers.

>> That is correct, mayor. Actually, less than 1% of this budget would have General Fund dollars in it. Most of these funds are restricted to other uses and some of the uses that you mentioned are General Fund and there are no other fund being source for those particular items, for example, fire apparatus.

>> Mayor Reed: Thank you. It is a lot of money but it's not something that we can use to solve our next year gap unfortunately I suppose. Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I just want to -- also wanted to give my congratulations over the past many years, I think that we take for granted the number of projects, and when you lay it out there, it's quite impressive. And David, certainly to you and your teams and of course Katy Allen, over the years as well. In my district we have had two beautiful libraries just in the past couple of years, a very challenging community center built in a challenging place and a substation that had issues that had nothing to do with the city team but still the city staff worked through it in a very effective manner and of course throughout the city there are dozens of other examples of projects we have seen come in on time under budget and I think most importantly produce a product that we would be proud of and I think the issues regarding staffing and all those issues that we have to deal with. The reality is that your team put the product out there that the community asked for and so I want to thank you for that and make a recommendation to accept staff recommendation. Make a motion to accept staff recommendation.

>> Mayor Reed: All right we have a motion and second by Councilmember Liccardo to accept the staff recommendation. Councilmember Pyle.

>> Councilmember Pyle: Thank you. I'm going to join the (inaudible) press this thing (inaudible)

>> Well, I do think we set the bar pretty high as an organization, I mean the city as an organization. As I alluded to, Barry and I are involved with a benchmarking effort with other cities across the state, and as far as our commitment to on time, on budget type delivery, across the organization, not just within Public Works, I think we do set that bar pretty high for other organizations.

>> Councilmember Pyle: I think (inaudible)

>> I believe that's on another council item.

>> Councilmember Pyle: (inaudible) thank you very much.

>> Mayor Reed: I'm sorry I took them out of order. We'll be back. Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor. I wanted to echo the praise, Dave, Barry, your whole team. Not only have you done extraordinary job building out an enormous amount as you mentioned more than any other city in the state, the feedback I've been getting from residents, and all the acclaim you've been getting for LEED certified buildings over at Roosevelt and East Carnegie, very difficult projects, you know, in one case renovating and expanding on the oldest library in the valley, these are not easy to do. And you've done it in a very difficult economic circumstance with big price elevation so we really appreciate the good work. I had two questions. One was, I appreciate all the coordination that's been done with the GP 2040 effort and advising the general plan making sure we have a capital improvement program that matches where we want to grow in this city. But of course the general plan task force is going to come out with its view of the world and I'm sure we'll all bless it and then future councils will have an opportunity to change it as they often and always do. The question is, how is it that your efforts -- let me back up for a moment. As we focus on trying to make development more dense in the city and more focused, where it's more environmentally and fiscally sustainable obviously a big part of that is our public infrastructures. And how will it be communicated to future councils as they start to look at some development that comes along with the developer showing them a beautiful picture of what could be built, but it's

in far flung part of the city where we don't have infrastructure. How will that be communicated to council the cost, the burdens of building outside of those areas that the general plan task force really wants to focus on?

>> Actually it's something that Joe Horwedel and I have been talking about in terms of I think we've done a lot to align the CIP with the goals of the general plan but I think there's a lot more work that needs to be done, with regard to all the various program elements within the CIP and there are a lot and how they interact with the general plan. As you know we have been before the T&E committee with storm and San industry issues, with sanitary being able to come one a plan that will support the general plan and making sure that each of those capital programs are focused on that objective in addition to the other objectives that those programs have which go in some ways maybe different than just the general plan.

>> Councilmember Liccardo: Thanks Dave. I appreciate your work. I guess what I'm hopeful for is, as we look to put the general plan in front of the council in the next few months, is we'll come up with a clear mechanism that will clearly inform future councils that if they don't implement a general plan that says, focuses, I think we'd all prefer sitting here today that there be real significant fiscal impacts. Specifically you know in the CIP and how it is we're able to build out capital infrastructure for this very quickly growing city. And I think it would be helpful if that's actually incorporated in the general plan that the council approves, that we actually essentially tie ourselves to the mast and force our selves to confront whenever we've got to build out a significant sewer infrastructure to support a couple hundred units in a place where they probably shouldn't be built. So I look forward to seeing how we can do that in the coming month.

>> I would agree, approving moving forward with the General Plan without that connection to the CIP doesn't make sense.

>> Councilmember Liccardo: Thanks Dave. The other question I had was more general, about recognizing the reality we have fiscally, state money is pretty much gone the way of the dinosaurs and not a lot of federal interest in investing in infrastructure now knowing the deficits they have and given the political composition in the House side. I know there have been a lot of initiatives along the lines I think Mayor Bloomberg and governor

Schwarzenegger were pushing this infrastructure bank. And I'm wondering is there any movement that you're hearing of sort of with all the folks you're working with in the industry and so forth that that kind of concept could really help us build out the infrastructure we need to build out?

>> I have not personally heard any new news on that. I do -- I would say that now that we've got this CIP report somewhat behind us, our next focus of work is on the deferred infrastructure issue, and we will be returning to council with our annual report on that. And with some renewed focus on that in terms of recommendations we can bring forward.

>> Councilmember Liccardo: Thanks Dave.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: Thank you. I had a question, I view a lot of these streamlining processes, and I know in the past there was a shift to try to do a lot of this work in house as opposed to contracting out. But given what's happened in the past year can you speak a little bit to how that's changed that?

>> I think we've been pretty smart about how we deliver projects in the capital program, with the blend of in-house and consultant work. We tend to utilize consultants for projects that go beyond our, either experience or capacity. With the decline in the capital program, we have attempted to manage that decline by doing some more work in-house, and even work for other agencies. But I think the consultant community, and the value they bring, will always be part of the program. And certainly, as we look to the future, if there's a rebound here, I think the consultant community would be very involved with that as well.

>> Councilmember Rocha: Okay. Do you see as pros and cons oftentimes with decisions, is there any gone to any of these streamlining changes?

>> With the ones we recommended I don't believe so. I will be open with you, in the outreach we did in the consultant community there was some concern in their part about including cost as a criteria. Although it is not uncommon in the industry our commitment to them was that it would not necessarily become a determinant factor. It wouldn't apply in all cases and that we would be working with them over the next few months on what that implementation plan would look like. And with that, I do believe we have the support for moving forward with it.

>> Councilmember Rocha: Thank you.

>> Mayor Reed: I have one request from the public to speak on this item, I'll take that now. Gil price, please come on down.

>> Good afternoon. I'm Gail price, executive director of the American Institute of Architects. We have a membership of 600 individuals who are architects, designers, general contractors, and related disciplines and businesses. I have given you a copy of my statement. We are the local chapter of the AIA California council and the national AIA. I'm here to address item 4.1 and the proposed amendments to title 4 of the municipal code. Our position regarding base selection reflects AIA policy. While we recognize your goal of streamlining the procurement process, we believe that the procurement of professional services for architects or disciplines should be retained to maintained a strong emphasis on qualification based selection. Currently you have two separate processes of which you are well aware. Historically QBFC has not included prices as part of the selection process. But it has been considered an important part of negotiations. We believe QBFC is important for the following reasons. One, a strong emphasis on qualification-based selections secures very specialized and technical services, consulting services directly related to scope rather than considering cost as an element. The existing QBS process in San José reflects both state of California government code and public law 92582, the federal Brooks act, which paraphrases to publicly announce all requirements for architectural and engineering services and to negotiate contracts on the basis of demonstrated competence and qualifications at a fair and reasonable price. The current City of San José policy 815 has been in place since 1987, and was revised in 2004,

as your staff report notes. The most highly qualified firms will deliver stronger professional services. This will likely result in overall cost savings due to efficient and timely project management --

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

>> And thank you for letting me speak. We look forward to working with you and the Department of Finance and Public Works on the --

>> Mayor Reed: Thank you, you're out of time. That was the only request to speak on this item, I believe. Any further council discussion? We have a motion to approve on the floor. All in favor? Opposed, none opposed, that's approved. Item 3.3 is our next item. That's the status report on the alternative service delivery evaluation for workers' compensation administration and employee health services. Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I could wait until everybody gets seated. Well, it's in the same place. I did want to ask about injuries, and that becomes a significant part of the costs of building. Could you tell me what -- is there a majority of types of injuries? Or how does it shake out?

>> Councilmember Pyle, there are three major types of injuries. Back, shoulder, and knee. And you know that some of those are very -- not easy to ascertain a remedy or permanent solution. Back problems, I think we all know people with back problems, and you're not really sure what it's related to, and there are many different ways to approach it. Anyhow, those are the three main injuries that are sustained by our employees.

>> Councilmember Pyle: And it's because of use or the type of work or is it because of falls or what -- what happens?

>> You're sort of getting at I think a major issue that we would like to have addressed in the very near future which is a comprehensive look at the -- it's not just workers comp. It's health and wellness and safety and workers comp all rolled in together into a more integrated program. So we get a better handle on some of the causes are,

what we can do about it from a prevention standpoint to perhaps then even cut back on the number ever disability retirements. So it's a circular type of arrangement which I think in the past we've looked at isolated piece of it, but not in an integrated fashion. That's one of the outcomes that we've done with the RFI on the whole topic of workers comp, what the auditor has done also in looking at the workers comp program. At disability retirements, which is going to be completed in the near future. The really close interrelationship between all of these elements so that we could answer that question you just raised in a much better fashion.

>> Councilmember Pyle: Because if we can get help so that the workers have proper equipment or special aids to help them, such as I don't know what they're called but the things you wear around your waist so you don't strain too much, that type of thing, orthopedic kind of help, it could portend toward lower cost. And certainly, less suffering on the part of the individual.

>> Yeah, you're looking at, you've identified some solutions and we need to get to the source of the problems to figure out whether for example that is a good solution. We don't have the answers right now. I think that's going to be a search and that's the reason why one of the recommendations from the committee's report is to look at a pilot program. A pilot program that looks broadly at all of these areas to try to get a handle on what creates some of the problems that we have, why it takes us a long time, a relatively long time to get employees back to work and so forth.

>> Councilmember Pyle: And I'm concerned about the process, as well. Do these individuals that become hurt go to their own doctors or is there a particular doctor that works with the city, in reference to injuries that are a result of their workplace?

>> What I'd like to do since you're asking some very specific questions rather than me answer generally, I'd like to have Dave Wong who is our workers comp general manager answer. If there's an injury what does that employee follows?

>> Dave Wong human resources. Currently employees have the right to see their own physician.

>> Councilmember Pyle: Sure.

>> If they want to go to see someone at Kaiser or someone who has sooner them in the past they have that option. Currently we don't direct people to see a city physician, what we call MPM.

>> Councilmember Pyle: But you get.

>> Treating physician and we work with these doctors to get them back to work.

>> Councilmember Pyle: I know you're all busy, it's a case of getting people back to work and making some type of analysis perhaps of what's been happening?

>> That's correct.

>> Councilmember Pyle: Thank you very much.

>> Ed Shikada: Actually to that point, councilmember, Dave certainly expand on this if you like, but one of the recommendations is an element to pry a 30 day medical review of claims. In this case rather than seeing a personal physician there would be some call it control on how that period is handled. We're also obviously into a meet and confer process once we start talking about some of the changes along the lines of benefits. And so the recommendations that you've got before you some of which are somewhat specific and some more general would give an exact of the direction we'd like to have.

>> Councilmember Pyle: Thank you very much.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. We had a rather spirited discussion on this issue at the Public Safety, Finance and Strategic Support committee. And I just wanted to say a few things at this meeting so it would be clear to everybody. I really -- I have a concern, because we spent a lot of time looking into something to basically come to the conclusion that we overwork our claims adjustors. And then we have a recommendation to look at outside costs which we did, and said that we can -- we can't save money by outsourcing, because anyone who would take on this job would only do it if we gave them half the work. So from my perspective, the report didn't tell us much at all. And to continue to go down a path of looking solely at issues from a claims management perspective, I think, is foolhardy. We'll try this 30-day outsourcing and we'll find out that if you give the people half the caseload, they can manage it better. We pretty much already know that. What struck me, not only in the entire report that we got, but the entire presentation and discussion that we had at the committee, was never once, did we talk about treating the injured employee. We only talked about claims management. And as someone who was a former employee and you guys know I got hurt in the line of duty and I dealt extensively with the workers comp program there is nothing in our program that facilitates people getting treatment and getting back to work. In fact we have people sitting off work just months sometimes waiting approval to get something done and we don't really look at the overall costs of them being injured. Not only the dollar costs but the personal and the productivity cost. When we look at these numbers, we see the vast amount of resources that we put into claims management. Awhat we don't see quite frankly is the amount of expense born by each individual department in their budgets for time off work. So we get a very small sliver of what the real cost is. And I'll give you a couple of examples. If somebody hurts their knee, say they blow out their ACL. They could spend six weeks at home waiting for an MRI approval and be, let's just say it's a police officer or a firefighter, because we have more claims from them I think than most other departments. They're getting full pay for that time to be home while we're waiting and going through an appeals process for a procedure that might only cost a thousand dollars, yet we're spending thousands of dollars in salary while they're sitting at home waiting. We know that when people get hurt, there's lots of medical evidence and empirical evidence that the sooner someone receives treatment, not only the sooner do they heal but the more comprehensively they heal. The more move back to functionality. If you look at the way a sports team treats its athletes, which are its employees, you'll see that they are seen by a doctor within minutes, I know that's not practical here, but they're seen within minutes, under the knife within hours, no more than days, and they're in rehab immediately after that, and they're usually back, after more severe injuries, they're

back in the field in a third of the time than an average person would get. And while people may say that that type of thing doesn't make sense for a government agency, I pointed out, and I provided some resources to our human resources department, of what's happening in a fire department just outside of Denver. Called Westboro metro or something like that. That changed the way they looked at workmen's comp from claims management to investigation in the health and the wellness and repairing and treating their employees. And they have taken, quite frankly, that philosophy of their employees are like a star athlete, and investing in them immediately to get them healed and get them back to work. They have seen their workmen's comp claims drop by 85%. 85%, that's significant. Now granted, that's coupled with a wellness program on the front end, and it's also coupled with the fact that people not only have to go through the wellness program, but they have to maintain their fitness, and there are strict guidelines. But I really think that is where we should be putting our efforts. To simply put our money into a pilot program that is going to tell us what we already know I don't think is very useful at all, and that's my concern. And it would be one thing if my particular viewpoints were on isolated incidents. But I talked to many employees who have the same frustrations and issues and waiting and waiting and sitting at home, and sometimes people are home for a whole year before they get back to work. And there's no way that they're going to come back 100% when their treatments are extended. And quite frankly when we have people in some of the hazardous jobs that we have you have to expect significant injuries. Because some of the work they do, you have a fireman on a roof that's collapsing, you have an officer who's being shot at, or fighting with someone on drugs, you know they're going to have significant injuries. And we should anticipate that, and we should have a program to help them get treatment quickly and get back to work. And I think that has to be the number one concern, and I just don't see that. And I haven't seen it for the -- well, since 1997 when I got hurt, however many years that is. I haven't seen that, and I didn't see it in the report, and I didn't see anything in the presentation, and I've had extensive discussions with Kay and others and Rick about we have a system that is broke. So to simply do an outsource test I don't think is going to help.

>> Mr. Mayor, may I add to Councilmember Constant's comments? We did look at the West metro fire district, to look at the proposal that was -- not the proposal, the program that was instituted by them over the last nine or ten years, that drove their workers comp rate significantly down, got their employees back to work more quickly. And as a result of that, we have been giving a lot of thought to an extensive integrated program that I mentioned to

Councilmember Pyle that puts together all the program components that have been of concern to us in isolated pieces but never have we looked at it from a holistic standpoint. Interestingly enough right now, the fire department either has or is going to issue an RFP. That is an extensive extension of a wellness program for all their firefighters. So that is one step in that right direction, and if we would sort of add to that, enhance that, that could be the basis of a type of pilot program to look at all the areas that I mentioned previously. So it's not only the workers comp claim at the end, it's all the things that you do at the front end all the way through an employee's career, so we can look at being more productive about the way we spend almost \$30 million of the city's money on worker's comp claims to bring people back to work more quickly, to get them treated more rapidly, to have them in better health, and there are lots of things that we can do. And when I was talking about a pilot program, where we initially talked about a claims management pilot program, but it's probably going to be more beneficial if we put our heads together and come up with a more comprehensive program before we pilot anything in the future.

>> Councilmember Constant: Thank you, I still have a few things I wanted to talk about. One is, I have spoken to several doctors about this, and they have offered to come and discuss the problem with those interested here at City Hall. Because they continually express to me their frustration to the point where they don't even want to treat employees that come from the City of San José. And I think that's the problem. And there have been employees slash patients who have been fired by their doctors, so to speak, and told they are not getting any more treatment and have to find a new doctor. Those are things that we shouldn't have. I want to make a couple other comments. When we look look at the risk analysis or the claims factors that we have from other organizations that we compare in this report, it's really not an apples to apples comparison, because you have to count risk factors in that, as well. If you have an organization like the county of Santa Clara that has more people in clerical positions and less people in hazardous conditions, you can't make an apples to apples comparison, say their injury rate is lower, therefore they have to be doing something better. Therefore we have to look at ways, look at risk classifications, look at jobs being done, and have those comparisons and until we have all that accurate data I think we are pretty much spinning our wheels. That's pretty much all I wanted to say.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks, mayor. I share Pete's concern about looking at a pilot, although probably for somewhat different reasons, which is, as we look at the cost drivers, in our workers comp program, looks like if you take out written overhead, about 2.5 million comes in the form of administration, and about 27 million comes in the form of medical-legal cost, disability leave costs, really the meat and potatoes of workers comp. And obviously that's where the growth and expenses are. We're seeing in this one year, I guess, we're seeing a 15% roughly increase in cost for medical, legal, an indemnity and reduction of employees. That is a big big job and I know a lot of that is being driven by factors well beyond our control like medical factors and medical insurance costs. But it just seems to me Thea that we may be shooting at the wrong target in focusing on, well we already know that the 21 employees that we have doing this work are certainly doing it in a relatively cost effective manner relative to the vendors that are being laid out there on page 4. And so really the focus really needs to be on those larger costs. And I guess I applaud staff view of trying to push forward the fall fitness program, I saw that in the second report, certainly when I sat on the pension board I was really surprised by the high rates of cardiovascular disease I saw on the Police and Fire, a lot of that was quite preventable and it seems to me a fitness program would be critical to that. But I wonder if really our focus on the administration delivery is misplaced. And I'd be interested in any views from Kay or others that you may be able to offer.

>> Ed Shikada: Let me lead off and others may chime in as they see fit. I think it's important to point out that the staff report that you have before you really doesn't focus simply on claims administration, there really is a three part, I think you could describe, recommendation. One is, on recognition of the structural incentives that are created, the disability leave supplements that exist, as well as the structure of the benefits program. And again, recognizing that those are negotiated benefits and subject to perhaps some meet-and-confer applications, they're not easily changed. Second is the pilot as was noted, and the third and we really haven't talked about it, is the importance of I'll use the term management oversight and recognition that whether it be injury prevention, safety program as Councilmember Pyle mentioned as well as the follow-up, postincident, what was preventable, what's not preventable where there may be disciplinary action involved if there's a history of preventable accidents. So there are multiple touch points on the system that ultimately results in the high claims volume and the dollars

associated with it. And again unfortunately this is not the type of issue that can be solved overnight but really does require a multipronged approach in order to address.

>> Councilmember Liccardo: Do we have some sense of what you know a different way, I mean as we look for instance at the pilot, and the recommendation paragraph 3, do we have some sense of what we're likely to get in terms of dollars and cents by inserting a private vendor to administer some of this?

>> Ed Shikada: At this point we do not. We have not scoped out a specific pilot, as Kay pointed out a question of scope to the extent you go beyond claims administration, the life cycle from prevention to follow-up, that we would -- or in conversations to see how best to scope something that is again a manageable size pilot that does not add more cost than it has the potential to reduce.

>> Councilmember Liccardo: Okay. And Ed I appreciate your insight, obviously I recognize there's a lot more here. And you know one of the things I was going to ask about was specifically on as we look at you know reducing supplemental pay, for instance. I know that was one of the recommendations that we looked strongly at. And I appreciate why on pages 5 and 6, there's reference made to the state mandated amount to workers comp and what we award and I guess our award is essentially 100% for public safety for up to a year and 80% for up to five months for most of our bargaining units. What is the state mandate, what's the floor?

>> Temporary disability portion?

>> Councilmember Liccardo: Yes, that's the temporary disability.

>> I'm sorry, the state mandated rate is just the rate of about \$960 per week.

>> Councilmember Liccardo: Okay, so it's not as a percentage of salary?

>> It is a percentage, two-thirds of their gross weekly salary but that's the maximum they can receive.

>> Councilmember Liccardo: I see, I see, okay, that's helpful. And then finally, I do agree very much with the suggestion on page 7, that we look very seriously at the 2004 arm tech study, that's under bullet 5, recommending that we allocate the workers comp costs to the individual departments. I think that would seem to be a way to really drive to the supervisors how we need to really take an approach, I know Councilmember Constant has been urging us to take for many years, about being very proactive in dealing with workers comp claims. I think to the extent that we push those costs to the level of responsibility within the departments I think we're going to see certainly some advocacy within this organization to see how we can be proactive in managing those costs. So I really want to express my strong support for that recommendation. And Kay, I just wanted to say, welcome back. I know it's -- you try to get out of San José but we sucked you back somehow so thank you for joining us.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you. I tend to agree with many of the comments my colleagues have already discussed. And one of the comments that Councilmember Constant mentioned at the end there was comparison with the sheriff's department. I think it's always challenging when you have different job descriptions, and although they do have sheriff's deputies, the fact that we have Police and Fire department that are much larger certainly have to be taken into account. In terms of the bid analysis of the staffing and program costs, of what some of the third party vendors could, you know, could offer, I think it definitely shows that our adjustors are certainly doing a heck of a lot of work. And even if you look at the lowest potential third party provider, Corvell, it seems like if you add, I'm assuming it does not include the addition of seven adjustors that would be required for keeping the staffing level that they suggest which would make their costs even greater I imagine than the city, I imagine those seven adjustors would be more than \$100,000 total. So in actuality, taking out the average caseload per adjustor, the total cost is more for all of the third party vendors. And so then the question becomes, I think, as Councilmember Liccardo discussed in terms of what the greatest costs are to the program, a matter of prioritizing where we can get our greatest cost savings. I think Councilmember Constant discussed it in detail, that there are - it's not much discussion here, I think of where some of the greatest cost savings could occur. And I understand the desire to find and determine if there are opportunities to save, by looking at third party and outsourcing. But

when we get a report like this, which shows that there will be minimal if any cost savings by going to third party, and then making a significant portion of the recommendation doing a pilot project on that, rather than doing a focus on how we can improve our internal systems, as well as how we can better improve the quality of life for our employees both on the job and outside the job that will ultimately reduce our costs as well, I think that's where we should be putting our energy. In addition I'm imagining these costs don't take into account any potential reductions in pay or benefits that we're asking all of our employees to take a look at now. Once that's done that's even going to further reduce the justification or the reasoning to do a pilot program, when we know that the -- that small percentage if you look at the overall cost, the small percentage that's applied to the administration of the program is going to get smaller and that we should find ways to reduce the medical, legal, indemnity cost, as well as the disability leave costs, some of the costs that are taking up and affecting us the most, there's an opportunity if we put our energy there to really have a more dramatic impact than focusing on doing a pilot, that distracts us from what our overall goal is which is to reduce the overall cost of the program. It seems like we certainly have the staff that probably are too overworked in terms of the number of claims, there may be some efficiencies and reducing the number of claims so we can have a greater success in the outcome rather than putting energy in resolving the claims in a way that gets the employee back to work sooner, as Councilmember Constant indicated. But I don't know if taking into account some of the cost drivers that may reduce our costs over the couple of years, as well as the fact that there doesn't seem to be any great benefit to going to a third party, given the fact that the greater costs are in other areas. I don't know if staff has any comments on that in terms of trying to decide how we best prioritize moving forward.

>> Yes, I'd like to take a crack at it. You know, since we went to the Public Safety committee, we've had a number of discussions among ourselves and we've heard from councilmembers as well, about the whole -- it's not just workers comp claims processing or, you know, the claims adjustment. It is a whole area of the things that we've been talking about, wellness, employee health services because we have our own health services in-house, our safety program of which we dedicate a very small amount of resources, citywide, to that effort, and then we have the large, \$31 million of claims. And then we have a large number of disability requirements. If you look at the empire continuum about an employee, how the employee gets treated whether he or she gets hurt, what you can do to prevent that injury and how quickly you can treat the person, how you get the person back to work and so

forth through that career. I think we have an opportunity. And maybe pilot isn't the right word and it certainly isn't necessarily an outsource operation, it's looking at all those elements and trying to bring them together in some kinds of cohesive framework and maybe we pilot a program with some segment of the workforce such as the fire department, which has the highest number of disability retirements. And they have now a fitness program, not fitness program, a wellness program that they're launching, a larger one than they've had for a while. So I'm thinking, sort of rethinking the whole pilot concept and maybe that is still an appropriate term. But it does not necessarily mean an outsourcing. It means putting our heads together, coming up with a more comprehensive program, how we deal head-on with the very, very large expenditure and where our employees are not at work.

>> Councilmember Kalra: And I appreciate that, I definitely did take the holistic view of the whole program. I just don't know if the best use of energy is looking at the administration as opposed to like you just referred to, the firefighters, willingness in working with the city to focus more on wellness. I think pretty much you talk to any city employee bargaining group and they're going to be in favor of focusing on wellness, when we show them -- when they see the numbers and how much we're spending if we can -- if they know that they can provide a better quality work environment for their employees and for their members as well as create cost savings that can you know obviously reduce the city burden, I think it's a no brainer. And so I think that's where my issue is, is that it seems to be so much on the cost of administration, when the cost of administration really is not the bulk of the problem here. Especially when you look at the relative efficient at which our workers are doing their job. I think the greater burden is -- the greater focus should be as you have already referred to it on wellness, as well as how we shorten the time frame when these investigations are going on and these hearings are going on, having to get the people back to work as soon as possible and focus the process as much as on the due process, that every employee is entitled to, as well as focus it on getting them the help and treatment that they need, they don't have long term effects and so they get back to work and reduce the cost of the system that way as well. And so I know that it covers a lot of these different issues, in these recommendations, it kind of covers a wide span. But I think that I'm just curious, because there's so so much of the discussion has to do with the cost of administration where I think that there are better avenues for saving money than putting the focus there.

>> And Councilmember Kalra, I don't want to emphasize the fire department, I singled them out and I didn't mean to do that. Because it could apply anywhere in the city organization. Don't forget that the report makes some other recommendations about cost savings. We sort of honed in on the claims administration but there are a series of other recommendations that are cost saving elements that Alex is negotiating with the bargaining units that if they were to come to fruition would be cost savings to the city as well.

>> Councilmember Kalra: Thank you.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. Thank you for the report, and I think there's several recommendations in this report that are good. I do have some questions about the pilot or whatever we're going to call it. But I just wanted to say I think there are some very good strategies and suggestions here. I think the big umbrella above all this is prevention. I mean that's really what we need to do is stop having such a high rate of workers comp claims in the first place. So all those things that you're talking about in terms of wellness and education and safety and all that would help prevent those claims. I also sat on the Police and Fire retirement board and it's a little shocking to see the kinds of claims. Not all, certainly there are some that it's perfectly understandable. But there are some that you could look at the person and say, that could be prevented. And it's frustrating because there is nothing we can do at that point when you're sitting on the board and looking at that information. It's years too late, at least months, maybe years too late but it's very frustrating to see that I can tell you sitting up there. So I think that you know there are some very good suggestions and some of them in particular I just wanted to say. I think that we need to definitely pursue the changes to Police and Fire retirement, in terms of their being able to collect both workers compensation payments and retirement. And I wanted to ask you how much, if that were changed, because that isn't happening with nonsworn employees, that's only happening with Police and Fire, is that right?

>> Ed Shikada: Yes.

>> Councilmember Herrera: What's the cost -- if that were to change what kind of a dent would that make in our \$19,500,000?

>> Alex Gurza: You are correct that in the Federated retirement system there already is an offset for workers' comp benefits, there's an offset between the disability retirement and workers comp benefits received. As you've pointed out and as the memo recommends we pursue that same change in the Police and Fire plan. I don't have the figure in front of me in terms of the estimated savings but we can follow up with the council regarding that item.

>> Councilmember Herrera: I think it's definitely something that we need to change. Not that anyone would set out to become disabled, but I think you know by definition there's almost an incentive. It's not a good thing I think to be offering a situation when we could be getting double payments. It's not a situation that's smart so we definitely need to get that one changed. In terms of the pilot program we talked about here, from what I understand, and I'm looking at bullet 4, is you're really singling out specific claims that you wanted some outside company to handle and you talked about high exposure claims and how the county has a program like that. Could you talk about that a little bit? Is that really, are you trying to isolate certain kinds of claims to have an outside vendor look at, and then I wouldn't understand why we couldn't just do that internally but I want to understand it. Because you're saying dedicated team that are assigned to high exposure like these folks. You mentioned higher performing adjustor. Is there some difference between these adjustors out there and our adjustor?

>> No, this is a program that the county uses, it's what it says, they take a certain type of claims and they take in their view their higher performing adjustors and have them singled out to work on a team. This is only meant to be an example of a pilot program. We weren't planning on replicating it. As a matter of fact, just a few minutes ago, I talked about our sort of re-thinking this whole pilot concept, and I think we are going to be going in a slightly different direction.

>> Councilmember Herrera: Well, forget the pilot part. Are we trying to focus in on the high cost ones, are we looking at certain claims, and we're trying to put more of a focus on that or --

>> At this point in time, we have not had any further discussions about actually implementing that in house. We could certainly try to do that with a limited number of adjustors that we have, all our adjustors work hard. And some of them more experienced than others so we could have a small team and pull out a certain number of claims to have them work on and see what the results are. I haven't talked to either of the managers, the assistant manager to see whether they think that's a good idea or not. This is just an idea that came about in conversations with the county.

>> Councilmember Herrera: Yeah, I don't claim to know an answer to that either. I just saw that in there and thought that was some of your thinking, that you wanted to look at the ones that were costing the most and try to focus in on that. But I think some of these structural changes if they can get made are going to go a long way to reducing it and I really think the prevention is a really significant thing. And I think as has already been discussed making sure people get medical attention and when they do have an injury to make sure that that rehabilitation has been followed through. Thank you.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Two things. One, I just wanted to clarify. Sam asked the question about the floor on a benefit amount. And I wanted to make sure it was clear, Public Safety is a 100% floor. It's only nonpublic safety that has the floor that you mentioned, is that correct?

>> Alex Gurza: If I can answer, that's correct. We used to have a supplement for Public Safety similar to nonsworn but there was a change. In the state law now that we can't even negotiate a change on the Public Safety side. They do receive 100% of pay for a period of one year.

>> Councilmember Constant: Okay, I just wanted to make sure that that was out accurately so everyone understood that. What I'd really like to see, I think what we're lacking here is, a work plan so to speak of how we're going to get to where we're going. My worry is we've talked about this a number of times. And we have little

thing that will happen here and there but I don't see a comprehensive approach. And I'm just concerned that we're going to be sitting here in three years having this same conversation. So I would be much more comfortable and I'd like to hear from the City Manager on this how we might be able to accept this report but what type of direction do we have to give to see something come back where we can have some opportunity to get some input from health providers, to get some input from people who have been through the system, to have input from some of the claims adjusters to look at not only the program I mentioned in Denver that we're already looking at but some of the other programs, have risk analysis and have some kind of comprehensive attack on it versus we'll try this sort of thing?

>> City Manager Figone: I think we should -- don't know that we need to go necessarily all the way back to square one but I think we do need to take our review to the next level and touch on many of the issues that have been raised. Clearly this is a huge investment annually and we need to be more rigorous about what the program is doing, and can be designed to do. Also, you know, Kay will only be here through June. So I'm in the process of evaluating the best configuration for new leadership for HR. And I'd like to have you know that person's view factored into this. So I do think we need to come back to you, and probably realistically we're looking at the fall.

>> Councilmember Constant: So would you be comfortable with a motion or direction along with the motion that we accept the report, and that we have this brought back in front of the Public Safety, Finance and Strategic Support committee in say late fall as a discussion on how we go.

>> City Manager Figone: I think that would be reasonable and we'll bring to you as far as we've gotten. I want to make sure that council knows that you have my commitment to really bring this program to the next level.

>> Councilmember Constant: Okay, thank you.

>> Mayor Reed: All right, we had a motion on the floor, second. I had a couple of comments. I'll support the motion and I think the sense of urgency needs to be here, because this is a \$30 million a year program and I think we could save \$10 million a year and while I know it maybe is not fair to compare us to Santa Clara County

because of the work that was done but when you compare the work done by our City Auditor in 2009, and look at the comparison to us, not just to Santa Clara County but to other cities, Long Beach, San Diego, Sacramento, they figured it out somehow because if we were spending money at a three year loss rate per employee the same as Santa Clara County we could save \$14 million a year. Maybe that's not fair. How about San Diego? \$12 million a year. Long Beach at their rate \$11 million a year. Sacramento at their rate, \$10 million a year. So there's a lot of money here in these tough budget times we're struggling really hard to try to get 10% cuts in compensation across the board, if we're really really lucky to get it from everybody it's 38 million. But we're talking about ten, 12, million in a way we're spending in a way we don't have to. I just don't know what the answer is, somebody else has figured out and we ought to be able to do this too and because the budget is going to drive this I think it has to get a little bit higher on our list of items because it's just so much money involved and I know that Alex and the team have a lot of things on their work plan so I'm looking forward to this coming back because it is really serious amounts of money and we could just contract it all to the county and give it all to the county, the employees, let the county run the whole thing that one is probably not feasible either but something we could do differently I think would save us a lot of money and the administration that we've been talking about mostly here today is relatively small compared to the claims cost. So even if we cut the administration claims in half we still have \$10 million we can save on the claims cost. We do have some requests to speak on this item. I'd like to stay that public testimony now. Please come on down towards the front. There's plenty of seats in the front row, so you're close to the microphone. Matt Chessick, Charles Allen. Rachel Tagud. Matt, where's Matt? Coming? Okay Matt's first Charles Allen and Rachel Tagud.

>> Good afternoon everyone. I'm here to support the workers comp unit for the City of San José because I'm one of the people that they support. And I feel that the comments made by Councilmember Constant and Liccardo are right on the money. You can't turn something like this in regards to dealing with the people that are injured, you can't turn that into a logistical battle. You have to look at the people who are injured. You have to deal with their situation. At this point I believe that not doing a pilot project is, it's something that shouldn't be done by our city. Should be looking for something like the mayor just said. Another way of doing it. And out there hopefully we can do it. We need to save folks who actually know their jobs here. Thank you very much.

>> Mayor Reed: Charles Allen, Rachel Tagud, Janice Gill.

>> I'm Charles Allen, I'm with AFSCME MEF. And I'm here today to inform the councilmembers that outsourcing the workers compensation claim administration has been shown by the city itself that it will cost more money. We're told that we have 110 million budget deficit. Yet pursuing changes that will cost the city more money is irresponsible to San José taxpayers and makes no sense. The City Auditor examined workers comp in an audit and gave several recommendations to reduce the cost of this program. None of these recommendations includes outsourcing the claims to a third party. The number of city employees that will be affected if you accept this recommendation here today to tell you what they do, how it helps the city, and how they're strongly opposed to the changes because they are bad for the San José taxpayers.

>> Good afternoon. I am Rachel Tagud. I am here to speak on the proposal on the workers comp unit. Being the front line employees undertaking this important task we have serious concerns regarding this proposed spending of city resources in a pilot program which we believe is not only unnecessary but also unreasonable. Workers comp being done in house and with the atmosphere of employees taking care of fellow employees is a huge benefit as to how this program is being administered here. The recent RFI had also yielded clear results that the city's cost to administer the program is definitely lower. It is also worthy to mention that the present workers comp unit was able to prove in past audits that even if we are handling more cases as per industry standard we have remained efficient and effective in the management of the City's claims. Our outstanding performance clearly have resulted in positive results including savings in dollars to the city. And this is expected to continue if you would just allow us to pursue with our continuing objective of providing quality workers comp service to our fellow employees and at the same time, maintain the same or even higher level of efficiencies to provide more cost savings to the city as a whole. As a final note the unit had already lost two people last year and another two are scheduled to be laid off in June 30. Rather than spending the resources on this pilot, the end result of clearly inevitable, do you think it would be more fiscally and morally responsible to instead save the jobs of these two people who have (inaudible) through all these years to be dedicated loyal and productive employees of the City of San José. Thank you.

>> Mayor Reed: Janice gill, Shari Chen, David Oke.

>> My name is Janice gill. I'm a workers compensation adjustor. I've been in the workers compensation my entire year, working for insurance companies, third party administrators and ultimately self-ensured self-administered here at the City of San José. Self-insured, self-administered claims are truly the best out of the three. While being objective, I still have the opportunity to do the job I love, and to get to know the individuals I serve. It is already been determined that the employees in workers comp do this work more cost effective than any company that responded to the RFI that was done last year. Comparing programs between private and public service can be lying comparing apples and oranges. Comparing programs from state to state is virtually impossible as laws vary drastically. I hope you consider the results of the RFI along with our previous excellent state audits and vote no on the program workers compensation city claims. Thank you.

>> Mayor Reed: Shari Chan, David Oke, Lara Tiga.

>> Good afternoon. I'm Chari Chan, and I'm here to appeal to you regarding the recommendation of the workers compensation unit. One of the representations is to contract a portion of the city's overall workers compensation claims to a third party administrator on a pilot basis. Initial estimate of cost is \$1,000 per claim. On the average the city has 17 claims per 100 employees. Bottom line is: It would cost the city more money to finance this pilot program. In light of the current budget deficit, can the city afford to pilot a program that we already knew is being handled effectively by us, the city employees? As proven by the result of the RFI? Wouldn't the city rather spend this money saving city employees' jobs than spending it on a pilot program that has a known outcome? I would appeal to you to use this same money to save the two adjustors that be eliminated in June of this year. At the present time each adjustor already handles an average of 285 claims which is almost double the industry standard. By eliminating these two positions, it will drive up the number of claims handled by each adjustor. It is humanly impossible for each adjustor to efficiently handle more than 300 claims. This might be sold in errors and penalties that would cost more than you would be saving for eliminating these positions. I urge you to review the recommendations carefully and consider the many people that will be affected by this pilot program. These are

city employees who have been working for you for so many years and have been proven to be most efficient in the administration of the city's workers compensation program. Thank you.

>> Mayor Reed: David Oke followed by Laura Orachiga and Susan Kovich.

>> Good afternoon, my name is David Oke and I'm a workers' comp supervisor. I've been in the field for workers' comp for more than 18 years. The last three years here at the city. The arm tech audit found case loads were doubled compared to other self-insured cities and counties, you already know that. This has been an ongoing problem for many years while the complexity of adjusting claims continues to increase because there have been many reform changes since SB 899 and year 2004. Their research showed substantial savings were achieved through more efficient claims management when reasonable caseloads with reasonable caseloads. One of their main recommendations was to add adjustors which we've done in the past. So hopefully, we can retain those. State audit results have been better than other cities and counties who have passed the caseload of our adjustors. Other more recent audit findings found more efficient case management after resources were added to the program. Last year our program lost two position and we're faced with even greater staff reductions in the future. Most other self ensured organizations, third party claims administrators and workers' compensation insurance carriers understand the correlation between manageable caseload and effective case management. I was pretty shocked at the average caseload when I came here, you don't see it in the private, which I was for many years. I did see it in a few occasions and the results were very bad coming from private experience. The impact of staff reductions will result in less efficient case management, higher claims cost, more lost time and medical treatment delays. Also other employees are at greater risk for injuries due to the added work of covering for those who have been injured. Pursuing an alternative service delivery using a third party administrator will be risky because the outcome would be unpredictable and more costly. It's already proven that adding resources to the program has produced positive results and costs have steadily decreased --

>> Mayor Reed: Sorry your time is up.

>> Okay thank you.

>> Mayor Reed: Laura Archiga, Susan Kovich, Chris Monahan.

>> Good afternoon. My name is Laura Rachiga. I was born and raised in the City of San José. I'm a taxpayer community leader and most of all proud to be an employee in the workers compensation unit in the City of San José. Prior to my employment here I worked in and out of the City of San José working for various third party administrators and insurance companies during my career. Although the private companies I worked for have a lower case load, they have never rated as highly or paid minimal penalties in an audit as this group has with double the amount of cases and limited resources. In addition, the workers compensation industry whether a third party or insurance company abides by the same laws as mandated by the state of California. The recent RFIs clearly show this unit is least costly than an outside vendor and any outside pilot program which is recommended may lead to more costs as the program changes. Defeating any savings to our current budget deficit. Thank you.

>> Mayor Reed: Susan Kovich Chris Monahan, Han Van.

>> Good afternoon. My name is Susan Kovich, I'm a San José resident and have been a city employee with the workers compensation division for the last 15 years. I'm here today to address the status report on the alternative service delivery evaluation for workers comp administration which was forwarded to you today for formal action. In addition I have several comments regarding the Denver West Metro fire work comp model that is being touted to you as what the City of San José work comp program should be looking to as a role model or comparison program. I would like to provide you some facts that perhaps have not been brought to your attention regarding this model. First and foremost they are a private company and therefore not restricted by the same budget issues as we are. Secondly there is a different of state mandated temporary disability benefits of \$176.02 a week less than Colorado. That means that the cost of one year of lost time for a major wage earner such as fire or police is automatically \$9,153.04 less than Colorado. There are many other vast differences that simply because of the constraints imposed by us by the California workers compensation laws and the City of San José MOA makes application of this model not feasible. While working for ways to save money is appropriate, spending hundreds of thousands of dollars on a pilot program with no guaranteed cost savings is not a responsible thing to do in this

current fiscal crisis when the needs of the tax paying community are not being met. Given that this is an unnecessary expense, I question the timing of passing this proposal when there are other more pressing needs such as having more Police and Fire on the streets, having libraries open longer and having our streets maintained properly among other vital services. Therefore I respectfully request you deny passing this proposal.

>> Mayor Reed: Chris Monahan followed by Han Van and Elana Bachman.

>> Good afternoon. My name is Chris Monahan. I am the oldest adjustor in that I have been in workers compensation since July of 1964. I actually worked on firefighter claims and police claims in the state fund in 1965. So I've been there. Both as an adjustor, as the administrator of Lockheed and also as an injured worker. I think you've had a lot of good ideas here today and you've heard from my fellow adjustors. I think they're outstanding considering the amount of caress they handle effectively. We do the best at customer service we can and we come in day after day. We can't accept all claims, which doesn't make everybody happy. I think we could do better if we had more help. I think you have some great ideas. I know you are not the 23,000 employees of Lockheed, but you also have some legal presumptions like for example 32-12 that it is very liberal in applying heart trouble and cancer to public employees beyond the retire up to 60 months but your challenges are greater, but you are on the right track just like we are trying to do our best. Thank you.

>> Mayor Reed: Han Van and then Elana Bachman.

>> Good afternoon, I'm Han Van, a workers compensation claims adjustor. I'm here to express serious concerns on the proposed outsourcing pilot program of a portion of the city's workers compensation claims. A request for information was done a couple of months ago. The results was not only clear but overwhelming as well. The current service delivery mode is much cheaper to maintain as compared to other RFIs. For someone who has clear understanding of how the system works, this is the real test to quantify the cost savings. They may have raised the idea that this presents an incomplete picture and more comprehensive approach is necessary to validate this initial finding. The proposed pilot program. I personally believe that this is a complete waste of resources with the present crisis that the city is in now we certainly could not afford to gamble on a project that

would entail additional strain to the already cash strapped city budget. At this point why don't we look at other ways around and check on what are the real causes as to why there is a perceived waste of resources when it comes to administrating workers compensation claims? Why don't we take a second look at the city's policy on salary continuation? Why don't we review our safety control policies so we can avoid and prevent further injuries? These are just some of the things that could be explored but certainly there are dozens more out there. Just like you we recognize that we also have the responsibility to help the city overcome the biggest challenge. It is for this reason why I am here this afternoon. To fulfill my responsibility by appealing to you, not to waste city and taxpayers money on this proposal. This is not only financially feasible, at this time, it is also physically irresponsible. Thank you.

>> Mayor Reed: Elena Bachman.

>> Good afternoon. My name is Elena Bachman. I'm a workers' compensation supervisor in human resources department. I'd worked for the city for 20-plus years. Risk management of which workers comp was a part of was recognized in the summer of 2006 before the city council for our achievements in reducing workers compensation claim cost and providing excellent customer service. This continues to be our goal to save the city money and provide excellent service to injured city workers. The memo before you states two of our colleagues will be laid off because their positions were only budgeted for fiscal year 10-11. In addition other cuts will be made in order to balance the budget. How can we continue to handle claims, provide timely benefits to injured city employees, provide excellent customer service and continue our efforts to reduce the City's liability without adequate staffing? Yet this memo recommends just that. Laying off employees, plus outsourcing a portion of the claims for a cost of about \$300,000. That's roughly how much it would cost the city to outsource about 300 claims. Reducing staff, plus outsourcing a portion of the claims, will end up costing the city more money. The remaining staff will not be able to accomplish its goals and claim costs will surely rise. This just doesn't make sense. Why not invest in our own employees? The RFI validates current claim administration costs are much cheaper than if the program is turned over to a TPA. Thank you for your attention, and your consideration. For the record, I'd like to say that our turn around time, for requests for authorizations for medical care, is about four and a half days. And I'd also like to propose to give these packets to the mayor and city council. Thank you.

>> Mayor Reed: Give the packets to the clerk. She'll make sure they get distributed. That concludes the public testimony on this item. Councilmember Pyle.

>> Councilmember Pyle: I'd like to have Pete restate your motion.

>> Councilmember Constant: I wanted to accept the report, and provide direction that the staff return to the Public Safety, Finance and Strategic Support committee in the fall, with a work plan of how we will address this in a more comprehensive way, and my assumption is based on what I heard Kay tell us, is that they weren't looking to implement the pilot program specifically as they had said here, but to take a look at that along with other things. So that we could have a better menu of options and a plan going forward for comprehensive reform.

>> Councilmember Pyle: That's what I thought you said. You didn't say anything about outsourcing anything.

>> Councilmember Constant: No.

>> Councilmember Pyle: Thank you.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. Then one more clarification, because the memorandum very clearly states to evaluate it as part of the 2011-2012 budget process contracting with a third party claims administrator on a pilot basis. So Councilmember Constant is your motion based upon the answers you got to some of your questions from staff, did it then contemplate rather than that, that the analysis come back in the fall regarding this pilot program?

>> Councilmember Constant: I think I want to clarify what Kay said. I think what she said was that they were not going to pursue that at this time based on all the information and questions that were arising.

>> That's correct.

>> Councilmember Kalra: Thanks Kay for the clarification because if this pilot program were to be included in this come year's budget I would not support the motion and based on a number of things including what's in the staff report itself. The staff report the way I'm reading it indicates that the county of Santa Clara established dedicated teams of adjustors and managers that are assigned only high-exposure claims for public safety employees and there was a reference during the discussion that could be something you could do towards or other departments that are higher risk. We in the case of such a model could prove beneficial because of experience, high-performing adjustors could focus on those claims. Well, we have experienced high performance adjustors and I think that maybe that should be part of the analysis here is how can we maybe do that internally is focus some of the more experienced adjustors that are used to some of the more complex claims and focus them on a department like the fire department to see how we can improve efficiencies there. Somewhat consistent with recommendation 5 which is the arm study that starts to look at the different departments and in some ways by divvying up the departments, the department heads themselves get a sense of what they can do internally to improve, in terms of reducing the number of disability claims. But certainly, when we were looking at going to a third party, it states in the staff report itself that it's only in theory that a model like this could potentially save money. When the suggestion that the third party administrator would be \$1,000 a claim, I think now we're spending roughly \$500 a claim. I think it would not make sense and I think frankly it attacks our credibility to some extent when we are talking about outsourcing a number of different areas, we have one here which clearly does not show it will save money. In theory could it potentially have some cost savings, maybe. But I think in theory, internally we could create these same cost savings or better by focusing our experienced adjustors in areas that are more complex, doing the exact same thing that it looks like the county is doing we can do that same thing internally. I think as part of this analysis I would really like to see if there are some suggestions or thoughts of how we could do this internally as opposed to simply looking at the third party adjustor option.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor Reed. I just wanted to say that I think Councilmember Constant carries a lot of weight on this topic, being a former police officer and injured in the line of duty and has good familiarity to the disability claims process. So I defer to him on his knowledge on the area, will be supporting the motion. I also appreciate I think it's Mr. Monahan's comments, from the department who talked about his years of time he's been doing this. There is a skill set in order to do that but also pretty much laid out that we have a higher responsibility or higher cost factor because of the rules that are for public employees, that aren't in the private sector. So I think that's inherently a higher percentage of our budget will always go to workers compensation unless someone wants to change that law. But that's not the way it is over there. But the thing I want to point out is the word outsourcing. This council will have to bring this topic up before we balance the budget. This council will have to discuss whether we want to outsorts something to save another service. I quickly point out to last year we saved \$4 million by outsourcing janitorial. Should the council not want to do that, then go find \$4 million to cut. It may not make sense in this circumstance but this council is going to be in that position, very soon, to make a decision on, commodity items that don't have a higher skill set, on whether or not they should be outsourced to save money to keep another city service alive. Thank you.

>> Mayor Reed: That concludes the debate I think. We have a motion on the floor, it's just restated by Councilmember Constant. Any further discussion on the motion? All in favor? Opposed, none opposed, the motion is approved. I'd like to take a minute before we move on to the next item to talk about the election commission interviews, which are set to be heard last in the afternoon, item 3.4. We're down to two out of the five applicants who are able to make it today and I understand the clerk has talked to both of the two that are here, and they would prefer just to wait until everybody is here for a later interview. Is that right? City Clerk?

>> Dennis Hawkins: Yes, Mr. Mayor. I talked with both Randi kinman and Robert Shepard, the two applicants that are here today and they would prefer to hold this over until next week where all candidates could be interviewed at the same time.

>> Mayor Reed: Do we know they could all be here next week?

>> Dennis Hawkins: I have indications from those that are not here today that they will be available next Tuesday.

>> Mayor Reed: Okay, that would be the 15th. So if the council is okay with that is there a motion to defer a week? A motion to defer for a week. All in favor? Opposed? None opposed, item 3.4 is deferred for a week. We'll have to talk about the scheduling of that when we get to rules committee on Wednesday. Our next item then would be 4.2, hearing on appeal of a planning director's environmental determination. Before we get started on this, I want to disclose I have had some conversations and meetings with the Garden City representatives Eric Swallow, Matt Love, Richard Furtado, Margo Breidich as well as Rick Sawyer in a conversation about the hotel workers' interest in this matter. With that I think we'll have a presentation starting with Joe Horwedel.

>> Joe Horwedel: Thank you, Mr. Mayor. This is a protest of the environmental determination that planning staff made related to the Garden City relocation. It is not a protest of the planned development permit, which the planning director did approve in December. So the issues that are before us today are related to the environmental analysis, for the project. The real major issues that have been raised in the comment letters focus predominantly on traffic so I wanted to spend a little bit of time with the council and walk through the process that staff had used to analyze the project, as well as a little bit of the history of how we looked at previous projects with the site. First and foremost, the project site is contained within the North San José area development policy. As the council's well aware, the city council certified in the EIR in 2005, for the development policy area, that covered 28.7 million square feet of industrial space, about a million or a little under two million square feet of commercial space and 32,000 housing units. That EIR and development policy included a traffic mitigation fee that would mitigate the major traffic improvement that required for that level of development. We have litigated that EIR, have worked through the courts open that and the EIR has been upheld. As a part of the implementation of the North San José area development policy staff and the development community have recognized along the way that there were several things that we should modify. And one of those related to hotels, that the policy was really focused on office space, and residential, in support of commercial uses and so we came back to add in hotels which traditionally have existed in North San José, as well as regional retail, otherwise known as big box type uses, that neither one of those were accounted for. So staff worked in 2009 and 2010 to amend the North San

José area development policy. We did an addendum to the North San José area development policy EIR that analyzed removing two million square feet of industrial space and converting those trips to 1 million square feet of regional commercial and a thousand hotel rooms. We actually Analysis analyzed 2,000 hotel rooms at that time but in the deliberations of the policy of how much hotel we should allow the policy decision was made to only do 1 thousand hole rooms. The area development policy EIR and addendums we've done to that. In 2008 this site was one of many that were being approved for residential development in North San José, the 32,000 housing units. We did an addendum to the North San José area development policy EIR that analyzed the two residential towers that were proposed in the side. Those were up to 220 feet tall. They had a total of 600 residential units and up to 20,000 square feet of commercial space. A substantial project. We approved a planned development zoning and a planned development permit for that project and we did utilize the trip generation rates in the area development policy to assess the traffic impact fees that the project would be required to pay. As the economy melted down, that developer lost the project. It was one that did not make financial feasibility. And so the property went back out into the marketplace. Garden City card room was looking for a new location and ended up picking this site as the site to pursue their relocation. As a result of that they filed a planned development rezoning with the city and through that analysis, again, the staff went back to the North San José area development plan EIR, assessed the environmental impacts that were covered under that EIR. We looked at the proposed project and how it fit within the confines of the plan. And we recognized that while we had made those changes to deal with hotels, that we now had a means of addressing hotels, in traffic impacts. We did not have a means of addressing traffic impacts of a card room. A card room is I will remind the council a conditional use in our commercial zoning districts, so if this property was zoned CG, our general commercial district, we would be processing a use permit through that process. We wanted to make sure that the project was going to pay all the appropriate traffic mitigation fees that would be required. And that is based on the peak hour trips which is how we look at all the traffic in North San José and on a citywide basis. We did look at what are similar type facilities. We used information from a casino in San Diego. We typically do use traffic information from Sandag, the regional government in San Diego, because they have many similarities to how they do things here so we wanted to make sure that matched up correctly. And we used that to estimate the traffic impact fee. We were not using that to calculate CEQA impacts. The CEQA impacts are addressed in the North San José development EIR. The other thing I did want to note is we did look at greenhouse gases at this time. While we were not required to do that,

that there was -- is a part of looking at this new area of regulation coming out from BAAQMD, there was some confusion about what the BAAQMD standards were at the time, we asked the applicant to conduct that analysis. That at this point is an informational type analysis, that it is not something that this project is subject to because it predated the BAAQMD standards for greenhouse gases but we did go through and do that analysis, it went into the public record as a part of the decision making so that it was available. As it relates to the PD permit, which is what the challenge has been made on, is that today, well actually back up a bit. One last thing. The card room when we did the rezoning was for the card room in it. The applicant also asked for the ability to do up to a 600 room hotel on the site. And because it is a planned development zoning the city staff needed to go through and address that, so when this came through to the council, if in the future they wanted to do a hotel, the zoning would enable that. As council is well aware, zoning does not mandate that applicants typically build uses and that was the case here. The applicant did proceed with filing for a planned development permit for the card room. That application showed a parking lot where, on the balance of the site, so there is no hotel proposed with this project. There is no site plan for a hotel. It is only for a card room. And that is for a 49-table card room which is the maximum allowed by the voters in San José. We looked at the traffic generation rate, to calculate the traffic fee at this point, because we needed a specific number rather than estimate. We looked at what we had previously done with the San Diego information and then we did an additional analysis comparing this site to the bay 101 card room, and the amount of traffic that should be prescribed to this project to come up with that traffic fee. So we went back and looked at the traffic to make sure that we had the very specific numbers to make sure that we were putting -- allocating the full cost for traffic mitigation to this project. And that is how the analysis was done. Again it goes back to what we did with the original EIR for North San José, and all of the square footage, all of the housing is that we continue every time we do an addendum for this project and all the projects in North San José goes back to that master EIR. And then the last piece is just the -- because we did have the residential project for 220 feet on this site, we did utilize the initial study of that project to analyze, what are the site-specific impacts of putting a tower on this site? That the project proposed for the card room does include a small office tower that's about 150 feet or 160 feet. So we wanted to make sure that we had analyzed properly the impacts from a structure of that size. Such as you know, visual, you know, services those types of things. And so the work that we had done on the residential project of two towers of 220 feet we felt far exceeded the type of impact that would come from the office tower with this project. So we did reference that as additional information to the CEQA

process but the main decisions that we made were focused on the final EIR that was done for North San José. And so with those, our conclusion from staff is that the trips for the card room are addressed in the North San José area development policy and the final EIR as has been amended over time with addendums for each of those projects for North San José and the area development policy that the traffic impact fee has been calculated on a per trip basis like all the North San José impact has been done, that is the foundation using trips and that any future hotel, and that is the operative word, future, is subject to the same traffic analysis that we would look at to make sure that all the proper fees are attributable to the hotel, and that would go through a separate planned development permit, separate public hearing, separate addendum process, and that the city's services and heights have been addressed through the work we had done with the Fosters Towers project. We reassessed that with this permit and concluded that we were still had adequate coverage with that, and that the project itself predates the BAAQMD standards on appropriate greenhouse gas regulation. With that staff was asking the council to deny the challenge to the environmental process and uphold the director's decision.

>> Mayor Reed: Thank you. This is an administrative hearing on an appeal so we handle them a little bit differently. We will allow five minutes for the appellant to present the reasons for the appeal, and five minutes for the applicant to respond, then we'll take whatever else there is in the way of public testimony if there is any. So the applicant I've got cards here I assume Enrique Fernandez is going to represent the applicant, not the applicant, we're starting with the appellant and then we go to the applicant. You're here local 19, somebody representing them gets to go first. You get five minutes to allocate among how many people you want to have.

>> Good afternoon, honorable Mayor Reed and councilmembers, my name is Elizabeth Klebaner, today I'm speaking for United Air local 19 and Will by Angeles. Today you're considering approving the demolition of buildings at 40 airport parkway, the construction of an 88,000 square foot building and a card room with a 24 hour restaurant and bar. You are not considering the construction of a 600 room hotel which is legally part of this project. The applicant does not presently hold and entitlement authorizing these activities. Under title 20 the city has this question is required to consider impacts under CEQA before it issues the permit. This means that the city may condition this permit or even reject it on environmental grounds. I quote title 20 section 100-920 which states under no circumstances shall any applicant have the right to have a planned development permit issued. Thus the

simple question is whether today's authorization may result in significant adverse effects on the environment. If you ask the council cannot approve this permit today. Staff recommends approval on the ground that all project effects were considered and mitigated when the city approved the 2005 EIR for the North San José development policies update. This is incorrect for at least four reasons. One, this project was not proposed until November 2010 when the application for the planned development permit was filed. Two, the 2005 EIR expressly did not consider the traffic impacts of commercial development intended to serve an area beyond the boundaries of North San José. The records show that this is exactly this kind of project. Three, the 2005 EIR could not have considered hotels with more than 100 rooms on the project site because such large developments were not allowed at that time on the project site. The 2005 EIR did not consider the impacts of relocated card rooms because this city amended title 20 and title 16 in 2009 to consider those of commercial uses that included four years after the 2005 EIR was certified. The question now becomes does anything in the record show any significant project impact sited by appellants were previously considered? Again, the answer is no. Appellants have shown that the 33% increase in the gaming floor area that occurred in December 2010 will lead to new significant traffic impacts. The staff report claims that the 32% increase in the gaming floor is not significant. Not because the department disputes appellant's calculations is because staff now claims that square footage is not used as a basis of calculating traffic impacts. This claim is unsubstantiated. The city routinely uses square footage to calculate traffic impacts. I quote from a memo generated for this project by public works. The square footage of the casino gaming floor area is used as the primary trip generation variable. Second, appellants have also shown that the combined traffic impacts of a card room and hotel will be significant. The staff report does not rebut appellant's expert analysis but argues it was not required to signalize the hotel at this time. This is legally and factually incorrect. CEQA requires staff to analyze all environmentally significant foreseeable impact. On November e-mail from the applicant to the city states in relevant part and I quote, I am meeting with Joe and Zini on May 29th from 8:30 until 10:30 about this project. I will build an Westin or a W. See attached letter. I am still in communications with StarWood and working with them on the project and will be able to get in contract with them once construction starts. I continue to quote, the hotel makes sense and complements the casino in ways that can design in more detail if you're interested. The current renderings don't show a hotel per planning department request. End quote. Clearly the hotel is not speculative at this time and its impacts have have been considered. Appellants have also shown that the traffic impacts fee will not adequate mitigate project impacts

because of the City's significant budget shortfall. The staff report countered that infrastructural improvements are partially funded by developers. This is beside the point. The traffic impact fee assessment assumes that infrastructure improvements will be partially funded by the city. New evidence shows that the city may not be able to carry its burden due to current economic conditions. Staff has not rebutted this evidence. Appellants have also shown that project construction operation and its regional traffic will cause significant greenhouse gas emissions. The staff report counters that they will not be significant. Staff again has no evidence of this claim. The city's view of the analysis although they now claim it wasn't required, did not apply the Bay Area district significant thresholds. The day-to-day analysis also excluded from consideration the 600 unit hotel which is required to be analyzed at this time. Staff also argues that the day-to-day thresholds on the part of this project --

>> Mayor Reed: Sorry your time is up.

>> May I please have two more minutes?

>> Mayor Reed: Sorry, we'll hear from the applicant who will have five minutes.

>> Thank you.

>> Mayor Reed: I do want to note that we have response from your law firm as part of the record as well as correspondence from the applicant's law firm as part of the record. Margo Bradish.

>> Good afternoon, Mr. Mayor and members of the council. My name is Margo Bradich of Cox Castle and Nicholson. And I'm here today on behalf of the applicant, Airport Parkway III LLC to request that you deny the appeal before you and uphold the addendum for the card room PD permit. First we'd like to take the opportunity to thank the City's professional staff for the diligent work in processing the project and this appeal. In particular I'd like to recognize Joe Horwedel and Darryl Boyd of the Planning Department as well as Rick Doyle and Renee Gurza in the city attorney's office for their diligent work on this matter. Second I'd like to take the opportunity to commend the city, under your leadership, for its visionary action in adopting the North San José plan and the

associated EIR. Your efforts are a true model of how a city can comply with its obligations under CEQA while providing certainty for the business community and clearing the path for the economic development that sustains this city. The project is a component of that economic development and if I can use an overused term, this project is shovel-ready. If you deny the appeal this afternoon the applicant is prepared to commence demolition immediately clearing the way for our card room project that represents an \$82 million investment in this city that will generate ownership 1100 design and construction related jobs and over 800 permanent middle to high wage jobs for the city in addition to generating substantial card room and other tax revenue. We concur with the analysis and recommendation in the staff report before you, and while I won't get into extensive legal analysis here I can't resist acknowledging that the process that the city has followed for this project and in fact for all of North San José is expressly contemplated and authorized by CEQA. Once you've invested the time and resources as you have in the process of preparing a comprehensive EIR for a plan area like this, you are not required and in fact under CEQA are not permitted to require additional review unless certain statutory triggers are met. In other words the review you've completed becomes the baseline, in CEQA jargon, for further analysis of projects that are proposed under the plan. In this case the statutory triggers are not met for the card room against the baseline of the North San José EIR and the addenda that has been prepared over the years as described by staff, the addendum adequately analyzes the cardroom and determines that further review is required. I did have a brief opportunity to review the voluminous materials that were submitted by the appellant yesterday evening and no new issues are raised they'd haven't already been addressed. You have before you the information you need to make a decision on the addendum and no additional delay or analysis is necessary. Likewise the statutory triggers for initial -- excuse me additional development with respect to the hotel have not been met. The CEQA review for the PD zoning did analyze a hotel as it was contemplated at that time. The city hasn't pieced immediately its analysis but rather has already completed the analysis of the hotel that was proposed in the PD zoning as a possible future use. There's no proposal to construct a hotel at this time. And if that happens in the future as staff mentioned April application for a PD permit and for an environmental review will be filed and the same process will be followed. Also, while not a subject of this appeal, the applicant has requested that I convey to you that it is their intent that the hotel workers will be union workers. In conclusion, the planning director has complied with CEQA in approving the PD permit and the PD permit addendum. We urge you not to further delay this project and the significant jobs, revenues and economic development that it will

deliver. Instead we respectfully request that you deny the appeal and uphold the Planning director's action. We refer you to the letter we submitted for a more detailed legal analysis and we remain available to answer any questions. Thank you.

>> Mayor Reed: Thank you. We have some requests from the public to speak. Sort of from the public. Looks like people are engaged in this and then I'm going to let the lawyers have the last word for a little bit of rebuttal for each of the lawyers. We'll take comment cards, Enrique Fernandez, Lee Stribe and Ben Field and we'll hear from the appellant's lawyer and the applicant's lawyer for a minute if they wish.

>> Thank you, Mr. Mayor, members of the council, I'm Enrique Fernandez, I'm here as representative of several thousands of hotels who service casino workers who work and live in or near San José. We are interested in big development, that's what we're do and we are always probing development as it affects them as resident commuters and workers. And some of them we as the representatives are concerned about this specific project. We and one of our members have appealed the approval of the environmental review for the Garden City projects because it is a very important project for the city and for its residents and we do not think that the staff had adequately studied the project and its impacts including new impacts that are different from when the environmental review was done for the spring of 2010 and the adoption of the 2005 EIR. We also concerned that there hasn't been more transparency and cooperation in this process. This is an unusual and important project for San José. When you only have one opportunity to get it right, given the complexity of the issues here, the volume of new information and legal issues before you from both our side and from the applicant, on the lack of study that the staff has done on this specific proposal for a card room and hotel here on airport parkway, I respectfully request you to defer this item and conduct a full environmental review on the project. Thank you. To all of you.

>> Mayor Reed: Lee Stribe and then Ben Field.

>> Good afternoon, Mayor Reed, councilmembers, my name is Lee Streibe, I'm a research analysis with United hotel workers union. I'd like to testify briefly today to amplify an ad to some of the points Elizabeth made earlier, in that our view the director's December approval related to this project violated CEQA, and I want to add my voice

to those who are urging that this item should be deferred and staff should be directed to conduct a more thorough project-specific review, environmental review for this project. A few key points related to that quickly. First, that the city really has not conducted project-specific, review of this specific project yet. There are aspects of this project that are outside the scope of what was considered in '05 and outside the scope of the subsequent environmental review in other years. The tiering of environmental review that happened here is certainly creative but it goes too far and doesn't hold up and so therefore site-specific analysis for the actual project that is contemplate here needs to be done. Secondly, again, it's important to look at that time whole project here. The whole project is a card room, it's a hotel, an office building, a bar, restaurant and a card room larger than was contemplated earlier and the piecemealing that was proposed here is not okay. And we would ask you to direct staff to analyze the entire project. In addition, as noted there's new evidence in the record that has not been rebutted that talks about the significant air quality and public service and traffic impact that this project will have and we would urge you to direct staff to study those impacts. And finally, I think we've observed in dealing with this project, this is a city that prides itself in open government and transparency but the experience that we've had on this has been a little bit different. From that we've been often frustrated by --

>> Mayor Reed: Sorry your time is up.

>> By various delays so we would urge you to --

>> Mayor Reed: Ben Field is our next speaker.

>> Mr. Mayor, members of the city council, my name is Ben Field, I work for the South Bay labor council. The process for evaluating this project has raised some serious questions. There was no site specific review in the Planning Department time for the project until the day of the director's hearing in violation of the City's public outreach policy. On that day for the first time the Planning Department claimed that the 2007 study on the foster towers residential project provided the basis for an environmental analysis of the new Garden City card room, a bar, and a restaurant, which would operate 24 hours a day. And also, an office tower. At the hearing, major oaks were raised, about the environmental impact of the card room, hotel, restaurant, bar complex. The hearing officer

twice asked Garden City whether they wanted to respond, both times they declined. There was no response from staff either. The PD permit was summarily approved. This process was not worthy of a city that prides itself on transparency and openness in government. Leaving aside the fact that the proposed 24 hour a day card room restaurant bar complex is unlikely to have the same environmental impact, as a residential building, the process created the impression that the approval of the card room project was a done-deal from the beginning. So far, the review process has sacrificed openness, transparency and compliance with the law for speed. A project of this importance demands meaningful review or it looks like a back-room deal. The appeal should be granted. Thank you.

>> Mayor Reed: That concludes the public comment on this matter. We'll give the appellant's lawyer another minute and then hear from the applicant's lawyer for a minute and then council will have our debate.

>> Again, we urge you to uphold our appeal and delay approval of this project. Until a substantial environmental review has been done and the amount of substantial evidence shows that the CEQA triggers are in fact not here. Therefore the city must conduct subsequent environmental review. The hotel is not previously analyzed for the rezoning. It was deferred until a future time as staff's analysis clearly states. The card room also was not previously analyzed. It has since been increased by 32% which is a significant increase as substantial evidence which is also unrebutted shows. Again, appellant's unrebutted evidence is exactly the type of evidence that triggers review. Thank you.

>> Thank you for the opportunity to respond, I'll keep my comments brief. I have not heard anything, again here today, that I think raises any new issues. Again I'd like to commend staff for a well written staff report that I think addresses the issues before you and we once again request that you deny the appeal and uphold the action of the planning director. Thank you.

>> Mayor Reed: All right, that concludes the testimony on this, I'd like to ask council discussion. Let me just start by going back to I think 2003, is when we started the environmental analysis on the North San José plan. Of course we'd started the planning work long before that. And we took a couple of years, \$500,000, litigation,

confirming the validity of the EIR before we finally got it done and then we've done the 2009 amendment to do additional traffic study that staff outlined. So we've done a lot of environmental review and the whole process for doing a master environmental review for North San José was to allow projects like that to proceed without doing a full environmental report project by project by project. So we have a master EIR designed to allow us to develop the scope of the North San José plan, 26 million square feet of office, industrial space, 32,000 housing units, 1.7 million square feet of retail with some additional hotel rooms. So we've studied it and studied it and studied it, I don't hear anything today in the documents that have been submitted that show any problems with our environmental review. So I would certainly not support the appeal. And I don't want to reopen environmental review for this project or any other project unless it's necessary and required under the law and it's certainly not because if we start with this project Then we have dozens if not hundreds of other projects in North San José that are going to be compromised in terms of the speed of processing and the environmental review that they might have to as a result. So I don't want to go down this path, because the work certainly seems to meet the requirements of the California Environmental Quality Act. Finally, I know there's an argument here between the applicant and the union, I don't need to wade into that argument, it would be inappropriate to get into that argument, and it is not a reason for us to make a decision. They'll go work it out somehow. I'm anxious to see 1000 hard hats, design professionals and hard hats on the job. It's a sight we don't see often enough. I think we need to move this along so kit get under construction and create those construction jobs. So I would urge councilmembers to give this some serious thought and try to protect the investment that we have in the environmental work, and years of analysis to allow this project to move forward, along with the rest of North San José. Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. I wanted to disclose that I have also spoken to several people at Garden City casino. They are constituents of mine in district 1 so we have discussed this project a number of times over the last, quite frankly, several years. I agree with almost everything the mayor said. So I won't belabor this longer. I just hope that we do deny this appeal and follow staff recommendations.

>> Mayor Reed: Councilmember Nguyen.

>> Councilmember Nguyen: Thank you, mayor Reed. I, too, agree with everything the mayor has just expressed. I think the potential for job creation on this job is tremendous. It's something we're all looking forward to. While I have questions regarding some of the questions I raised but the responses I received in the memo clearly explain everything. I think if an additional EIR would not only duplicate what we already know but it's just going to slow down the entire project which is not something that I'm willing to support. And the fact of the matter is the relocation ever this card room is something that I would assume that the council would support. One of the concerns I had in the past was, its proximity to the residential community in District 1 as well as the harker school. And now it's moving to a place where it's surrounded by hotels and businesses and closer to the airport. Something definitely that we can all support. So strongly support staff recommendation and at this time I'd like to move for approval.

>> Second.

>> Councilmember Nguyen: Then just for disclosure --

>> Mayor Reed: We have a motion on the floor.

>> Councilmember Nguyen: Thank you. Just for disclosure purposes I had conversation west Eric swallow and my staff spoke with been field and representatives from local 19. Thank you.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Yeah I'll be supporting the motion. I think it's really important. We have a \$62 million investment, 1100 construction jobs, 800 ongoing jobs and even though I appreciate the issues raised by the appellants, I don't feel they're sufficient to warrant any delay or denial of the addendum to the FEIR. I encourage the appellant or the union to work with the developer. And I hope that those issues get resolved but I think they're separate to what we're looking at today in this FEIR.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor. I'd like to disclose I've spoken with Eric swallow and I think other members of Garden City or other employees rather. I've also spoken with Enrique Fernandez of local 19. I had a couple of questions for Joe or anybody in planning. One related to, there were, at the time that we approved the rezoning, as I recall, included a condition of expenditure I believe it was \$100,000 to deal with traffic impacts in the Rosemary gardens neighborhood. There is in fact a residential neighborhood that is relatively close to this area and we wanted to address those impacts. Is that condition memorialized in the permit, when does that become effective? When does the money become available for the city?

>> Joe Horwedel: The -- with the council approval the council did recognize that the applicant voluntarily offered the traffic mitigation, working with the neighborhood, and the Sonora neighborhood because that was a voluntary contribution that is one of the things that staff grapples with, whether that is something that belongs in the PD permit or not. It is something I think with the applicant's representatives here to just restate that. My expectation is prior to them getting a building permit that we will have that money transferred, because that really is kind of the logical point to do that.

>> Councilmember Liccardo: Would somebody with the applicant like to speak on this issue?

>> Joe Horwedel: And it is in the zoning.

>> Councilmember Liccardo: It is in the zoning.

>> Mayor Reed: Yes, just come on down, we'll get you on the microphone and on the record and on television and all those things.

>> Councilmember Liccardo: This is your chance.

>> Good afternoon, I'm Brian Turpin. I'm the applicant. Yes, it's actually I believe in the PD permit, required for the \$100,000, I believe is for the traffic lights and some other things. So and yes, that's something that Joe and I have talked about that has to be paid before a building permit. So we're on board.

>> Councilmember Liccardo: So we'd expect that payment to happen at the time of the building permit?

>> Yes, prior to the building permit documents going out.

>> Councilmember Liccardo: Thank you. I guess while you're here I might as well ask. I think this project has taken various forms over the months and frankly, I was actually hopeful there would be a hotel, frankly, in the first round. I understand that the market may not be amenable to it at this moment but say there's an eight-story tower attached. I know that office tower isn't going to be used for card rooms. Is that entirely self-contained Garden City operations or are there other folks that are going to be leasing in that tower?

>> It could be -- actually now it's a spec building there's nothing interior. It is contemplating majorly back of house office. Because really not sure how much people, how many people they're going to actually employ as this is a little larger of a project. So I think that it's back of house operations. Possibly a -- you know a convention-meeting space. It's a very small footprint of a building. So could be contemplated for a myriad of, you know, uses.

>> Councilmember Liccardo: Okay. Yeah, I'm just -- honestly I'm a little puzzled as to why it's there maybe Joe you have some --

>> Joe Horwedel: I would just for the record in case everybody is thinking this is spec office space. It is not designed that you could go and lease it out to individual office users. The lobby comes in through the floor of the card room. As opposed to being a stands alone entry. How the space is actually configured to deal with building codes and fire codes for fire protection and exiting is really -- would not work well to even, if you have an extra entrance I don't think you could really lease it out as office space. So we've treated it as back of house so essentially what you would normally see on the ground floor, they just chose to go up with it.

>> Councilmember Liccardo: Okay so we expect that it will be essentially fully utilized by Garden City.

>> Joe Horwedel: That's correct.

>> Councilmember Liccardo: Okay, thank you. Thanks for all the information. I've read through the materials. Pretty thoroughly. And I can't say I understand or that I agree with rather the concerns that around the sufficiency of the EIR. It seems to me that the -- I understand that the square footage is typically used for traffic impacts but clearly the draw is the number of tables, that's what generates the business and the number of tables remains the same. I do expect there would be a hotel there. The hotel was clear through the EIR. I think everybody expects it's a prime hotel site and we expect that will get built and whatever impacts will essentially be addressed, have already been addressed by the EIR. In any event, I certainly appreciate the concerns that have been expressed, in my conversations with Mr. Fernandez and others, and I'm not a huge proponent of this project. Certainly, we appreciate and understand the value of new development. But I think we also recognize that card rooms bring very serious impacts. I've been very vocal about my concerns about the impacts of company card rooms. But I also recognize that this is really not an expansion, essentially, this is a relocation. The prior location was much closer to residential. At least a greater number and greater concentration of residential homes. And this location is one that that's certainly more appropriate with regard to its proximity to key transportation and the airport. And its surrounding industrial and commercial use. So I will support the motion.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I just wanted to mention that I -- my staff did speak to Eric Swallow, I talked to Enrique Fernandez, Rick Sawyer and a couple of other individuals but I don't have their names right now. I have a question in reference to something that was brought up. You need statutory triggers in order to come up with a hotel? First of all I don't know what that means and secondly, we may never have a hotel there. Would that be somewhat accurate?

>> Well, the statutory triggers that are being referred to is. After you've done years and years of environmental analysis CEQA is loath to have you delay projects and get more and normals. You can get trapped in analysis forever. What the speaker's referring to is once you've gone through and actually prepared and certified an environmental impact report you have to meet certain statutory triggers to reopen and look at environmental analyses even further. So both the speakers were alluding to the fact that you don't keep analyzing and analyzing and analyzing.

>> Councilmember Pyle: And at this point it doesn't look too likely that within the next two years we will have a hotel, is it --

>> To the extent that can a hotel be placed here at some time in the future a hotel use was included as part of the zoning. Beyond that you are correct. It is pure speculation as to whether we will ever have a hotel. So that's why it's not included in the permit and with regard to piecemealing argument simply because we have zoned an area there is no requirement you have to implement the entire project at one time. So a portion of the project site is coming forward but beyond that it would be pure speculation.

>> Councilmember Pyle: Well, I'm concerned as the mayor has already mentioned about putting people to work. And so I'm very much in favor of this, thank you.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. This is going to be familiar because I'm going to ask Renee a question. I haven't asked you a question in over a year. And it's all on the legal aspect of this. In the documents that I received yesterday at 5:00, the appellant attorney kept citing legal cases in which -- in their report and analysis showed that the courts actually did agree that even though there was a particular project, I think it was in Placerville, that was previously approved, that never came to fruition. Then another project that was a little bit larger came into fruition, and it seemed like the courts agreed that additional analysis was needed. Could you explain if there's differences in these two?

>> Yes, and thank you for that question. Yes, so the case that was cited by the appellant, it was really at -- the key distinction is that there was no master plan, no master planning document like we have in North San José where you have the North San José development area policy where a massive EIR to address uses, impacts in that entire region was prepared. And so the case that was cited by the appellant was more taking one tiny project and, on one site, and using it for a different project. But in that case there was no master planning document like we have with the North San José development policy and that accompanying environmental impact report.

>> Councilmember Campos: Okay. And so getting back to your opinion, I mean, are we opening ourselves up to litigation on this?

>> Well, as you know, having worked with the city for many years, we're always open to litigation. I see the City Attorney smiling. I mean, we are -- we are a big target. But we have prevailed in many of those cases. So litigation would not be unusual. It's actually fairly typical in the CEQA context. And again, I can't anticipate what the appellant will want to do from here but I'll defer to the City Attorney.

>> City Attorney Doyle: And I will interpret the question, do we think the documents and the analysis are defensible and yes, we do.

>> Councilmember Campos: Okay, and the reason why I ask is, you know, first of all, I mean, you know, we have a balance here and one is to put people to work. And two is to, you know, approve this project and you know, hate to say, possibly face consequences. So I go back eight years ago and I'm alluding to the Lowe's project. When I was on the commission, the commission had concerns, delayed it for 30 -- for 30 days, staff came back, with more analysis, alleviated some of our concerns. We certified the EIR. Council certified the -- or accepted the certification. That got litigated and we lost. And ultimately, what, seven years later, the project went forward. But I think we could argue that a much better project is in place right now, because of that. And so I don't want to be in that same place. So -- and so I'm trying to balance, you know, we need to put people to work. But do we believe we have potentially the best project for our city?

>> Well -- and if it helps you feel any better, the North San José development policy, final impact report was actually litigated and it was settled in a manner that upheld the validity of that EIR. So one additional piece of comfort that you have here is that the EIR that this tiers off of already has been subject to litigation.

>> Councilmember Campos: Can you -- what were some of the issues or the items that were litigated?

>> Back then the main issue was traffic as I recall, neighboring jurisdictions who felt we should analysis the traffic impact of such a large project on the border of several large cities, should analyze the traffic impacts in their jurisdictions. Up to that point, at that point in time there was CEQA guidelines that says we don't need to analyze impacts that we can't mitigate. The law has changed since then but my recollection was that was the big issue back then.

>> City Attorney Doyle: If I could add, that was the nature of the issue. There were arguments that water and a whole host of other issues as well which we prevailed on. How we settled that case is, we entered into agreements Santa Clara, Milpitas, and the County of Santa Clara to help mitigate Montague expressway in their jurisdictions.

>> Joe Horwedel: One nuance I will add to that is we actually did analyze the traffic impacts of this massive amount of development in the surrounding cities, all the way down to chasing impacts into the city of Campbell and North San José. We did extensive analysis outbound. But the point Renee was making was the correct one, that cities did not mitigate impacts outside of their boundaries because you could not ensure that that agency would actually go and actually go and do the mitigation. The judge asked that the adjoining cities and the city of San José sit down and work out a joint mitigation strategy that's now being used in impacts with from other cities into San José. So it was a break through moment on that. But the really defining thing about the North San José plan is we did such -- we analyzed such a large amount of development, we looked at the cumulative impacts that you're hearing today that we didn't do it that we piecemealed it, how the other cities around us do development

that we have taken the much more conservative responseful approach about analyzing traffic service demands all of those impacts that would normally get lost on a project-by-project basis.

>> Councilmember Campos: And you know the initial EIR was so long ago I can't remember when studying hotel rooms, were there -- were we anticipating that you know, hotels would go, you know, at first street and 237 or where this proposed project is going and is that how we analyze the traffic impacts on those intersections near there?

>> Joe Horwedel: Is we analyze the traffic based on putting trips into the intersection, and whether those trips were caused by a hotel or by regional retail or by office space, we were looking at the traffic at the peak hour that was occurring, accumulating at intersections. What the policy does is then takes all of those trips and says that well, 20 plus million of those are going to be assigned to office space and that we're going to go through and put about 2 million square feet to retail that serves the North San José area and we're going to put another million towards the regional retail. And we actually analyzed 2,000 hotel rooms in North San José. Because of the questions that were asked by the hotel community, where would those rooms go? Because there was a concern that we would never have room for 2000 hotels. We actually showed where we could do more than 2,000. And that looked at the area around the airport, and it looked at the area up along our city boundaries on 237 corridor. That those are the two areas we thought the market would most support the hotels. In the end we went and back that down to a thousand rooms that the policy accommodates but the environmental review that we did under the North San José EIR and the addendum to that review was for 2,000 rooms.

>> Councilmember Campos: And then just my last question, any of these I guess within a one mile radius or two mile radius, any of these intersections protected intersections?

>> Joe Horwedel: I don't have that in front of me. North San José overall has an average level of service intersection policy. We've used that since the mid '80s where we do not focus on an individual intersection like we do elsewhere in the city. So we have a cumulative averaging that we do recognizing the unique traffic that's up there. We do have protected intersections that were created as a result of the North San José area development

policy and that was more focused outside of the area development policy so we did protected intersections on I think the 13th street corridor, the fourth street corridor, some intersections we may have added on the Alameda, that -- where we had not already protected those. At the same time, we were doing those protected intersections, we were also doing the update to the downtown strategy plan and the flea market was moving through at the same time. So we were protecting intersections for all three of those projects at the same time. So it's hard for me to remember which one was triggered by the individual projects.

>> Councilmember Campos: Okay, thank you.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. While I believe that the North San José area development policy is a sufficient tool to manage growth in that area. However, I reservation about the traffic analysis for the hotel using residential numbers, when we did the addendum in 2009, is that right, and at that time we are assuming that there will be residential units. In this property. We're not -- we -- the Foster towers was already in the plan. So when we did the changes of the 2 million industrial, changing the 2 million industrial to a thousand-room hotel plus whatever, some big box commercial, at that time, this particularly site was originally planned for residential. To me, was not part of the changes in the addendum. Because the addendum were addressing changing from industrial to hotel, from industrial to commercial, big box commercial. And we're not talking about changing from residential to hotel, or residential to commercial. And that's why I have really a reservation, about traffic study around that site. So I would like to make a substitute motion to see if we can defer this decision for another month, so you -- just to convince me that we have done the due diligence, we have done the site-specific traffic analysis, to make me -- I'll feel much comfortable to support the motion. And as a disclosure, I have talked to local 19, Garden City and the Banfield. I would like to make a substitute motion if I can get a second to defer it for a month.

>> Mayor Reed: We do have a seconded substitute motion, so we have a substitute motion on the floor. Councilmember Rocha.

>> Councilmember Rocha: Thank you. Couple questions. Let me disclose also that I've met with representatives from Garden City and also local 19. In the meeting with Garden City, I did have a question about property ownership, and had asked, who were the property owners or if they owned the property, I was informed there was an MDA, they couldn't share exact lid who they were but except it was an airport partners LLC. That was a bit surprising to me, I had a question I guess for staff in terms of when gaming is concerned, which is a little bit different than any normal use in my opinion, wouldn't there be some state requirement or local requirement about acknowledgment of disclosure of who owns the property, where a casino would be located?

>> City Attorney Doyle: Councilmember, yes. And that will have to occur, both under our own title 16 couple which is the section of the -- or the title in the municipal code that regulates gaming, as well as under the state gambling control act. They will have to disclose all owners, all stock owners. It is owned by an LLC so all the stock owners will have to be disclosed.

>> Councilmember Rocha: In terms of timing, we're comfortable with that, moving ahead with the use of the project without knowing that?

>> City Attorney Doyle: This is purely a land use issue before you. They cannot operate the casino without a gaming license from the state or from the city. It's just a building otherwise.

>> Councilmember Rocha: As far as the conditions of operation can you refresh my memory in terms of when we would see those or have we already seen those in a previous approval?

>> Joe Horwedel: The planned development included some basic-type operations but the planned development permit functions as a conditional use permit in this case and that concludes the basic operations for the facility. And then the majority of the operational conditions would be in the gaming permit that the police department would issue that deals with how the card room would operate. That in the land use permit we are regulating how the basic site operates, that we try not to get duplication of planning and PD trying to regulate the

save activity. We're focusing on the basic activity itself. There are things like entertainment in the restaurants that are not regulated under the card room permit. We deal with that and then we deal with the police department who does look at our planned development permits. We coordinate with them on our permit we approved.

>> Councilmember Rocha: Okay, that kind of leads into my next question, I was trying to refresh my memory in terms of the PD permit, that acts as an SUP or I'm sorry a C.U.P. Is that typical or is that really special?

>> Joe Horwedel: The cardrooms are a conditional use in the city of San José so at the current location for Garden City, they've had a conditional use permit. In this case we're doing a planned development permit because it's a planned development zoning district. Both of them are then subject, or all the locations are subject to the police permit ordinances, where they would issue a separate license or permit for the operation of the card room.

>> Councilmember Rocha: And that's administrative, that's not something the city council would add --

>> Joe Horwedel: That I would defer to the City Attorney open.

>> City Attorney Doyle: I'm sorry, I was checking on an e-mail. Could you -- ReneÉ, could you did you hear the question?

>> I didn't hear the question.

>> Councilmember Rocha: It was police department's conditions is that administrative or is that council?

>> City Attorney Doyle: That's administrative. The gaming administrator issues those, and they are public records, but it's a decision made by the gaming administrator.

>> Councilmember Rocha: Okay, last question. I noted in the report, staff report, I can't remember which page, that the number of tables was driving the traffic analysis. That kind of stuck out to me because I was used to the size of the building driving the traffic analysis not for example the equipment inside or the size of the equipment. Can you help reconcile that kind of discrepancy for me or is it pretty typical, well you can't call it typical given we have only two card rooms.

>> Harry Freitas, Department of Public Works. I think the important thing to understand with regard to a casino is, it generates peak hour traffic but it doesn't generate a large amount of traffic during the peak hour. It's diffused over the day. It has a late generation characteristic. Late in the evening. There is some if you look in the documentation some argument over the trip generation rate that we used in the traffic analysis. And regardless of how you would take on the issue, the appellant was referencing a tribal casino in San Diego that had a trip generation rate approaching four trips per thousand. We were using a trip generation of about approximately three trips per thousand. The three trips per thousand netted 59 peak hour trips because of the diffuse nature of the generation. Even if you doubled it to eight trips per thousand you wouldn't even really approach the type of trip generation characteristics that the existing building had. So it's a little bit of a kind of a false argument in some ways. That the traffic for the casino is really an issue here. With regard to the hotel, what we did was, we converted a typical industrial trip, as part of the base traffic analysis for North San José, into a hotel room trip, such that if a hotel ever comes in, in North San José, they'll be paying \$3,000 per hotel room into the North San José area development policy fund which as you know, constructs over five -- \$520 million worth of improvements. So you know when you ask what would you study to follow up on this, it's all been studied. There's really not much else to at this time at this point. The intersections have been studied exhaustively. The project will contribute to the North San José area development policy and that policy will result in the construction of over 500 million worth of traffic infrastructure.

>> Councilmember Rocha: Thank you. Helpful but still kind of for me, leaves the point of measuring traffic not with the size of the facility, but -- and I'm -- let me just state that I'm comfortable with the traffic analysis. It's just that kind of stood out. Normally, I've seen this over and over again, us -- the moment somebody increases the

size or square footage of a building, traffic analysis impact and this one said no, we're just looking at the table. And I understand and I'm comfortable with it but just trying to better understand that point.

>> Joe Horwedel: It certainly is different than an office type use or residential, the dwelling units. But as Harry pointed out, it's one we looked at really what was the best means of assessing at the end of the day how many cars would leave the driveway and is that more related to square footage or is it more related to the tables or whatever else activity is going on inside. And after a lot of review, that the Public Works and transportation staff did, is that they really felt that connecting it back to the tables was the prime driver of why people were at that site. And the amount of traffic that would be as a result of that. And then they went out and actually counted traffic coming in and off of the bay 101 site, where you have similar traffic characteristics of how people get to this site, you have the similar characteristics of the games that were allowed, it allowed us to ground-truth it and do an apples to apples comparison of why do you use San Diego numbers. We were trying to go through and figuring out what was the best representation to do that projection.

>> Councilmember Rocha: Let me use the example that I didn't really want to publicly state. Let's assume there is a tournament. I haven't been to a casino or a tournament. But if there were, there would be more people regardless of the number of tables. That was for me what I was asking questions about so thank you.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you. The discussion that's going to pulled out of questions for me and I know that we got this brief from the appellant's attorneys late yesterday, but my staff didn't get a chance to read it, and so I have a summary of it and wanted to ask some questions in regards to it. And on the point that I think everyone up here grace with we all want jobs created, as soon as possible, especially hard hat jobs. But my questions resolve more around the legal aspects of the EIR and some of the appellant's claims which obviously whether we want jobs or not, that's not something we consider when we consider some of these legal issues. And one of the questions I -- it looks like and I think ReneÉ you referred to the different criteria necessary in order to -- pursuant to CEQA that would require a subsequent EIR or at least the consideration of such and it really has to

do with substantial changes in the project or conditions that didn't exist during the original EIR. How do the addendums play into that, in other words there have been a number of addendums. Where is it or what kind of conditions does addendum satisfy certain conditions as opposed to the threshold to reach substantial changes to require a new EIR?

>> Thank you. So in the CEQA guidelines, in the CEQA guidelines, it is not enough to have the change in circumstances. The change in circumstances has to trigger two things, it has to trigger major revisions to the EIR because it identifies a new environmental impact which was not disclosed. So sometimes you'll hear appellants just say there's been a change in circumstance. But again there are two additional elements that we also have to watch for. Which is not just a change but did it actually create a new impact and will it cause major revisions in the EIR. So that's why you hear some of the staff telling you, you could defer it a month and we would go analyze more and more and more but we wouldn't get new information. So the way the addendum fits into the statutory transitioners are is guidelines are written such that here are the criteria, here are the statutory triggers that would warrant new environmentalist analysis. And a couple of the sections of the guidelines later says, if you don't have one of those triggers the addendum is the appropriate vehicle to use. That's how they're related.

>> Councilmember Kalra: When you have a large area like we have here in the North San José area plans where you do an EIR for the whole area, what would be examples that would be a major revision? Because if in this example, clearly in 2005, there wasn't a proposal, on this site for a 24 hour casino with a number of tables or with -- or even for a 600 room hotel. So when you're talking about an area that large you know, how do you arrive at that decision that something's considered a major revision or not?

>> Well you raise a good point. Because we analyze such a massive volume of development, it will be difficult, it will be more difficult to trigger some brand-new impact that wasn't analyzed because the scope of what was analyzed was so large. Because we are at the beginning of that EIR. Now if we were in phase 4 and we were going towards the end and wondering is each project going to trigger something we haven't analyzed. But I think you have raised a good point, which is it would be difficult to trigger a brand-new significant impact that has never been analyzed. It is possible. And one thing that we're looking at is when it would be appropriate to do some

supplemental analysis on certain issues. But generally speaking I think you're correct that when you analyze such a massive amount of development it would be more difficult.

>> Councilmember Kalra: I any when you're talking about millions of square feet and thousands of hotel rooms under what -- it doesn't seem like you can find circumstances even though clearly I think even Joe you were referring to commercial uses. But saying commercial use is one thing but a regional 24 hour draw a card room is very different than any other commercial use we have and we only have two of them. And clearly there's an existing one now that's moving so it's not a matter of necessarily you know having this dramatic impact on top of the other but there's still an expanded card room a card room that will be a newer draw, I've seen some of the designs, looked nice in the restaurant and all that. This is a unique draw compared to just saying a unique use. In 2005, there have been addendums that expanded the use of a commercial use and also now with the card rooms. How is this commercial use the unique aspect of this commercial use, how is it different -- how does it not require an EIR? In other words in your kind of judgment and then I'd be happy to hear from ReneÉ on it as well from the legal perspective.

>> Joe Horwedel: Sure. How staff looks at these issues is we really parse them kind of issues by issues related to the project. So to the last issue you raise of why a card room wouldn't be an EIR? From a staff standpoint we would not assume that an EIR was required to do a card room. We did not do an EIR for the bay 101, we did not do an EIR for the Garden City in its current location. So a different use inherent and just by itself is not a reason to do an EIR. You would have to look at why you would do an EIR. There is a significant unmitigated impact that's there. Having a large EIR such as this where it analyzed such a large development, what we're looking at on a project by project basis we're looking at that proposal on a given property and whether it's residential or office or commercial we're looking at how does the EIR analyze that property. And so there are a number of things that we do a blanket type approval. That says we're going to draw traffic off this bucket and we're going to assign it, cross it off of this bucket that it's part of the office or residential line. We're also going to look at are there things related to hazardous materials use, are there things related to biotics, tree removal on the property --

>> Councilmember Kalra: In regards to the traffic analysis, the fact that it's a regional draw, with 24-hour use, did that in any way play into your analysis as well and what if any impact did that have?

>> Joe Horwedel: We really very much have done this. Harry is going to talk about that.

>> I wasn'ted to address a couple of things. I wanted to make very clear that Public Works analyzed the project and we determined based on a square footage basis there's 59 peak hour trips. Just to put that into perspective, the CMP the regional CMP doesn't require traffic reports for projects that generate less than 100 peak hour trips. That's to give you an idea of the threshold. North San José is generating somewhere along the lines of 20,000 trips which is 59 trips. We fact-checked it on a table basis, just to make sure that we had everything right. So we went across the street, to bay 101. We also checked -- we didn't check the existing Garden City. We took a look at the existing Garden City operations. So the size of the traffic impact is very small. Now, with regard to the issue about the tournament or let's say a sharks game or let's say Christmastime on a shopping street, the art or the practice of traffic engineering says you do not build streets for those events. And the reason why if you did that in front of the arena you would have an eight-lane road. So what we do is put police officers in the road. And same thing with Christmas. You kind of accept that a shopping street is going to be congested on are Christmas. We specific do our traffic counts for the purpose of CEQA valuation in good weather when school is in session, which is kind of the maximum every day kind of analysis. So you know we're not going to -- you don't analyze traffic at 11:00 at night because generally the roadways are level of service A so there's really no -- no way of really doing it.

>> Councilmember Kalra: And thank you. And a couple other areas in response to some of the comments that have been made as well as some of the paperwork files and one had to do with the site-specific review, there was indication when it was first presented I guess during the planning director's hearing for the permit, was that the first time that kind of the response regarding whether an EIR was necessary, was that the first time that it was presented?

>> Joe Horwedel: I don't know when staff gave an answer back to the appellants about whether an EIR was required. I would imagine that we would have been able to give that answer much earlier into it because when we had looked at it we had never seen anything that would trigger an EIR. The traffic wasn't going to do it. There was not a historic building on the property, there were not burrowing owls on the property. All the things that would trigger an EIR inherently we did not see here. I think the timing of us as staff going through and saying, here is the initial study that we did for the foster towers project and it is part of our analytical information we're using for the card room, yeah, we probably should have had that out sooner. It's my goal that it should be out a week ahead of time so the public does have the ability to see it. Because we do believe in making sure that the public has access to all this information. You know, I think the one thing, the mayor confirming, Councilmember Chu can confirm, is there's absolutely nothing about North San José that you could say that has been done behind closed doors. We have had multiple task forces running, multilayer community meeting process running is a part of even this proposal, the amount of outreach that we did. So I think where staff felt short is to go and not have that done a week ahead of time. But we had it there prior to the meeting, which is for an addendum there is no statutory requirement. It is something staff has self-imposed on ourselves, how we should operate. We did not meet our standard but we did meet the statutory standard.

>> Councilmember Kalra: The addendum met the statutory standard but it didn't necessarily meet your standard, giving the sunshine rules, it didn't necessarily meet those standards the opportunity for the public to have review in advance?

>> Joe Horwedel: Yes and I don't think it's covered under sunshine, we tried to go through and get the spirit of the sunshine regulation --

>> Councilmember Kalra: I'm aware of the spirit and I think we talked about that often enough here. And then in regards to -- because there's been mention the applicant indicated there is no proposal, the appellant's paperwork it he shows e-mails indicating their interest from starwood, I've met with United more recent and Eric swallow and representatives at some time right now, and the idea was the hotel and the casino, and what are the legal risk that we have for saying, I don't know we don't know whether it's going to be a hotel or not, when this whole time for a

period of over a year it's been very clear that the intention here is to build a hotel and a casino. I've seen drawings of it. It's been very clearly stated that that's what the goal is. Councilmember Liccardo and I agree, ideally we would like to see a hotel and a casino there. And there's some indication that planning staff whatever procedural or timing reasons made an indication that they shouldn't, but the fact that there's a hotel there, are there other legal risks that we're opening ourselves up to because of how we conducted ourselves in that regard, or if we try to say oh, we don't know if it's going to be a hotel, so we don't need to do further traffic analysis for a hotel. Can we generally say that and more importantly legally do we risk anything by going forward with that presumption that we don't know what's going to be there?

>> I'm not concerned about legal risk in that area at all because now having been here for 20 years I can tell you that there are so many projects that we get wildly enthusiastic about that never happen. So we can sit leer today and say we want a hotel, we want a hotel, will you please bring us a hotel, don't forget about the hotel, we are so excited about the hotel, we can't wait and it may never happen. From an environmental standpoint, what's before you today, what on earth would we analyze? We would have to completely speculate, well it might have this many rooms, it might have this many restaurants, well, it might have this many meeting rooms, we would from a CEQA standpoint, we have no idea from a project level. From a zoning level at a 30,000 foot level let's analyze having a hotel here. But as an actual real project we wouldn't know what to analyze.

>> Councilmember Kalra: I think my question is from a legal CEQA standpoint is there a requirement knowing the information we have with the level of certainty it is going to be a hotel which may a great level of certainty, but certainly been discussed in quite great detail, and the applicant made it clear that that's what they want to build there, and we've made it clear that that's we would like to see there but from a CEQA standpoint that doesn't require us to incorporate that into the analysis of the card room?

>> My understanding is that we have analyzed a hotel use at that site to the greatest degree that we know what it is. But to go beyond that we would be making stuff up.

>> Councilmember Kalra: To go beyond that is not required?

>> Right.

>> City Attorney Doyle: Rene is often reminding me that CEQA doesn't require you to speculate. In fact you are encouraging her to speculate. That's not really on the table.

>> Councilmember Kalra: And the final question regarding whether there's been substantial change or not even from a legal analysis Rick Rene, you say clearly this doesn't meet that threshold but it seems to be a fact-specific determination and that being the case you know is it something that if there were to be litigation would we be at risk of going down a path of litigation, to a certain point where we're spending a lot of money, trying to convince the court that does not qualify as substantial changes that would require a CEQA review you know would it -- because I imagine if it's fact-specific it wouldn't survive summary judgment, you would probably have to have more hearings on it. What is your thought on that?

>> Well, I guess I would say that I don't know what the appellant's plans are. And the length of CEQA litigation and how complex it gets is difficult to foresee. Sometimes the issues that a judge may find aren't the ones that we thought were going to be the issue. So it's a little bit difficult in advance to be able to tell you how complicated or how prolonged the CEQA litigation would be or if it would occur.

>> Councilmember Kalra: I imagine you got a chance to look at what was delivered yesterday 5:00 the paperwork.

>> I definitely reviewed it.

>> Councilmember Kalra: Does that offer any additional questions or does that offer any challenges that you would be uncertain about going forward if again I mean hopefully there won't be any litigation but if there were I mean it kind of follows along what Councilmember Campos indicated that there have been projects in the past that have been fraught with litigation even though we were certain we would prevail, and it's not whether we --

even if we could prevail it would still cost us a fortune and cause us a lot of delays also. So I think that's kind of the question in regards to the level of certainty not just in prevailing, which it sounds like we're pretty confident that we would prevail in that challenge. But the other costs, the other costs to the city is that something that you've had an opportunity to analyze?

>> I haven't analyzed the cost of the licks. As part of the development project review --

>> City Attorney Doyle: We've looked at the analysis. I know ReneÉ was working furiously this morning. We didn't receive the letter until this morning. We actually didn't get a copy until this morning. It really doesn't change our analysis, as I said before we believe this is defensible. I'll just add as a practical matter the real party in interest in these cases is the developer and if they see a rely reel risk or likelihood that they will lose, they wanted to are sure that they dotted all the I's and cross all the T's.

>> Councilmember Kalra: Okay, well that's actually helpful to hear as well. And I'll certainly -- considering this does incorporate and involve the North San José plan, in deference to Councilmember Chu, I feel that 30 days is not an unusual or exorbitant request. If that motion were to pass that you know maybe I'd offline have some follow-up questions regarding the legal risk. That is something that certainly is of concern in the long term on this project. Thank you.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor Reed, I remember the last time this came to council, we didn't have nearly the amount of questions we do today. As a representative of the area Councilmember Liccardo, who should have the most concern, ferreted those questions out early on, and today, and I think really at the end of the day we just know it's behind the scenes there's this nonagreement yet to whether the future, if maybe some day hotel would be union or not. So I'd like to call the question ton substitute motion.

>> Mayor Reed: All right we have the request to call the question that means cut off the debate and that requires a two-thirds vote to cut off the debate and we don't debate whether or not to cut off the debate. And on the calling the question, all in favor of calling the question? Okay, lot of ayes in opposition. I see the hands in opposition so can I do a count?

>> Councilmember Campos: Can I do one thing (inaudible).

>> Mayor Reed: We'll have time to do disclosures. Because we still have the motion. Underlying to deal with. So all in favor? Opposed? In opposition to closing, calling the question and cutting off the debate, no opposition to cut off debate on the substitute motion. So we have another motion. To vote on. And that would be the substitute motion and if that fails we'll have the underlying motion and we can have some more debate I suppose, I get it right City Attorney? So we have a substitute motion on the floor which is to defer for 30 days and we've done debating that so on the substitute motion to defer for 30 days, all in favor, opposed, Oliverio opposed, scant opposed, Reed opposed, Nguyen, Pyle and Rocha opposed, so that fails on a 3-8 vote. Did I get that right? City Clerk? Clerk says I counted it right. So the substitute motion fails. Now we have the motion in chief in front of us which we could continue the debate. Parliamentarian is shaking yes. The motion was to deny the appeal. Follow the staff recommendation. That's now on the floor. Did I get this right? Did I skip a step there?

>> City Attorney Doyle: It isn't deferred and now the main motion is back on the table.

>> Mayor Reed: Okay, Councilmember Campos wanted to make a disclosure.

>> Councilmember Campos: Thank you, mayor I did want to disclose that I met with Katy Lee and Enrique from local 19 as well as Eric and Scott Hayden from Garden City. Thank you.

>> Mayor Reed: On the motion, Councilmember Constant.

>> Councilmember Constant: (inaudible).

>> Mayor Reed: That was old. Councilmember Kalra.

>> Councilmember Kalra: I just wanted to mention some of the concerns I have regarding litigation. I know I handled EIRs in front of the Planning Commission. This is a little different because it's involving an additional plan and I'd appreciate maybe some follow-up meeting and we can discuss this in a greater detail but I'll support the motion at this time because all in all I think legally we're in a safe position.

>> Mayor Reed: Okay we have a motion in front of us to deny the appeal, approve the staff recommendation. On that motion, all in favor? Opposed? None opposed, that is approved. So that completes our work on this item. Which was 4.2. We will now take up the Redevelopment Agency board items. We will follow that up with the San José Diridon development board meeting. And item 8.1 was covered on the consent calendar. So that takes us to the Redevelopment Agency board meeting. We have the boards meeting and the San José Diridon board authority meeting and the elections commission interviews have been deferred if anybody's trying to keep track of the agenda. We'll take just a minute to swap out the staff for the Redevelopment Agency board meeting. Fir items on the redevelopment portion of the meeting would be the consent calendar. Any items from the consent calendar council would like to pull to discuss?

>> Councilmember Nguyen: Move for approval.

>> Mayor Reed: Goes a motion to approve the consent calendar. All in favor, opposed, none opposed, that's approved. Item 3.1. Report of the executive director.

>> Harry Mavrogenes: Mr. Mayor, members of the board I do have one brief item, some good news. I received notification today that the Edenvale and Great Oaks community center received gold level certification from LEED. That was hard work on the part of the architects and the staff and we're very proud of that. We'll circulate some more information on that for you but just wanted to let you know. Thank you. And that concludes my report.

>> Mayor Reed: Item 3.2. Agency's financial progress report. Have a motion to approve, all in favor, opposed, none opposed, that's approved. Item 3.3, approval to amend time limits and extend effectiveness of certain redevelopment plans and the last day to repay indebtedness for those plans in accordance with AB 26. Motion is to approve. All in favor? Opposed, none opposed, that's approved. Item 7.1, approval of an amendment to the ground lease agreement with SC be pavilion LLC. Motion is to approve. I have some comments from the public on that, we'll take the comments from the public at this time, I think. Hoften Hussy, Dan Orloff, James Zurer.

>> Thank you, mayor. I would just like to say that Cinequest is very likely to have thrived over the years. You'll be better than Cannes in two years and we really are very fortunate. I thank you all for your support. We would not have existed without the Camera cinemas and the very loyal partnership of Jim Zuher and Jack Niblom, Harry Mavrogenes, and many other people that supported us throughout the years. And camera cinemas venue is absolutely critical to our success. It provides 70% of our venue capacity and our estimates are providing about 6 million in economic revenue this year in impact to San José. We don't want to move that 70% out of here. So I speak with great emotion because this is a member of my family the camera cinemas and the wonderful people of the camera. So I would deeply appreciate your consideration in helping their longevity and their stay here in San José.

>> Mayor Reed: Dan Orloff, James Zuher, all in favor, he'll yah Sanchez. You're definitely not Dan Orloff.

>> Thank you.

>> Mayor Reed: I meant that as a compliment.

>> I know. My name is Amy Joyce. I'm the marketing director for the camera cinemas. I'm speaking on Dan's behalf. He is an investor, he wanted to speak but he had a family Marty to attend to. He is part of a \$2 million investment made by investors and wanted you to know that despite the fact that the investors may never get their money back that they support staff's recommendations on camera 12 cinemas and are confident that with your support camera 12 will be here for decades to come. Thank you.

>> Mayor Reed: James Zuher.

>> Good afternoon Mr. Chair, and members of the board, my name is James Zuher and I was one of the managing partners for camera 12 cinemas, and with me here is Jack Nibloom, the managing partner for camera 12 cinemas. I'd just like a couple of things that weren't in the staff report. That might be helpful for your consideration. I think a number of you are aware that we've been downtown for 35 years and over that 35 years we -- it's kind of hard to keep track ever all the people we brought down but we think we brought over 5 million people downtown to support the restaurants and the fragile retail. We also, during our tenure, with the help of the executive director, your executive director, John Vasconcellos, growing a restriction on first run commercial blockbuster films downtown. And that was something the previous operator United artists could not do even though it was a much, much larger company than us. And we think that was instrumental in helping the downtown get those kinds of films. And lastly, I think that we've done our diligence and as helpful as we can be to help the people that are trying to fill in the housing, sell the units downtown. Although it hasn't been too successful, the last couple of years, and it's probably one of the reasons we're up here. We're basically here to ask for your support. And so we can continue to do the things we do downtown. And we are confident that, if you pass the staff's recommendation, that we will succeed. We will make it down here. And we're here to serve. Thank you.

>> Mayor Reed: Thank you. Aurelia Sanchez is our last speaker.

>> Hello. I'm a downtown resident, and I think I'm a little disappointed that the camera is going to refuse city funds. And the reason being is that I live downtown. And you need to come to my neighborhood to see the run down roads, the crime, the trees that look like they're from a third world country, the poverty in my neighborhood. And I would invite you all to get up off your seats and come down to my SNI area. You know, redevelopment promised us a lot of things. They did not deliver. The only thing that was delivered was affordable housing and I'm all for affordable housing. But if our public officials, politicians, would give people decent jobs, we wouldn't need that much affordable housing. You know, the camera has been subsidized for a very, very long time. I've seen the city council lay off city workers with tears in their eyes that they're losing their homes. You

know but yet, you know, it seems as though you all want to create jobs. But these are jobs that are low-paying, such as the gaming industry, or theater work. You're not going to support a family, you're not going to go to school. You're going to need food stamps. I think Jerry Brown is right. We need to get rid of redevelopment. I think there was a time and place for it but not now. I heard a quote that says businesses do not pay taxes, because they pay politicians, I wish that was not true, but somehow I think that is. You know, if there's a way that government can raise money and bring back the level of standard of living the Americans need, number one you can do you can start taxing people that earn over \$200,000 and corporations. Another thing you can do is --

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

>> Thank you.

>> Mayor Reed: That concludes the public testimony on this. Additional comments? The executive director had a comment before we move on.

>> Harry Mavrogenes: I want to say some. I was involved in this project since day 1. Many of you remember the vacant hole that left when United artists left. They took the seats and everything. This group went in in good faith and invested in it. We invested in it. We're now faced with a situation where they need some help to keep it going. We are proposing a time period where we waive our share of the rent. They are going to invest in that money to improve and digitize the facility. The choice we have today is either not receive the income and have a vacant black hole in the middle of downtown or we can forgo the income for five years and ensure that this facility will be around for a long time. So I urge your support of this. Thank you.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. And I wanted to just join in and correct I think the misapprehension out there this was some kind of budgetary action, we're allocating money. We're foregoing rent, and I think it's an important distinction. Obviously there would be a loss to the agency if there was some

opportunity cost there, if we believe there was another tenant that was ready to move in to a very large space, with high ceilings, very high energy cost, heating, cooling and everything else. We know from experience, that isn't true even in better days, and the truth of the matter is, is that Jim Zurher and Jack Niebom for over 30 years have been operating in the downtown and bringing people downtown and I think certainly in the last week we've seen incredible evidence of that, Cinequest film festival, I hope many of you had the opportunity to enjoy it, it's wonderful to see the vibrancy of the downtown, enormous focus is right there at the camera cinemas. By the way, if you haven't seeing dying to do letterman you've got to see it, it's fantastic. Really to the point this is going to be a missed opportunity if we don't keep this space activated for all of the surrounding businesses all the surrounding restaurants we know how fragile it is in the downtown and we need to keep it going.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. I had a few questions, just because I want to make it clear on the record what we're doing here. I'm sure many of my colleagues received e-mails like I received wanting to know why we're spending this amount of money. Harry if you don't mind I want to ask you a few questions so I make sure I fully understand it so we have it on the record or any of your staff members, of course. Right now we are not spending money. We are basically saying that in lieu of the theater's leaving, we are going to reduce the rent.

>> Harry Mavrogenes: That is correct. We are foregoing our share of the rent. The city gets a part of it and we get a part.

>> Councilmember Constant: If we were not to do that and the theater is vacated, we would have an empty theater where we would have no revenue coming in at all, is that right?

>> Harry Mavrogenes: I strongly believe that. This is a very tough use to put anywhere. Theaters are not doing that well. I think not anyone would open up for a long time.

>> Councilmember Constant: The last time we found ourself in a similar situation, that theater sat empty, that space sat empty for eight years.

>> Harry Mavrogenes: That's right.

>> Councilmember Constant: If we were to experience a similar situation that would be somewhere around \$1.2 million of rent that wouldn't be coming in over the period of eight years based on about \$150,000 or so a year on average?

>> Harry Mavrogenes: I believe that's correct.

>> Councilmember Constant: Okay. So I just asked all that just to make sure that those people who are watching it, at home, or on the Internet understand what we're doing because I tell you from the e-mails that I got, it was -- there's a lot of misconceptions. In fact I had to ask Sam some questions directly about it being that he knows more about this particular project than I do to make sure I fully understood the impacts of this. And I think I can't emphasize enough that we're not writing a check for \$817,000 or whatever the number happens to be. That we're really just doing what many landlords out there are doing where they're renegotiating their leases and looking for ways to ambiguity vacancies in properties that are available. Because we know there is still a pretty high vacant rate not only downtown but throughout the city. I know in parts of my district there's several store fronts after store front after store front and then entire buildings that are vacant. So that's why I'm going to support this. And I just wanted to make sure that it was clear for everyone listening, what we're actually doing. Thank you.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you. Yeah, I agree and I'm glad some of the specifics have come out because I think that the community should understand exactly what we're doing here and it's always a balancing act when you're foregoing what otherwise come to you, it is money and we're making a choice. At the end of the day, what is the cost benefit of doing nothing as opposed to doing the action which is proposed today which I'll be of support

of. Not only do we have to consider what the Camera 12 theatre does in terms of the vibrancy of the downtown but also the tax revenue it brings in not just from the ticket sales at the movie theater and the popcorn and all that but people going to dinner downtown people coming to the downtown and spending money otherwise, if you throw in the fact that we're going to continue to add residents downtown even adds to the likelihood that the theater can be successful moving forward. And there's one item that hasn't been raised during the discussion here which is the fact that there is a threshold of gross sales. And if that's hit, that reinstates the rent back again as well as the pass through back to the Redevelopment Agency. So really, we're rooting for camera 12 to be successful and by foregoing this pass through during the next five years what we're precluding is a boarded up building that gets us nothing and the opportunity for camera to hit that threshold which once again we get that pass through which is what we really want for them to be successful and starting to increase their revenue. I agree with the comments that have been made. I also agree that film festival Cinequest was fantastic this week and it wouldn't be possible without Camera 12. And so we have to think about those kinds of opportunities that bring people into the city from all around the country. Without camera 12 downtown, it wouldn't be happening. So I really encourage my colleagues to support this. It's a tough kind of decision to make but I think it's a no brainer when you look at all the numbers and what we're trying to do to the downtown. Thank.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I just want to add my support to this. I appreciate the clarifying questions so that folks know how this transaction is working. But I remember the previous theater and the empty space and the frustration, as a resident of San José not having a theater. And I really appreciate what the camera theaters have brought. Not only just in terms of enlivening the downtown but providing a different kind of experience for theater goers and options to see all kinds of films that we wouldn't have the opportunity to see. So I highly support this and good luck, and appreciate your investment in our city.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you. Pete I don't want you to get too excited about this. I agree with you. I've actually been getting those Emmys as well. Redevelopment is kind of a complicated subject and it is important that we're considering what's being perceived. I want to tell you something that I really, really appreciated was about a year ago, before the Irish arrived and we were trying to do a fund raiser. It was Liam Neeson's first movie since he lost his wife. And it was one of the most fantastic movies I've ever seep, heaven can wait. That was such an intimate bringing together of people who were working hard to raise money for the Irish visit. And I think that kind of cultural connect is very, very important. And I thank you for that, and encourage that kind of activity on a more ongoing basis. Thank you.

>> Mayor Reed: Thank you. I think that concludes the discussion. I've forgotten if we have a motion. If we've got a motion, clerk got the motion? I think Councilmember Liccardo made the motion. Okay, memory's still working. Any further discussion? All in favor, opposed, none opposed, that's approved. Now take up item 8.1, actions related to the San José Diridon authority joint powers agreement. Let me just note for the record that we have received a letter of objection from Santa Clara County. County council. Raising for the record their objections on item 8.1 and 8.2. And a footnote about other actions under the development authority agenda which we'll get to in a minute. But we have received that. So item 8.2, actions related to the San José Diridon development authority joint powers agreement. We have a motion to approve. I've got a request from the public to speak, I think that's on this one, 8.1, Harry Korb. Okay. We have the letter. So that's part of the record here. On the motion, all in favor, opposed, none opposed, that's approved. Item 8.2, actions related to the transfer and acceptance of public facilities. We have a motion to approve, again we have a letter from the county, on -- county counsel's office on that matter. Do we have any other cards on item 8.2? None. All in favor, opposed, none opposed, that's approved. I'm sorry. Councilmember Liccardo.

>> Councilmember Liccardo: Thank you. My concern was this: That as we look to the next few days at recognizing there are a lot of time sensitive decisions that might be made, want to know if it's appropriate for us to set a special session today, for a date in the near future when we might be discussing additional potential transfers of assets.

>> City Attorney Doyle: That a council call. A special meeting is permitted under both the Brown Act and our sunshine ordinance. Its proceeds that the mayor can set the special meeting or a majority of the members of the council can. With respect to sunshine before you take any action, though, if the notice is less than four days you need a two-thirds vote of the council.

>> Councilmember Liccardo: Okay so Rick you're saying the mayor can simply do it by typically --

>> City Attorney Doyle: Typically the mayor will do it, the mayor can decide to call notice. He works with the clerks office to get everybody -- in terms of availability and then township there's a waiver of notice provision and we move forward.

>> Councilmember Liccardo: Okay, I'll then defer to that process if that's an easier way for us to go.

>> Mayor Reed: I think that's easier because we don't yet know what the state legislature is going to do, that's a different story every day. If we need to have a special meeting to do what needs to be done I can call it as long as we can get a quorum we can move ahead. Okay? Any further discussion on that before we convene the San José Diridon development authority meeting which is the next step. San José Diridon development authority meeting, first item on the agenda is the swearing in of directors. I think City Clerk has passed out the oath of office for each of us. Is that the way you plan to do it Dennis?

>> Dennis Hawkins: Yes, do it all together.

>> Mayor Reed: Okay we got everybody here, everybody raise your hands, we're going to have a swearing-in.

>> Dennis Hawkins: I state your name, do solemnly swear [Repeat

>> Dennis Hawkins: That I will support and defend repeat.

>> Dennis Hawkins: The constitution of the United States [Repeat

>> Dennis Hawkins: And the constitution of the state of California against all enemies foreign and domestic that I will bear true faith and allegiance to the constitution of the United States, and the constitution of the state of California, that I take this obligation freely, without any mental reservation, or purpose of evasion, and that I will well and faithfully [Background repeat]

>> Dennis Hawkins: Discharge the duties on which I'm about to enter. [Background repeat]

>> Mayor Reed: Then want everybody to sign it and the City Clerk will collect it.

>> Mayor Reed: All right, City Clerk, we have a quorum. We do have a quorum, okay. We can proceed. Next item is item 2, public comment. I have no cards from the public although I do acknowledge receipt of a letter of the office of county counsel Santa Clara County. Part of the record. And item 3 is the consent calendar. We have no cards, I assume, no cards. Consent calendar, five items on the consent calendar. Anybody want to pull any of the items off the consent calendar for a discussion? We have a motion to approve the consent calendar. All in favor, opposed, none opposed, that's approved. Item 4, we have adoption of resolution authorizing authority as the executive director to execute some documents as needed and take such other actions needed for the acceptance of property transferred to the San José Diridon development authority. Again I'll acknowledge receipt of a letter from the county on that item. We have a motion to approve. I have no cards from the public. All in favor? Opposed? None opposed, that's approved. That concludes the work of the San José Diridon development authority. Our last item would be open forum. Under whatever anybody wants to talk about, council, agency, authority, agenda, I have some cards. Please come on down when I call your name so you're close to the front. I'm sorry Dan Rush, Dave Hodges, Judy bender. Go ahead, sir.

>> Mr. Mayor, councilmembers, thank you. My name is Dan rush. I am the special operation director for United food and commercial workers union local number 5 headquartered here in San José. And I'm here to, A, to applaud the council in your moving forward with a medical cannabis ordinance and also with helping to develop a

dignified cannabis industry. In these times of depression, budget cuts, foreclosures and layoffs, when you enable an industry to create jobs, good, sustainable union jobs, you are empowering your citizenship, and you're putting people to work. Local 5 is the cannabis industry union, and we have currently hundreds of members and soon to have thousands of members just in California. We're also working in other states. We're here to offer help, because we see that there's a lot of confusion and people not knowing exactly which direction to go in and I'd like to tell that you we've worked on 16 ordinances between cities and counties in the state of California. If you do it right, and we can help you do it, not to be offensive, but we have a lot of experience in this, if you do it right, what you're doing is creating a dignified industry that is safe and clean. And good to workers, good to the community and also, provides tax income. You will be developing millions of dollars annually in sustainable tax revenue streams. And another good example of what a cannabis industry could look like is also like our organized liquor industry in California. People work in that industry, but they don't go to work drunk and they don't drink at work. They're good union jobs and they provide for the people in the cities.

>> Mayor Reed: Sorry your time is up. Dave Hodges is our next speaker, followed by Judy bender and Norm Larson.

>> Hello Honorable mayor and city council members I'm here today to ask several things. The first and most important is to remove the terms sales and purchase from the text of measure U. The issue is as structured collectives cannot pay it without incriminating themselves. To operate as a true collective or cooperative, no sales are involved. What measure U does is redefine our activities as sales. I believe that these modifications are allowed for by 4.6.10 of measure you U I've provided a revised copy removing the words sales and purchase from the tax measure. I also highly recommend that the council consider a legal review committee without going further with any further medical cannabis recommendations. This would be a committee containing lawyers from both sides to help the city avoid the legal issues that are going to come out of both measure U and the medical marijuana permit, unfortunately the path that the city's currently on is to start lawsuits against 90 businesses which will potentially put 900 people out of work. This does not help the city. The only people who benefit are drug dealers, narcotics agents and lawyers. Not the city, its people, the medical patients who need this. I would also like to state that a cap is not necessary and will only further complicate the situation. Please consider what

I've said and ask staff to look into implementing a legal review committee before moving forward with any of these legislations. I also would like to contribute my time and the time of my attorneys wherever it may be helpful to provide some guidance in this process. Thank you.

>> Mayor Reed: Judy Bender, Norm Larson, Sal Galvin.

>> Judy is not here.

>> Mayor Reed: Okay, Norm, you've got it. Sal Galvin and then Douglas Chelpek.

>> My name is Norman Larson for Southside. It's been a full month since I've stood here and brought a complaint about the attitude and the actions of our city center staff and of the advisory council officers. I brought a sampling of specific incidents to a contact at the City Manager's office and they were going to get back with me. I am here today to say that I have only heard that something's happening but that's all I've heard not a single detail. In the meantime has anything changed at Southside? No it's gotten worse. As a result of my speaking to you at the advisory council the following day I had to write another official grievance. I was interrupted and yelled at by the treasurer and told to sit down by the president because of her choice of what is a participant. Then Friday a close friend of the president stated, I saw you on tape at City Hall. You will be sorry. There will be consequences. I see now that the actions at the advisory meeting was part of that consequence. City staff has not changed either. My wife a certified ceramicist, was warned by city staff that she better not help anyone in her class because that would be considered as instructor interference trying to take over the class. And if she were to offer help she runs the risk of being permanently barred from any ceramics class at Southside. So the bottom line is still we need to get results of an independent investigation of Southside and its advisory council and actions. The summary of allegations I gave you last time is still valid and proven by subsequent actions on their part. Now I have one other part because my wife two or three weeks ago, asked the council here or pointed out that or asked about the legality of the boutique at Southside where a small private group with restricted membership is able to sell items on city property without paying a dime in rent nor share a single nickel of their sales to the city. She and would I

like to know how they can do this. Again, we've heard nothing. So thank you for your time, again, and I hope not to have to come back here again. Thank you very much.

>> Mayor Reed: Sal Galvin, Douglas Clopek.

>> My name is Sal Galvin. I've been a member of the Southside advisory council since mid 2008. Last month, on February 21st I hand-delivered a copy of this letter to Balagso's office regarding a South side not having confirming bylaws. And be a mess we have that's confirmed by our president and condoned by our center supervisor. To date I have not heard from anyone. That's why I'm here. What the letter addresses are several things but the most important thing is that one regarding our bylaws which are not acceptable to the city. And two, how we can rectify the problem immediately. We could do this by one, have someone from parks and rec department attend our next meeting next month, and declare our bylaws to be unacceptable, to the city. Now, we should appoint some temporary officers, as suggested on (inaudible) and my letter to Mr. Balagso. Number 2, replace our center supervisor. Because, A, she has not been helpful to our advisory council and who has failed at one of the jobs listed in the gerontology supervisor duties. And I quote: Provide assistance to the advisory council. She has failed to provide the necessary assistance, and B, the most important thing, she failed to have us rewrite the bylaws even after she received a notification from the office on aging which reads: To Southside senior center, Jeanette Meyers, supervisor. A copy went to the president and a copy to myself. And it reads, please be advised that the Southside Sr. center advisory center does not have bylaws assemble --

>> Mayor Reed: Sorry your time is up sir, thank you for being here. Douglas Chulpek is our last speaker. You want to submit that in writing we're happy to circulate that to the council.

>> Hello, Mayor Reed and councilmembers my name is Doug Clopek, I'm one of the CEOs and founders of med mark healing center here in San José. I've actually sent each and every one of you e-mails over the last weeks of the community efforts we've been doing, one of which was the Guadalupe river creek cleanup. I hope all of you have received that. The purpose today I know all of you are doing your best with this daunting issue of medical marijuana in our city. It is a troublesome issue I think has been a thorn in your side because of so many different

political viewpoints and different issues that are arising from that. I feel that you as a city want to have the best practicing clubs in practice here, you want to have the clubs that are producing the revenue for the city, creating the jobs for the city, paying the workers comp and additionally the 7% of the measure U have been passed. I fear that in the haste to finish this issue, with what's coming up with the meeting tomorrow, and then also the council meeting on the 29th, that some of the responsible operating clubs may be overlooked because of the urgency of finalizing this issue. That being if commercial general is the only afternoon that is able to be explored, and if you do a 600 foot as the crow flies, versus a direct pedestrian access, every club in the City of San José will be shut down. They will not be allowed to operate. I please urge you to consider, light industrial, in addition to commercial general, and as your 1997 ordinance stated, as a direct pedestrian access or closest vehicular route, by 500 feet or 600 feet whatever you design as best, that would be very appropriate. If it is in any other way, I fear that every club will be shut down. We don't need 100, I agree with you. 50 to 60 of those 100 shouldn't be operating because they're not best practice clubs. They are not cultivators they are not the right ones here.

>> Mayor Reed: Sorry your time is up.

>> Thank you for your time.

>> Mayor Reed: That concludes public comment. All the work on the city agenda, all the work on the redevelopment, all the work on the Diridon authority, we are done, no meeting tonight so don't come back.