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>> Mayor Reed: Good morning, I think we have a quorum to be able to start here with the open session, presentation on labor update. Turn to Gina Donnelly and then we'll go back into closed session. We have some requests to speak. We'll take that up in a minute.

>> Good morning, mayor, city council. Gina Donnelly, deputy directory of employee relations. We want to start first as we do every week and just remind everyone that might be watching us online that the proposals can be viewed on our website, and the website address is there on the screen. And very quickly want to go over an update of negotiations. We did receive another package proposal yesterday from ABMEI for a two-year term you have that in front of you this morning. We have not received any other additional proposals from IBEW, we do have a meeting with them later this week. The city continues to be at impasse with OE3 and we are proceeding to mediation in early May. The association of legal professionals did provide another package proposal to us last week. The good news is that package includes ongoing total compensation reduction that has been sought by the city as well as some changes to vacation sell-backs and disability leave supplemental pay. However they have indicated that they are not willing to continue negotiations over retirement reform or changes to sick leave payout as the other agreements that we've reached to date provide for. In fact they did indicate to us that they would want a zipper clause, which they have not had in past agreements, and this would actually prevent any further negotiations or changes during fiscal year 11-12 so for this upcoming fiscal year. And in contrast to that we thought it was important to mention that last Thursday, the city did receive a letter from San José firefighters local 230 offering to begin meeting regarding retirement reform at the earliest convenience of the city. This is actually referring to the side letter that we have signed with them to continue negotiations over retirement reform. MEF and CEO did provide a package proposal to the city yesterday. Again similar to their last proposal for a three year term which is also in front of you. And as for the POA, we still have not received any proposals to date.

>> Mayor Reed: All right, I have a couple of requests to speak. We'll take that now. Bryan Doyle and Vera Todoroff.

>> Good morning, Mr. Mayor, good morning, councilmembers. Alp has proposed exactly the same pay and benefits cut for themselves that the city manager is recommending for Unit 99. We have offered cuts that amount

to approximately 13% in the value of our pay. We already pay approximately 11% of our pay towards retirement costs. With this proposal we have offered we would be paying 24% back to the city. This amount is more than enough to pay for the entire portion of the unfunded liability that is attributable to our members. This 24% far exceeds any cuts agreed to by any other local employees in California. It is three times the 8% cuts that the poor devils how got tea bagged in Wisconsin gave up. We are told that there is no deal because the city has to have the right to continue to bargain over second tier pension enactment and changes to current employee retirement benefits. We have been ready, willing and able to hear what the city has in mind for new hires, but you have sandbagged the issue for at least three months now. Changes to our current employee retirement benefits are outside the scope of bargaining. I have in my hand a stack of PERB decisions that say you cannot condition acceptance of our economic proposal that is a mandatory subject of bargaining upon your insistence on an agreement on our vested benefits which is outside the scope of bargaining. Please accept our plain and simple offer and we will talk to you again next year. Thank you.

>> Good morning, mayor and councilmembers, Vera Todoroff on behalf of alp. We heard this morning that our bargaining unit is going to take another ten people in cuts from 39 attorneys down to 29. We have a great concern about the ability of our office to continue to provide services and meet our ethical obligations. We are already at the point where we cannot do that, and this puts us far over. If the council's intent is to contract out legal services at a much higher cost in order to meet the duties of our office, that's an unwise decision. Moreover we're very concerned that all of a sudden that ten identity of 39 attorneys in the office need to leave over will be laid off appears to be retaliatory. No other bargaining unit that is still performing services that has work coming in is being requested to take those kinds of cuts. Others have had had funding drops, others have had work go down. We have not. We also wanted to ask that none of the cuts, you know there are no cuts to management in our office at all. They are all to the out-bargaining units. We need to know what cuts others are taking including the council and the mayor. What cuts are you taking? We haven't heard yet. The buck starts with you. Doesn't just stop with you. It starts with you. Thank you.

>> Mayor Reed: That concludes the public testimony. We're going to adjourn now 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 April 19th, 2011. Our first item will be an invocation, Councilmember Chu will introduce the invocators.

>> Councilmember Chu: Thank you mayor. It is my honor to have Filipino American veterans Rodalla with us today at invocation. Fil-Am veterans Rodalla was founded in 1998, and is a Philippine string ensemble band. They have performed and shared their diverse Filipino music at many events throughout the City of San José. As a group made mostly of veterans their participation in many festive advertise and military events have been a source of pride for the men and women in this service. Today the Fil-Am veteran Rodalla will be led by George gain and Diana Overson. George, a retired U.S. navy chief air traffic controller, a District 4 resident currently serving as the San José International airport commissioner and the founder of Rodalla. George has been a musician all his life and will be performing on the Benduria a traditional 14 string instrument. Diana overson, an employee in the city's Public Works department, will be accompanying George on the keyboard. They will be performing a tradition Filipino song entitled Panlamuin. Please join me in welcoming the Philippine American veterans Rodalla. [∂music∂] [applause]

>> Mayor Reed: Our next item is the pledge of allegiance. We're joined today by Lynhaven school, third graders. They're going to help us with the pledge. Please stand. [pledge of allegiance]

>> Mayor Reed: Next item are if orders of the day in which we consider matters to be added to the agenda or modified on the agenda. And there's a little bit of confusion about requests on item 3.8. City Attorney, as I understand it, Councilmember Pyle is withdrawing her request to modify the agenda and we'll just take up these issues when we get to the item we're dealing with immediate is than marijuana.

>> City Attorney Doyle: I think that's correct.

>> Mayor Reed: We don't need a separate vote on that it will just be when we get there. Any other changes to the printed agenda? Motion is to approve orders of the day. All in favor? Opposed? None opposed, that's approved. We'll be adjourning this meeting In the memory of Pat Kramer and Diana Navarro, both employees of

the Department of Public Works who recently lost their lives in unrelated automobile accidents. Pat was a dispatcher with animal care and services for almost ten years. Diane worked in administration and was a 25-year city employee. Both made significant contributions to the city and both will be greatly missed. Dave Sykes has some additional words.

>> Thank you, Mr. Mayor, members of the council. I'm Dave Sykes, the acting director of Public Works. On Saturday, April 2nd, the city lost two valued members of the city, in separate but unrelated car accidents. Pat Kramer passed away as a result of injuries she suffered on March 24th. Pat was known for her wisdom vibrant personality and endless compassion. Pat served at the San José animal care and services center for nearly ten years. Prior to coming to San José she worked at the Humane Society of Silicon Valley. She made a positive difference in the lives of homeless animals and our community for a very long time. Pat loved kittens and cats and each year cared for many orphaned, underaged and underweight kittens that otherwise wouldn't have had a chance. She also cared for her coworkers by helping with employee recognition. Pat could be depended on to organize an event and take on an extra shift when needed. Pat was always ready to help with any problem and would do so without regard to her own burdens. Her honesty was refreshing. She had a contagious laugh and a wicked sense of humor. Pat could sometimes offend people with her direct manner but it was impossible to stay mad at her. She was known to lift the spirits of others as often as she challenged their patience but in the words of one of her coworkers, I am a better person for having known Pat. Pat is survived by her three grown children who live out of state. Diane Navarro passed away on Saturday, April 2nd as a result of a tragic vehicle accident. She touched many lives with her warm, loving spirit and outgoing personality. Diane worked for the city for 25 years. Hired in 1986, she worked at the library, the convention center for 23 years, and most recently in general services. Diane started work at the city at a very young age. Many colleagues have commented that they watched her grow from a young adult to become a fine mother of two. Throughout these changes Diane was always welcoming, friendly and personally engaging. She possessed the unique ability of making people comfortable after only a few interactions. Diane was a wonderful friend to the city and we greatly benefited from her years of service to the community. Diane was also the biggest Speedy Gonzales fan one could ever know, and she loved attending 49er games and traveling with family and friends. She was a devoted mother, daughter, sister and friend. Diane is survived by her children, Andrew and Sandra, mother, Clefaria Berrera, brother Daniel

Martinez, sisters Teresa Rodriguez Vallejo and Christine Berrera, and ex-husband Dave Navarro. Both Pat and Diane will be sorely missed by their family, friends, and co-workers. Thank you.

>> Mayor Reed: Thank you Dave. Next item is the closed session report. City Attorney.

>> City Attorney Doyle: Mayor, council, the council did meet in closed session. We were given authority to initial litigation in one matter. The name of the action and the defendants as well as the substance of the litigation will be disclosed upon inquiry once the action is commenced.

>> Mayor Reed: We will now take up the ceremonial items. I'd like to start with inviting Councilmember Constant, Councilmember Liccardo and staff from the grace community center to join me at the podium as we celebrate their 40th anniversary.

>> Councilmember Constant: Thank you. Today we have the honor of commending grace community center for their 40 years of service here in the City of San José we have a host of people behind me. We have Dr. Lisa Blevins. If you just raise your hand so everybody knows who you are. We have Harriet Yamada, Gloria Cherman, Stacey DeForest Thompson, Leon Cannon, Teresa Cuishons I believe is how you pronounce it, and Teresa Easley. So they're all with us here today. They are all staff members at Grace Community Center. Grace opened in 1971 with the help of Grace Baptist Church and it's part -- an integral part of our citywide therapeutic services. For those of you who are unaware of where Grace is, it is just a short distance away, at the corner of San José State university at the church. Grace community center has been providing truly invaluable services to the City of San José and frankly throughout the county. Grace serves adults with mental illness and developmental disabilities. Participants are provided with great opportunities to become more self sufficient, improve their self esteem, and develop skills that help them integrate into the larger community. This is especially true in their reopened art and wellness studio. If you haven't had a chance to stop by and visit that studio you owe yourself a visit to that studio. I know I was incredibly impressed by the work that goes on there. Individuals are encouraged to express their feelings and connect with others. It is the only therapeutic recreational center in Santa Clara County. It's open six days a week, offers over 50 structured and many other unstructured programs

each week. It serves over 125 individuals each day and about 2,000 individuals throughout the year. They provide breakfast, snacks, and lunches, and they receive in donations from the second harvest food bank, over 100,000 pounds of food each year in order to carry out their mission. We are truly honored to have them and the work they do in our community. On behalf of the mayor and the entire city council, I want to commend Grace Community Center for having served the city and our residents for 40 years, and we look forward to at least 40 more years from them. And Dr. Lisa, are you going to say something? [applause]

>> Good afternoon, honorable mayor, members of the city council, and City Manager Deb Figone. On behalf of the staff and participants of grace community center I thank you for this special recognition of the center's 40th anniversary. I have worked at grace for over 17 years. Yet after only a few months, I felt a tremendous amount of pride being a part of a city organization that provides programs for persons with severe and persistent mental disabilities. These programs enable people who have been dealt an unfortunate challenge in life to experience the small pleasures that we often take for granted. The people who attend the community center each day find friendships, opportunities to learn life-changing skills, have a chance to give to their community through are volunteering, find a daily refuge where they feel safe and supported and often develop and identity other than a person with a mental illness. With the scarcity of resources for these individuals, it's hard for them to find these opportunities elsewhere. I would like to take a moment to recognize the grace Baptist church that 40 years ago saw the need in the community for such a refuge and initiated the center's opening, and worked to sustain it by gaining the support of the City of San José, in 1971. Reverend Darryl Lavway, their pastor, continues the church's mission from 40 years ago by supporting this city's great assets through his leadership in the community. I would also like to acknowledge all the participants and supporters of grace who are here today in the audience to share in this recognition. In closing, the City of San José's support for therapeutic services over the years demonstrates the city's efforts to embrace all its residents and to make this a strong faith and welcoming community for all. Thank you very much. [applause]

>> Mayor Reed: I'd like to invite Councilmember Pyle who is here and winners of the 2011 outstanding contributor awards to join me at the podium. These are folks who have done great work for the early care and

education commission. We'll give them a minute to get down here and Councilmember Pyle will explain what we're doing.

>> Councilmember Pyle: Thank you, Mr. Mayor and welcome to everybody here with me. I have with me Councilmember Rocha who will be helping with handing out tickets. Isn't this a good-looking group? We're here today to honor Maria Pakiz, Jane Tyson Davila, Mokut Dat and Cook tran, I hope I haven't massacred your names too badly, as four outstanding contributors to child care. Maria Pakiz works with children with special needs at the kid and go Hubbard preschool center. Through Maria's passion and dedication she ensures that children with special needs receive the education and build the social skills necessary to succeed. And Maria, could you -- there she is. [applause] Next is Jane Tyson Davila who is the founder and director, you can puttier hand up, there she is who is the founder and director of TLC preschool and extended care. As such she works to ensure that her program is the great place where children gain positive self esteem and learn independence. She's done a great job of doing that. Jane. [applause]

>> Councilmember Pyle: Next is Mokut Das who has been in the education field for 38 years and with St. Elizabeth stay home for 20 years. She dedicates long hours to organizing fund raisers which allow over half of the children at St. Elizabeth day home to receive some type of scholarship support. Congratulations, Mokut. [applause]

>> Councilmember Pyle: And cook Tran, there she is a teacher at the wool creek head start. Her classroom is a truly inclusive environment where she puts the needs of the children first by adapting curriculum for individual children and the classroom as a whole. Now therefore we, Mayor Reed and Councilmember Rocha and myself, do hereby -- and Jane Light -- where is Jane? There she is. Do hereby, congratulate and commend these women for their continuing commitments to provide high quality early childhood education and proclaim them to be the 2011 outstanding contributors to childcare. There is more, but let's give them a big hand! [applause]

>> Councilmember Pyle: We're also here to honor the ladies of charity. As the 2011 George R. Howard memorial volunteer of the year, the ladies of charity formed their nonprofit in 1931, of course none of them were

the founding people. And have been serving the needy in our valley for 80 years! Each year, the ladies of charity provide all children at the St. Elizabeth day home with high quality children's books for the holidays and assist them in fundraising efforts to provide scholarships for over half of the children. Now therefore we hereby congratulate and commend the ladies of charity for their continuing commitment to ensure the children of St. Elizabeth day home do receive the high quality education and proclaim them to be the 2011 George R. Howard memorial volunteer of the year. So with that, mayor and -- [applause]

>> Councilmember Pyle: Let's give them all a big hand. [applause]

>> Councilmember Pyle: And there's something else, Jane Light, would you like to say a few words?

>> Jane Light: This evening, to celebrate, these wonderful people and organizations, we're going to have a reception at 6:00 in the wing next door and we'd love to have some of you join us to thank them for their many contributions. Thanks.

>> Councilmember Pyle: Thank you. Thank you everyone. [applause]

>> Mayor Reed: For our Nebraska next item we would like to invite Councilmember Chu, Councilmember Kalra, and the Watabu Buddhist members to join me at the podium as we recognize the festival of songkran in San José.

>> Councilmember Chu: Well, good afternoon. It's really my honor to present award to proclaim April 19, in celebration of the Thai new year. Sawadepema, that translate into happy new year. We all know that the City of San José's greatest strength is the diversity of residents who came from all over the world. Bringing with us a celebration of traditions and festivities that further promote the awareness and the appreciation of various cultures. The new year, observed Thailand, Burma, Sri Lanka, Cambodia and Laos, is celebrated for three days from the first full moon in April. It is an important time for celebrations and fresh starts for many in the world. Here today to accept this on behalf of all that celebrate the Thai new year in the City of San José is Wa Vuda Sunorn,

Thai temple. Established in 1983, the Thai temple serves the majority of the Thai and Lao community in the South Bay. They organize two days of festivities to celebrate the new years including multicultural performance and religious ceremony. Here to accept the proclamation is Joachim Passar Kawassa Ro from the Wat Buddha New Sorn Thai temple, and Ting Terra Rugh board member and a District 4 resident. We don't have the commendation ready for whatever reason, but we'll symbolically we'll still like to present you and thank you very much for coming over here.

>> Thank you.

>> On behalf of the Thai association of Northern California and the New Sorn Buddhist temple, I would like to thank the council for the proclamation to celebrate the festival in hosting this new year festival for all South eastern communities for one of the largest festivals in the whole Bay Area. The Thai community celebrating together with the Lao, Burmese, and Cambodians, we are delighted to put on a show for the entire Bay Area to enjoy. It is an honor that the Putadin Thon Thai temple accepts the proclamation on behalf of those who celebrate the new year. It's called Son Kran for Thai Americans, Benai Lao for Lao Americans, Cholchan Sennai for Cambodians, and Ti Gian in Burmese. The festival also coincides with many south Asian new years following the south Asian traditional astrological calendar. Westerners who also visit the southeast Asia during this time call it the water festival, because people pour water on each other. I asked Councilmember Chu if I could bring in a water gun and they didn't think SJPD would appreciate that. Thanks again for celebrating this with us, and yeah, cool, thank you!

>> Mayor Reed: Our next item, the consent calendar. Before we take that up, I just wanted to let people know, there's an item on the agenda, item 3.8, actions related to medical marijuana, which is a continuation of the work that we were not able to finish last week. We took the public testimony last week. We're not going to take additional testimony on that matter today. The council is going to try to reach some decisions. We'll get to that later. So on the consent calendar, are there matters that would -- I have one request from the public to speak and then we'll decide what we pull off for discussion. Mr. wall.

>> David Wall: Good afternoon Your Honors. It's always a pleasure to see all of you in a very healthy and joyful state. This first item deals with 2.3 B, the transportation and environment committee meeting minutes. They are not accurate as to what I discussed on the plant master plan. I'm really concerned Mr. Mayor that these minutes, once you pass them, become ancient history. As if they were actually truthful. And I think more effort should be put in to keeping accurate accounts for the public record. Item 2.7 is an item that showed up at the treatment plant advisory committee meeting last Thursday, which you weren't in attendance, which was one of the more egregiously managed meetings I have ever seen in over 19 years of attending those meetings. This particular issue on water conservation, we should all be proud to conserve water. The main issue is that the water pollution control plant funding or the sewer service and use charge in particular should not be used in this manner. What should be used is the District should pony up their sum, the Water District, and all the different water companies pony up their responsibilities. This 230,000 gallon estimate flow per day translates into about 85 million gallons per year. Our flow rate is about 92 million gallons per day. So the figures are somewhat suspect, at best. I really think this is just a very creative and inappropriate fund-shifting mechanism and I don't approve it. It shouldn't be on the sewer service and use charge. Thank you.

>> Mayor Reed: One other request to speak, Ann, or Anh on the consent calendar, please come on down.

>> Is this for 2.7?

>> Mayor Reed: It is if you wish to speak on 2.7.

>> Yes you have a cost sharing agreement with Santa Clara Valley Water District for cost sharing. I have an interesting interjection. Sunnyvale has a wastewater treatment plant that they use areas -- I wasn't prepared yet -- that they use areas where they take the waste and put them out in ponds. Well we have some salt ponds that are available on the other side. And environmental groups are interested in restoring those tidal marsh lands. We could do the same thing by conserving energy by using the salt plants that we have, by releasing some of that water, and dumping some ever our sewage in there and creating algae which would produce energy. So as far as the City's zero waste program this would definitely considered. Thank you.

>> Mayor Reed: That concludes the public testimony on the consent calendar. Are there any matters on the consent calendar that councilmembers would like to pull for discussion? I'd like to pull item 2.5, the trip report. Motion is to approve the balance of the consent calendar. All in favor, opposed, none opposed. On the trip report, last week I went to Sacramento as part of Silicon Valley leadership group trip joined by Councilmember Herrera who may have some additional things to add to this. We had a chance to meet with quite a few members of the legislature. And some time to spend with the governor's staff. The governor's staff thought it would be useful if San José participated in a call on discussion with what the governor intends to do with regard to pension reform. That would certainly be important to us and helpful. I think that was probably the highlight of my trip, in addition to the lunch that we had in the Governor's Office of relatively modest quality sandwiches. Councilmember Herrera.

>> Councilmember Herrera: I think the highlight was probably the governor's dog walking through, Dutch, through the meeting, the entire meeting, it was a lunch meeting. It was really great to be able to meet with our legislators. Our legislative group from Silicon Valley. The leadership group envisions this as an ongoing process working with our Silicon Valley legislators. I think that was a great start, they plan to keep them informed on working with them on ways to encourage economic development and also work towards getting a budget passed. I did raise the question of RDA during the meeting with the governor's staff and his chief of staff indicated a willingness to talk about it. So I regarded that as positive. Thank you.

>> Mayor Reed: One last item was, this was the inaugural meeting of what is now known as the Silicon Valley caucus, 12 members of the legislature that represent different parts of Silicon Valley. I think that will be helpful to us when we have issues which we frequently do that affect much more than just the City of San José. Anything else on trip report? Is there a motion to approve? Motion to approve the trip report, all in favor, opposed, none opposed, that's approved. Item 3.1. Report of the City Manager.

>> City Manager Figone: Thank you, Mr. Mayor, members of the council. One report, and that is, we do continue to work on finalizing proposals that I will be including in the 11-12 proposed budget which is scheduled to be

released on Monday, May 2nd. As you know we will be proposing significant reductions to close the \$115 million budget deficit projected for next years. The community budget meetings are continuing in each of the city council districts, and at the same time, department directors have been holding meetings in their work groups to preview some of the proposals that will affect their employees directly. On Monday of next week we will be holding an employee straight-talk meeting an opportunity for all employees to hear an overview of these proposals to ask their questions and get answers. In addition next week we will be notify those employees who are subject to layoffs or bumping. As we have done in years past we want to make sure these employees are notified before they read about them in the newspaper. The human resources department, the office of employee relations and Work2Future are working together to ensure support services are available to employees during a what will be a very difficult transition period. And I wanted you to be aware of these efforts since they will unfold very quickly next week and no doubt will be the subject of news stories as the details become public. And that concludes my report.

>> Mayor Reed: Now move to items 3.3, 3.4, 3.5, and 3.6, I think we'll have a single presentation on those items. 3.3, are terms of agreement with the association of engineers and architects, much longer name but also known as AEA, and the approval of the agreement with AMSP, and 3.5, CAMP and 3.6 are actions related to changes for unrepresented employees and the City Manager. City Manager.

>> City Manager Figone: Thank you mayor Island kick it off very briefly and turn it over to Aracely Rodriguez to handle 3.3, 4 and 5 and we'll take 3.6 separately. As the mayor said, before you today are three of our management and employee bargaining units that have stepped forward with agreements that achieved the 10% total compensation reduction. On an ongoing basis as council had deregulated as well as agreement to continue negotiating on other key reforms. Given Aracely will take you through the details, what I wanted to say is how much I appreciate these unions coming forward with these proposals and how happy I am to be presenting these agreements to you today. I do want to recognize both the union and the city team for achieving these agreements. And also, give very special recognition to Nancy Ostrowsky of IFPTE Local 21 who was the primary spokesperson for these unions during these negotiations. And we are recommending these agreements.

However the hard work as we all know is not over because we will all need to get back to the table to roll up our

sleeves and continue discussing the other significant reforms that we have the reopeners on. So with that I'll turn it over to Aracely.

>> Aracely Rodriguez: Good afternoon, mayor and council, Aracely Rodriguez, senior executive analyst with the office of employee relations. To our right are Gina Donnelly, deputy director, and Jennifer Schembri, senior executive analyst. To my left is Marco Mercado, executive analyst, also with the office of employee relations. You have before you memorandums on the tentative agreements that we did reach with three bargaining groups. The full text of the agreements are attached to the memoranda. These have been available for 14 days for the public to review. For anyone that is watching, the tentative agreements are on our Website which is listed here. We did reach three agreements with the association of maintenance supervisory personnel, the association of engineers and architects, IFPTE Local 21, this union does have two contracts, and the city association of management personnel, IFPTE Local 21. The current agreements with these unions expires on June 30th. And we commenced negotiations in January and reached tentative agreements with all three unions on March 23rd. I do want to take a moment and recognize the union's teams. On the union side we have Nancy Ostrowsky, senior representative with the International Federation of Professional and Technical Engineers Local 21, who was a primary spokesperson for these negotiations. In addition, there were three representatives from each bargaining group that are listed here on this chart. On the City's side there were several staff members from our office. In addition we did have representation from various departments including Joe Horwedel, director of Planning, Building, and Code Enforcement, Vijay Sammeta, director of Information Technology, and Matt Morgan, deputy director of Public Works. Very briefly, the council direction was to achieve a 10% ongoing total compensation reduction and various health care changes. In addition the authorization included additional reforms and retirement sick leave payout and some other items that are listed here. In terms of the agreement, they are two-year agreements, through June 30th, 2013. It does achieve a 10% ongoing total compensation reduction through a 10.1% base pay reduction and various health care changes. As Deb mentioned, the work, however, is not complete. We do have agreements with these unions to continue negotiations on various items including retirement for current and future employees, sick leave payouts and the other items listed here. We did reach resolution on two pending grievances. These agreements do include a me too clause provision that would apply if the city agreed to less than a 10% ongoing total compensation reduction or does not roll back any general wage increases that were

given this fiscal year to any other employee groups. In addition, we do have agreements to phase out two programs the vacation sell-back and the first year it will be reduced in half and eliminated in year 2. The disability leave supplement will also be reduced in the first year and eliminated in year 2. These two items do have reopeners. If we do not reach elimination with the other bargaining groups. We are recommending today approval of these tentative agreements with the association of engineers and architects MFP and CAMP. With that I'll be happy to answer any questions you may have.

>> Mayor Reed: City Manager, do you want to discuss the unit 99 unrepresented folks?

>> City Manager Figone: I can do that now, mayor, and you can take this vote, or we can do unit 99, it's up to you.

>> Mayor Reed: Let's see if we have council questions. Councilmember Kalra.

>> Councilmember Kalra: I just wanted to thank our bargaining team for all the work they've done. I certainly know it's been a very challenging and difficult process for all of us. I certainly want to thank the bargaining units that have come forward and our employees suffer through the same challenges living in this valley, and increased cost of living here as the rest of our residents do. And this is a tremendous sacrifice, and it's a sacrifice that was made not simply, in my estimation, not simply as a way of coming to a resolution for the sake of the employees. But I truly believe that the resolutions that our bargaining units come forward with in approving these tentative agreements is a sacrifice for the residents of San José and or the their commitment to public service. So I thank everyone that was at the table that was able to achieve these agreements and I'm hopeful that this new wave of cooperation can continue. And as the City Manager indicated this certainly does not in any way get us out of the situation we're in. But I think it's a very good sign and it's very helpful for us to know that we are achieving some things together and moving forward together. And so I'm hoping that the community understands that our employees are certainly making their effort to be part of the solution.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I just also want to specifically thank Nancy Ostrowsky. I think it really -- her leadership has been tremendous and are other leaders, but I just want to specifically call her out because I think there's certain people that have come forward in this time, with various bargaining units that have shown extraordinary leadership. And these are the times that call for that kind of leadership. So I just want to really say thank you to her. Aracely, our team, too, and I also am grateful to our employees for stepping up and making a difference. You really are making a difference no matter whether folks look at this around say well it's not solving the whole problem. It's moving forward is what counts towards solving the problem, so thank you. And I move approval.

>> Mayor Reed: We have a motion to approve. I'm going to support the motion. I want to thank all of our negotiating teams, both the city side and employee side. This has not been easy for anybody. This is a really important step in saving jobs and in saving services for the people San José. Even though it doesn't solve the whole are problem for next year, not even half of the problem for the next year, it's very important, I know significant on behalf of the employees. So I express my appreciation that we're able to vote on this agreement. Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. For the reasons I've articulated earlier, I'm very appreciative of the employees' willingness to sacrifice in this very difficult time, and this is a very substantial sacrifice and we shouldn't minimize that in any way. I continue to have concerns that we are painting ourselves into a corner in which as we'll learn I think on May 2nd when the City Manager's budget comes out in which we are faced with the prospect of simply engaging in mass layoffs, and severe cuts because we're not taking the retirement benefits at the front end of the negotiations. I'm very concerned about this approach and for that reason I'll be voting no.

>> Mayor Reed: There are some requests from the public to speak on these items. I'll take the testimony on all three of the contracts, 3.3, 3.4 and 3.5 together and then we'll return to deal with the unit 99 item. Jeff Welch followed by Nancy Ostrowsky and Kay Denise McKenzie.

>> Good afternoon. Jeff Welch from San José firefighters, just rising to support the agreements reached by the bargaining teams and the city. It's a lot of work, I stand up here with a lot less pressure on me but a sense of relief also that the pressure is off Nancy and her team here for their work at this moment. Moving forward, I think it's important that we're are making the progressive steps in the right direction to find these solutions and it's all part of working together in a collaborative way. And represents the success of collective bargaining and what it means by reaching agreements that have common sense solutions and create opportunities to move forward for everybody. So thank you very much.

>> Mayor Reed: Nancy Ostrowsky, Kay Denise McKenzie and Roger stores.

>> Good afternoon, mayor, city council, City Manager. The agreements that you have today demonstrate not only our members' understanding the difficult financial situation of the city but our leaders of these organizations that stood with us as negotiators. Meeting with our members and working through us at every turn. We came to the bargaining table with real solutions and a willingness to work collaboratively to save jobs and city services. We strongly urge you to approve these agreements that were ratified by over 90% of the respective bargaining units, AEA, CAMP and AMSP. We also wish to recognize the time and effort of the city team. The city bargaining team conducted themselves as I said before in the fair and honest manner and that was and is still appreciated. These are difficult times as you've said and only by working together can we really find the real solutions that protect the jobs and city services. And ensure taxpayer dollars are spent wisely. Thank you.

>> Mayor Reed: Kay Denise McKenzie and then Roger stores.

>> Good afternoon, honorable mayor and city council. My name is Kay Denise McKenzie, president of CAMP IFPTE local 21. CAMP as part of a coalition of bargaining units, led by Nancy Ostrowsky, the senior representative of IFPTE local 21, have worked very hard with the city's negotiating team to bring this item to you today. With overwhelming approval of the tentative agreement by my membership, I ask for your vote of support and approval of this today. Thank you very much.

>> Good afternoon, honorable mayor and city council, my name is Roger stores. I am a board member for the association of engineers and architects local 21. I wish to thank your bargaining team and the rest of the city staff who have participated in this process for their honest and open approach. I'd like to contradict this year with last year which has been a complete turn around. Our membership did vote overwhelmingly to support this agreement. We thank you and we just ask for your support in approving this agreement. Thank you.

>> Mayor Reed: Mark Trout.

>> Hi, Mark Trout, former candidate for District 9 city council here. Nice to see you all again. You know I'm not sure if this architects and engineers is associated with the architects and engineers for 9/11 truth are they connected are these two groups connected?

>> Mayor Reed: We are talking about contracts. If you want to talk about 9/11 you're going to have to wait until later in the agenda.

>> Well there's a group of architects and engineers for 9/11 truth. I'm just wondering --

>> Mayor Reed: That's not, if you want to talk about this contract you have a minute and 30 seconds left.

>> Okay, I'm trying to sneak it in.

>> Mayor Reed: Yeah I no.

>> Mayor Reed: That concludes the public testimony on this matter. We have a motion to approve the three contract terms of agreement. All in favor? Opposed? One opposed, Councilmember Liccardo. That passes on a 10-1 vote. Our next item is 3.6, compensation and benefit changes for executive management and professional employees in unit 99, other unrepresented employees, and the City Manager. City Manager.

>> City Manager Figone: Thank you, mayor, I will be presenting this. Before you now is the approval of compensation and benefit reductions for executive management and professional employees unit 99 and other unrepresented employees in units 81 and 82. First of all, it's important to understand the makeup of these groups. They are all unremitted which means they do not meet and confer and the majority of them are unclassified and at will. Although most people think of unit 99 as top level managers it is important to note that unit 99 has employees that make salaries starting at \$34,000. They include more than the city's top executives which is important to remember. Historically it is the City Manager who brings forward the registers to the city council for all employees in unit 99 and while the compensation and benefit structure for these groups is recommended by the City Manager and approved by the city council, I have also coordinated with the other council appointees who have employees in 99, and I also think it's very important even though we are not meeting and conferring to get the thoughts of the employees who are in unit 99. So as such we have had regular meetings with what we call the unit 99 forum which is made up of a group of employees from each of the city departments. Although there is willingness to share in the sacrifice, unit 99 employees also have the same concerns raised by some of the bargaining units regarding being treated fairly and equitably. These are very understandable concerns. Last year, unit 99 took a 4.75% ongoing pay reduction and health care changes for the first 5% total compensation reduction and a 5.4 one-time pay reduction for the second 5% of the total comp reduction. Consistent with council direction I'm recommending that the 5.4% pay reduction become ongoing and also, I'd like to note that the 12 paid time-off days that unit 99 received last year will not continue. Disability leave supplement will be reduced to a three-month maximum and eliminated in the second year. And vacation sell-back will be phased out over two years. We will also be continuing our discussions on retirement reform and sick leave payout. So I do recommend the changes in front of you and in closing I would like to say for all of the units who have been before you today, that it's difficult to ask employees anywhere in the city to take pay and benefit reductions. This is not a reflection of the contributions employees make, and the services that they provide, but rather, a reality of our budget situation and the need to preserve jobs and services to the community. That concludes my presentation and again recommend your approval.

>> Mayor Reed: Motion is to approve. I just want to take note of the fact that our City Manager and our senior staff have taken the lead, last year and they're making sacrifices again this year. We started at the top with the

mayor and the council. Our council appointees, our senior staff have all made sacrifices to contribute towards keeping jobs and services in this unit 99 recommendation is a continuation of that direction. We have a motion to approve. All in favor? I'm sorry. I have a request to speak. Sorry, Mr. Wall, before we take the vote.

>> David Wall: Unit 99 has our attorneys and our auditors within that group. We are losing some of the finest minds in the state because of how unit 99 is treated. I suggest that you re-look at the overall budget, Mr. Mayor, and look at all the different funding streams that the attorneys and auditors have access to in the normal scope of their duties. Fractionalization of these funding streams to augment their salaries will cause a dramatic reduction in their general fund liabilities. The attorneys and the auditors are the very most important part of the brain trust of the organization. The legal work will continue to go on as a direct and proximate result of poor decisions either made by you or the manager's office. The auditors prove themselves time and time again worth their weight in any measurable precious metal. And there are, unit 99 should be separate and above what is going on here, because of their secret work that is needed for the city with reference to confidential matters and financial and legal arenas. Thank you.

>> Mayor Reed: We have a motion to approve the recommendations. All in favor? Opposed? One opposed, Councilmember Liccardo. That passes on a 10-1 vote. Our next item is item 3.7. Interview and appoint a public member of the board of administration of the Police and Fire retirement plan. Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. We as a council have had an opportunity to interview Mr. Lanza previously and both retirement boards have done so as well. And based on that, knowing away we know, I think it would be appropriate for us to appoint him, and I make that motion.

>> Second.

>> Mayor Reed: Motion is to I guess is to waive the interview and moi him. I do recall that. I have no requests from the public to speak on this matter. On the motion, all in favor uh, opposed, none opposed, that's

approved. We'll move to item 6.1, modification to procedures for the airport noise abatement office. Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. After some conversation with staff and I appreciate the team over at the airport, particularly John, for your work and collaboration, I'd like to modify the recommendation I've made in the one page memorandum with yesterday's date and supplant the word complaint as it appears in subparagraph 1 (b) with the word intrusions so it would read, the hour of day of those intrusions in summary format such as a bar chart. With that modification, I'd like to make a motion to approve.

>> Second.

>> Mayor Reed: Motion is to approve based on Councilmember Liccardo's memorandum, have one request from the public to speak, David Wall.

>> David Wall: I have read Councilmember Liccardo's memo as well as the director of aviation's position. I think a creative use of funding at the airport could maintain this office because once I believe this office is done away with and placed on the Internet, noise problems with the airport will just continue to grow. And people do not have any access to redress government about the inability to enjoy the peace and quiet of their property or their own home. The suggestion that I'll make for you today is the fact that we have high-paid mouth pieces in this city. Mr. Mayor, you have a high-paid mouth piece, City Manager has a director of communications, the director of aviation has a communications person. I particularly think you, Mr. Mayor, madam City Manager, and above all, the director of aviation, speak very well and eloquently on any issue. And you don't need these positions. Subsequently, you look, for example, just the one at the airport. And transfer funding for that position to keep this program alive. This business with noise is only going to increase. I monitor it all the time with the corporate planes that continually come and go, without regard to the curfew. Now granted the corporate rigs are pretty quiet, with reference to southwestern or any of the other airlines. But this is important to ensure the airport doesn't get out of control. Thank you.

>> Mayor Reed: That concludes the public testimony. Councilmember Campos.

>> Councilmember Campos: Thank you mayor, I'll be supporting the motion but I just have one question of staff. As you're coming down I'll ask the question. I know that there was the ANAC that was established because there was a variance, a noise variance up until you were able to retrofit all of the homes in the sensitive areas with noise buffering equipment. Is the ANAC still around or is -- will this disband ANAC as well?

>> Good afternoon, Mr. Mayor, members of the council. Kim Aguirre, the COO of the airport department. The ANAC is still around, and the ANAC will continue as long as the variance is in place. Even after the various, should it go away, we will have the opportunity to modify the process for meeting with the ANAC and roll it into a point of order under the airport commission. So there will still continue to be community outreach and methodology for community members to come in and talk to the airport.

>> Councilmember Campos: Okay, thank you.

>> You're welcome.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: Thank you, mayor. Forgive me if I missed this but what actually is the cost savings? I see it listed as in staff but do we have a dollar amount?

>> Correct. We had at one point we've reduced the staffing over time from three people down to one half-time FTE. The individual who will be in that position will also be doing some work on the emergency planning so there will be -- it is staff time.

>> Councilmember Rocha: Okay so -- and we don't really have a dollar value of what it would cost to do -- have this reporting as we had previously?

>> The reporting will still continue. We're just modifying the methodology of the reporting. So it would be a half FTE.

>> Councilmember Rocha: Okay, thank you.

>> Mayor Reed: We are have a motion made by Councilmember Liccardo. All in favor, opposed, none opposed, that's approved. Item 7.1 actions related to the fuel cell utility interconnections and foundation pad design-build project. We have a motion to approve. We have one request to speak, I'll take that testimony now, Ann. Item, Mr. Wall? Go ahead. While Ann is coming down.

>> David Wall: I am concerned that the rush to take in grant money oversees prudent planning and progress. On page 2 of the memo, the supplemental memo, quote, there was only one bid received for this project which was from Anderson Pacific construction, incorporated. And the bid amount was 19% below engineer's estimate. That sounds like a good deal. I'm cognizant of the fact that this requires specialized work and this group has done work at the water pollution control plant before, with good record. But I'm very concerned with only one bid. I'm very concerned with grants, and how grants are really borrowed money and what type of position the city will be in. But above all, nowhere in this memo does it say exactly how much power the plant is going to get from this, point one. And point two, we see in today's agenda more or less a Band-Aid approach to rebuilding the plant in a cohesive plan. Now, you've had extended an enormous amount of money, millions of dollars for the plant master plan which really didn't do anything for the integral aspects of the plant's operations. Now, this should be reviewed along with other matters that will be discussed later today. But I have a real big problem with this, especially for the amount of money that's involved, and the sketchy nature of this project as far as how much power is the plant going to get from it. Thank you.

>> Mayor Reed: One other speaker, Ann.

>> Hi, good afternoon, thank you for allowing me to speak on utilization of city facilities and green building agendas. I believe that something that the City of San José has overlooked is utilizing our space for special events, especially for green series. As you are involved in the waste management and green planning, we could also invite small business to introduce products and services offered to the general public and to the city as a whole. Not simply a few cell utility interconnections fed back into PG&E's grid but a real way for homeowners to take back their utility cost due to municipal waste costs integrated into contracts. I also have an idea here in support of the integrated waste management of San José's zero waste initiative, which is to offer a CRV applied to products that the likelihood of these toxins, such as aerosol, hair spray cans, household cleaners, aerosol spray paint cans, aerosol insecticides, aerosol foodstuffs, that if a CRV is applied to these products the likelihood that these toxins will be used up in their desired purpose before this disposal will help ensure that these toxins are not leached back into the landfill and help the recovery of metals used in the recycling process and lessens the burden under the resource conservation and resource act. As of 2005 there is a 37% recovery rate of all metals recycled in the U.S. This is a source from the U.S. EPA. Jobs can be applied in the removal of chemicals from aerosol cans, plug pin removal, and remanufactured and reused and recycled. Toxins are removed. thousands of jobs are created. I'll give this to the City Manager. Thank you.

>> Mayor Reed: That concludes the public testimony. Councilmember Rocha.

>> Councilmember Rocha: Thank you, mayor. I had a question about the only one bid. And there's no consideration of rebidding it.in terms of the alternatives, I guess.

>> John Stufflebean: The one bidder is someone who has done a lot of work at the plant, a very good company and the schedule would not allow rebidding, we would lose the grant which is essential to make this project cost-effective.

>> Councilmember Rocha: When did we initially bid the project?

>> John Stufflebean: Pardon me?

>> Councilmember Rocha: How long ago did we initially bid the project?

>> John Stufflebean: Exact date, Public Works give me a hand? There's John.

>> Councilmember Rocha: I'll jump ahead to another question. How much is the pad going to cost that we're doing?

>> John Stufflebean: How much is the pad going to cost?

>> Councilmember Rocha: Yes.

>> John Stufflebean: I don't have the breakdown on each individual item.

>> Councilmember Rocha: Sorry I didn't give you a heads-up on this. The city obligated, the city being ESD, I'm assuming, the memo is signed by Public Works and yourself, but just to ensure myself in comfort level, it's ESD, right?

>> John Stufflebean: Yes, all the financial obligations are to ESD, yes.

>> Councilmember Rocha: Okay, those are the three questions I had.

>> John Stufflebean: And we can always follow up on the date when it was originally bid.

>> Councilmember Rocha: Bid open date? That's all right, we can always follow up on these later. If you wouldn't mind getting those to me.

>> John Stufflebean: Sure.

>> Councilmember Rocha: Thank you.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. Along Councilmember Rocha's questioning, if you could also forward the same information to me. But just out of curiosity, is this common that we don't get a multitude of bidders for this type of project, or is this such a unique or specialized area, that that's just the nature of this type of business that we're only going to get one bidder?

>> John Stufflebean: Well, this is the first fuel cell we've ever done so from that perspective it is a unique project. But the actual work that's being done here is mostly connecting utilities to the facility, and so a lot of that work could be done by other contractors. You know why they didn't bid I don't know. But there are some special aspects of this that are pretty specialized and again fuel cells are a new technology at this scale and this is a unique project.

>> Councilmember Campos: Okay. Yeah because I do think it's sort of odd and so I would be very interested to see the cost breakdowns as well. Thank you.

>> John Stufflebean: Sure.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I understand that the bid amount was \$1,545,000 and that's 19% below the estimated project cost. That's great. That's really good news. A question that I had is, if we don't do this, we lose out on a rebate do we not from PG&E?

>> John Stufflebean: That's correct.

>> Councilmember Pyle: Which is pretty sizable.

>> John Stufflebean: Multimillion dollars, yes.

>> Councilmember Pyle: 5.4 million or something like this?

>> John Stufflebean: 5.4 million.

>> Councilmember Pyle: Makes sense to me. Is this the third fuel cell in San José? I know we have one at whole foods on Blossom Hill this one will be going in and there was a second one somewhere.

>> John Stufflebean: You could be right. I would mention that this is again specialized in that it is a very large fuel cell, and it's used 1.4 megawatts of power to fuel -- to basically fuel part of the plant. And it's also using the gas that we produce at the plant which is not the typical natural gas it had to be a specialized fuel cell to handle the gas we use, so it is again a special project.

>> Councilmember Pyle: Has a special niche. This is most helpful in emergency situations that this would continue to operate and continue doing its thing.

>> John Stufflebean: One of the great advantages of the fuel cell is it doesn't require a lot of maintenance, it provides 24/7 portions of the base load so it's very good at providing part of the power needs of the plan.

>> Councilmember Pyle: I want to thank you. This is a great project. Anybody moved?

>> Mayor Reed: We have a motion to approve. I forget who made the motion. Vice Mayor Nguyen did. Further discussion on it? All in favor? Opposed? None opposed, that's approved. With that will take us to item 7.2, agreements with harvest power and CEC grant agreements for biomass to energy technology project.

>> John Stufflebean: Mr. Mayor, I just wanted to say a couple of quick sentences. This is a project as you know that we have been working on for quite some time, and it really is one of the projects that gives us entree into the field of waste to energy. And that analysis should provide an analysis of some very interesting technology. The project will not move ahead unless the feasibility analysis comes up with a positive recommendation a year from now, so it gives us a chance to really do an in depth analysis of this technology. Last week I was at the biocycle conference which is kind of the international conference on this topic and this was the hot subject was the use of this kind of technology and its application. I'm glad to answer any questions you have.

>> Mayor Reed: We have a motion to approve. I have some requests from the public to speak. We'll take that now. Mr. Wall. And then Ann, come on down, please.

>> David Wall: I am very cognizant too, of all the grant money that is to be for this program, as well. But let us not forget that grants come with obligations. And when the grants run out, the obligations remain. Now, harvest power is an interesting thing. Because it can produce odors, they say they will not produce odors, but yet Mr. Mayor, I have yet to hear you at the treatment plant advisory committee ask them to hold the City of San José harmless for anything that they do. And both of these energy concerns, I'm not opposed to pilot programs or research and development. But there has been no real energy discussion as far as how much energy does it come to the plant, to power the plant? Now, we've had recent discussions at the treatment plant advisory committee meeting about the use of Santa Clara power, which is local power. And power must be understood by everybody that can hear my voice. Without power at that plant, a disaster on the order of a biblical plague could happen. It is wise to diversify the energy portfolio. But be very, very wary of these grants. They look very nice and enticing, especially to politicians who want to go for unsustainable or sustainable jobs. But in the long term, they can actually cost more money than they actually are worth and could become obsolete before they are completed. Thank you.

>> Mayor Reed: Ann.

>> Hi, I really appreciate it. I'm very motivated on this subject of energy use and water demand. The weight of water, we understand when we are transporting our sewage, and water is very heavy. And we have 110 miles of new pipeline that we put in, that we have our purple pipe infrastructure that the City of San José now uses for our toilets, that's great. San José state university has purple pipe. But what we're introducing is a water supply treatment, and 75% of that cost of water is for electricity. So even by introducing fuel cell technology in higher energy biogas recovery which is a solar imprint used by the City of Sunnyvale and their water treatment plant, which I believe City of San José starting to mirror, what basically how you create this energy is you blow air into a tank and put lots of oxygen in it so bugs can grow and eat. So what I suggested was that we use some -- some of the salt ponds that we wanted to do restoration, we could open up a new natural land reserve, port open space and open up to groups who have technical backgrounds to speak on alternative functions to that of the Santa Clara-San José water plant. Biogas recovery is 50% -- or the wastewater treatment plant uses 50% of this biogas recovery to power the plant which is terrific. But I understand through some costs that we are generating that we are integrating new processes or new anaerobic digesters to create more energy.

>> Mayor Reed: Sorry your time is up. That concludes the public testimony. Councilmember Rocha.

>> Councilmember Rocha: Thank you, mayor. Can you share how this fits into the master plan, or capital program or is this a separate item not included in that?

>> John Stufflebean: This really is a separate item and the connection to the plant is that it's on plant land, and it potentially could make use of the biosolids that the plant generates. This really is more of a waste management project that deals with handling wood waste and generating energy out of it. So it really is more of an integrated waste management program. But again, we went through T PAC and so it came through these other ones because it is on the plant land, and as I said, the last could also be supplemented.

>> Councilmember Rocha: Is this part of the commercial program or the commercial contract that we talked about that spoke about that?

>> John Stufflebean: No that's separate from that.

>> Councilmember Rocha: Isn't this the same?

>> John Stufflebean: They are related, some of the waste could come in from the commercial waste stream and other cities and the residential waste stream as well.

>> Councilmember Rocha: The mention about harvest power would be required to remove the equipment and restore the plant to its original condition. Can you explain a little bit of why we would get there and why we wouldn't want to maintain some of this equipment and then I guess the second part of that question is, looking at the value of harvest contribution, could you help me understand what their interest in this?

>> John Stufflebean: What harvest power's interest is?

>> Councilmember Rocha: Yes.

>> John Stufflebean: They're looking to establish a new technology and a new method and make a business successful from this new technology in this area, and they've looked at many places and determined that this is kind of an ideal location for a number of reasons. They also are connecting with some companies that have some ability to bring this waste stream to the facility. The amount of -- the requirement that they remove the facility, just an item to protect the city in case you know if it doesn't work out you don't want to be stuck with something that didn't work. That's a civilian legal issue to protect the city.

>> Councilmember Rocha: So they're not required, we're just going to have the language in the contract that they will if we ask?

>> John Stufflebean: That is required, if things didn't work out.

>> Councilmember Rocha: So they're making it seems like a little bit of a risk and a.

>> John Stufflebean: Those are the ones that are taking the most of the risk here.

>> Councilmember Rocha: Thank you, great work.

>> Mayor Reed: We have a motion to approve. All in favor, opposed, none opposed, that matter is approved. 7.3, feasibility assessment for the creation of the south San Francisco Bay emergency port access.

>> John Stufflebean: Mr. Mayor I did want to mention that Pat Saucedo is here from the chamber and if it pleases the council if she could make a brief presentation on this project.

>> Mayor Reed: Come on down Pat.

>> Pat Saucedo: Good afternoon, mayor and council. Pat Saucedo with the chamber of commerce. I am pleased to be here this afternoon. I will make this brief. I know you've had quite a bit of documentation presented to you. First let me say that I appreciate all the efforts 50 environmental services department particularly John Stufflebean and also Christy Strew. Kristin has provided an extensive amount of oversight and feedback as we've gone through this entire analysis on the Alviso emergency port. In 2009, the Water District and the San José chamber of commerce applied for a grant from the economic development administration to perform a feasibility analysis for a South San Francisco Bay emergency port access in the amount of \$180,000. The Water District and the chamber partnered with Santa Clara County and the City of San José, who also provided funding in order for us to conduct the feasibility analysis. In November of 2009, AE com, the consulting engineer was engaged as the official consultant for the feasibility analysis for the emergency port. We also coordinated a group of technical advisors from throughout the South Bay region. They helped guide us as we performed our analysis. They provided input to the engineers, AE com, as well as to the partners of this study. The actual study itself consisted of several components. We started out with five alternatives. One was a look at a cargo port, an emergency port, a ferry terminal an entertainment waterfront and a recreational marina. Physical requirements for each of those

five alternatives. Following that review by the engineers, we reduced those number of alternatives to three. It was the emergency port, the entertainment waterfront, and the recreational marina. Following that analysis, we did an economic analysis of those three alternatives. And we came down to two alternatives that are now part of the final report that you have before you. One is the emergency port, and with that we are looking at the potential of a hover-craft being utilized for that emergency port access and the other is entertainment waterfront. The reasons for these two final alternatives are, with the emergency port utilizing hover craft opportunities, is one, no dredging would be required, of the Alviso area. And this is a critical component from an environmental standpoint, and also, a cost standpoint. But there would be no dredging required, if we were to implement an emergency hover craft port. We also, and I just wanted to point out that the idea of an emergency port is to provide for the import and export of people, goods and/or emergency supplies following a catastrophic event. And I also wanted to point out, I know that there's been talk about Moffett field but during the analysis that we went through, we actually have had feedback come in that redundancy is what FEMA and other emergency organizations are looking at, that as many opportunities as one might have, that is what they see as a future planning effort to protect society and large metropolitan areas when a catastrophic event takes place. The entertainment waterfront is the potential for private investment, it is on land, it is not within the bay itself. It is on land. It would be private investment. And we look at that and the reason we've contained that in the report and one of our alternatives is, we wanted to have that for the EDA to understand that we are also looking at the potential for some economic development opportunity in the future that would have no direct environmental impact into the Alviso slough area. We held three community workshops. One was in July of last year. The second was in December, and we held that within the Alviso community. And the third was in February of this year which also was within the Alviso community. I will state that when we were in the Alviso community and we had good attendance, it was interesting. Because the community members that showed you actually were very supportive of the idea of emergency hover craft opportunity, and the waterfront development opportunity, as a future potential economic driver within the Alviso community. As of now, TPAC has approved, not approved, but they have accepted the report, which is what we're asking of you today. And last week, on the 12th of April, the Water District accepted the report as well. The chamber sees this report as really a first step in what would need to be a number of other significant studies before anything could officially be built or designed. I think you have in your packet an executive summary that shows for a hover craft port, there's actually very, very little physical development that needs to take place. You actually have photos that

show the before and after. And I wanted to point out that for hover craft what we learned through this process is hover craft are very flexible, they could be small carrying light goods and services but you could also have hover craft that would carry up to 100 people and bring them in and out should that be needed or desired from a future standpoint out of the Alviso area. Again we see this as a first-step. There is much to do. We have appreciated our partnership with our other agencies. We are hopeful to outreach now to some of the private sector if we wish to proceed and go forward with further analysis and study and we very much would appreciate the council accepting this report as part of the first step towards looking at an emergency access in and out of Alviso. Thank you. Be available for questions.

>> Mayor Reed: We have a couple of councilmembers who wanted to speak. They may have questions. Hang out there just a moment. Councilmember Rocha.

>> Councilmember Rocha: Thank you. I had a question about the history of looking at this. Memory serves me correct, I believe the Bay Area council had some state legislative funds that did a study similar to this. Am I incorrect on that, do you remember anyone? No? Okay.

>> Pat Saucedo: There is a history but the history actually goes back to 1840. And --

>> Councilmember Rocha: Predate council.

>> Pat Saucedo: Predates Alviso was an active port, large ships coming in and transporting lumber and other commodities in and out of Alviso. In fact the U.S. government was going to look at Alviso to become a deep water port and they actually authorized an proposition to do a study, at that time a study to do the deep water port. But the second world war broke out and everything kind of stopped dead in its tracks. So what happened then in 2009, actually the chamber as you'll recall, the chamber was moving from one location in the downtown to the other, they came across the old appropriation in some old boxes. And so the chamber and the Water District went back to D.C. and lo and behold it was still an appropriation that had never been expended.

>> Councilmember Rocha: Pretty interesting.

>> Pat Saucedo: You know when Congress votes, that's the way it is.

>> Councilmember Rocha: Thank you. I was just curious if it had been done. I was wondering if we used that as a resource, I may have been incorrect, and maybe it was considered, and requested, and it was never funded. But I believe it was Russell Hancock at the time when he was with the Bay Area council, and I could have sworn there was some funding from the state on it. But again, that was quite some time ago. Thank you for your time.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you mayor. First of all I'd like to thank Pat and the chamber of commerce as well as the Santa Clara Water District. We have director Santos over there to lead the effort of getting the grant, federal money and initiate the study. Our staff, we also spent a lot of time on the issue, and over, almost a year, nine-month period. I've received many public comments, I'd like to thank those who e-mailed and commented on this study. With that I would like to move for approval.

>> Mayor Reed: All right we have a motion to approve. Councilmember Liccardo.

>> Councilmember Liccardo: I was just going to ask Pat had she been rummaging into any boxes under City Hall recently, if she found any federal money. We'd be glad to take that at this time.

>> Mayor Reed: We have some requests for public testimony. David Wall and Ann.

>> David Wall: There are points in municipal government to which open ridicule is appropriate. This is one of them. On page 7 of the report, by the way, every topic that is environmental service related that went to treatment plant advisory committee meeting last Thursday, there was no public testimony solicited at all, it was suppressed

for all that matter. Let's look at page 7 of your report. They have pictures of the Alviso slough, the most current one is 2004. That's kind of interesting. Why not 2011? The lobbyist that just spoke, she is correct, on page 11, and I quote, hover craft there is no dredging required. But this report is chuck-full of dredging for a marina and everything else. What really bothers me is the official memo signed by the assistant City Manager. Policy alignment, "the feasibility study is an alignment with the plant master plan process to improve the shoreline of San José and potentially provide additional public access." This is an economic development plan, that's using some of the water pollution control plant funding because City of San José has no other money to chip in. So it's a stretch. , if not a down right fraud on the sewer service and use charge to use any portion of this. This packet right here, Mr. Mayor, this is what the bound copy looks like. It went to the chief counsel for the United States Department of Commerce, economic development agency. There is going to be more talk about this because this program is just to be ridiculed. The economic development of the waterfront is a good idea. But as long as it has its own local and perpetual funding outside the water pollution control plant.

>> Mayor Reed: Ann is our next speaker.

>> Should we put money into things that aren't broken? Putting levees in a burdened system is not a solution that will prevent future mitigation by the EPA and the state EPA due to a ten year flood or the big 100 year flood, the rise of the sea level by the end of the century is two meters. The history of Alviso is that it floods, because the Guadalupe and the Coyote creek rivers join together. When the levees were built, they interacted with the marshes. And the silt that comes down through these rivers flood into that area. And that's how all the silt built up. So if you need the access way, clean it up.

>> Mayor Reed: That concludes the public testimony. We have a motion to approve. I have a couple of comments on the motion. The plan in many cases calls out the need to find funding and lots of different potential funding sources. Just like to note that in the staff report, approval by this council does not mean a commitment to support, fund, approve or otherwise undertake any further actions related to the project. This is not a budget decision. This is approving a report. Then the other thing is seems to me a lot of the heavy lifting on this needs to be done in conjunction with the water emergency transportation authority which is just a statewide approved

authority, and clearly they need to play an important role in this, and that's called out in their report. We are not the only ones that are thinking about the emergency access from the bay which will be important to us in conjunction with whatever happens at Moffett. Because it's basically on a regional effort that Moffett will be a very important place for emergency preparedness and emergency response. We can land large aircraft at Moffett, bring in supplies, but somehow we got to get them moved around, and if we have port access, that's another way to do it, if the bridges on the freeway are down, which they most likely will be, this could be a very important place to get the supplies into San José. So with that I'm going to support the motion which on the floor, all in favor, opposed, none opposed, that's approved. 7.4, water pollution cream plant master plan selection of preferred alternative.

>> John Stufflebean: John Stufflebean, pleasure to be here and talk to you about the plant master plan. I have a presentation and some will be review. Similar presentation that was made at TPAC and also T&E. This slide shows the outline of discussions. There are some projects that are considered critical infrastructures that we need to move ahead with quickly. There is also a preferred technical alternative and a proposed land use alternative. What we are asking for is to move ahead with the CEQA work. This map shows the eight cities that contribute to the plant, this big piece of land two miles across and two miles wide, again four square miles of land that's available. This is the close up of the plant lands, showing the operations area in the middle, surrounded by the biosolids area, to the Northeast, the pond 18, and everything else is buffer lands. Why are we doing this? Again, as we've talked by far, the overwhelming reason to do this is the aging infrastructure. The plant was built 34 years ago, needs to be replaced, and beyond that, we want to make sure we accommodate future regulations and we accommodate population growth, that we -- instead of just using this plant as a waste handling facility, it's so it can generate energy and can generate water, so you want to recover the resources from the plant. We want to be a good neighbor and deal with odor concerns and other issues as quickly as reasonably possible with consideration of the rate impacts of that and also make sure that we handle this and that it not be underwater, because the plant will not work under water as the sea level rises. This is the project schedule. Again, you have seen this before. We are now at the blue arrow, the CEQA scoping point. And the project has moved along in I think a very methodical fashion for three years, focusing closer and closer into our final recommended alternatives. From this point on it would be about a -- we estimate about a two-year CEQA

process. At the end of which council would be asked then to approve the final plan. This is the -- since we last met we've had our January workshops on the recommended plan. They went very well, we got a lot of great input from a lot of perspectives, and I think the end result was not much change in the plan because I think most people just said it seemed like a very sound plan. Just a reminder of our goal, make sure we operate the plant, and beyond that, that we fulfill economic, environmental and social objectives, and it's important to remember that the council specified these as the objects, that it was to accomplish all of these things. We had two different tracks, one was the plant itself which of course is our primary mission and the most important part of this from our perspective, to make sure we're rebuilding the plant. We've done very, very thorough work on all the different processes at the plant, what needs to be done to fix the plant up and remain part of our plan that isn't as much what we go out with the public on, but it's what we deal with in-house is, how are we going to rebuild it, each process, what needs to be just rebuilt as it is, what needs to be replaced by something new and better? That then establishes the plant footprint and then allows the parallel analysis which is we have this land as we improve the plant, reduce odors, there are land use opportunities, and we always felt it was not our decision what they should be, this should be something that should go out to the public and ultimately then for you all to decide what to do with these plans. The 30 year capital program, it is a large number. 2.2 billion, that includes 2% annual inflation and it includes improvements in every process area. And there's about 20 different, distinct processes at this plant. It's like a living being, it's like a body with a nervous system and a muscle system and so on, there's different systems all that fit together. Many of them are biological, complex systems that need to be carefully operated. It also adds odor control to every process area where the odor is generated, significant odors are generated, and that includes mainly the head works, the primaries, the thickening and the biosolids area. And it reduces the sludge lagoons and drying beds to a smaller footprint. This as you know has been one of the controversial issues, how fast can we do this. You can do it faster, there are some rate implications and other implications, so we're certainly looking at how we can speed that up if at all possible and then enables new land uses. Again the 2.2 million does not include anything else that's done outside the plant purposes. It does not include operation or maintenance of the plant, it also doesn't include, for example, if there was a park developed or anything else on the adjacent land. So we've separated the plant projects into two categories. The first category are things that are critical infrastructure rehabilitation that are not going to be part or recommendations that are part of the big EIR. These are just things that needed to be fixed at the plant. They needed to be fixed anyway. And we're proceeding with them outside of

the big EIR process, the two-year EIR. Four main categories are to complete the rebuild of the second -- complete the building of the second head works, that will enable us to completely decommission the first head works as needed. Second thing is to completely rebuild the primary tanks in terms of renovating the concrete and the steel. Third is to -- there's a lot of renovation in the secondary process, and then fourth is to rebuild the digesters, that we talked about five of the 16 digesters are out of service so they need to be rebuilt. So these are the projects that are going to proceed just as the project regardless of the plant master plan. The recommended alternative, here is the map showing the recommended alternative. This is pretty much the same map that you saw in December with some slight modifications to the levy area. And then these are the projects that are in the EIR, in the two-year EIR, and these are projects that have a significant environmental impact and that are something beyond what we're just renovating of an existing facility. Number one is odor control. As we implement odor control, as we cover some of these tanks, collect the air, there is clearly environmental impact to that operation. If you cover the facilities, you're going to have to use additional energy to pump the air, treat it, and there's an environmental impact to that. So this is something that has to have an environmental review done. Beyond that, the biosolids, the dewatering and removing from the biosolids lagoons and drying beds to the mechanical dewatering, clearly again a major environmental impact, largely because of energy use. These will be using much more energy, it will be much more costly, and there will be an environmental impact due to the extra energy use. But these two we are proposing to do at a project level. So that at the end of two years we can then move quickly to implement them. We won't have to go through any additional environmental review, they will be ready to implement. The other technologies, the filters and the ultraviolet disinfection, we are proposing at a program level. Those are pretty far off in the future, they are still technologies that are developing, so we think there is no rush on these and so we can do them, and as we get closer to the time when they need to be done, we'll then do the project level review. Additionally, the programmatic level -- we're done on the land view. This shows the drying area. Again, the brown area is the current lagoons and drying beds. The proposal is to move it to the future biosolids area, shown in green, that's currently legacy lagoons that were used back in the '60s that need to be cleaned up. We did a lot of work to determine this, we felt this was the best place to relocate them, and then again it shows also the plant processing area. This is the diagram that we showed you again last December, that shows the time frame for this being 2021. And I guess there was some -- maybe a little confusion on this. There's two things to keep in mind about this time line. One is that it takes two years to get through the

environmental review. So you really can't start any major work for two years. The second thing to remember is that after we get the new facility completely built and operational, it's still three more years before we can completely decommission the lagoons and drying beds, because it's a three-year process to get the material through that. So there's five years on this process that are pretty much immovable. Beyond that then you have to have time to design it and build it and get the land ready and operate it. We do feel we can remove about four years from this by expediting the pilot testing. This is simply a map that shows what the amendment to the general plan would look like if this is adopted. Currently this land is almost entirely shown as kind of a light blue, quasi-public land, and then some of it would become green open space, others would be land that's developed, red for retail, purple for mixed use and blue for other industrial uses. One of the other controversial issues has been roads. Obviously, if it is going to be developed, we need to make sure that we have proper access. This shows an existing connection to Zanker road, but beyond that we are proposing to analyze three additional road accesses to this area, from the different directions. From the west via North Tech Drive, from the east via the McCarthy property, and from the north via Dixon Landing. Again, these would not be completed. This would simply be part of the analysis of the environmental review to determine whether these roads are necessary and what the impacts were and then a decision would be made by you all whether to proceed with this obviously sometime in the future. We are very cognizant of impacts of traffic to the surrounding community, especially to Alviso. And so we certainly think that whatever is done, that would be one of the major issues to look at, to make sure it doesn't have a negative impact on the community of Alviso. This kind of shows what we're envisioning as far as traffic that the roads would be more than just for cars, they would be for pedestrians and bicycles. And that we certainly would be looking at the impacts of 237. Obviously it is a road that is already at capacity in many times a day, and so we need to make sure that whatever is done here, that analysis is complete also. Economic development, we show again the kind of four categories, small retail area, a clean tech institute which is kind of a campus environment that could allow these things to work together to develop new technologies, especially around water. Our economic development staff tells us that there is a great need for R&D, industrial properties, and this is a special place that this could happen. It is certainly not available in any other places in San José. And then beyond that we have what we call renewable energy fields, most likely solar fields. So this is kind of the part of property, it is only 300 acres of the 2600, it's a fairly small amount that we are proposing to be considered for development. We are also very cognizant of the Alviso master plan and wanted to make sure we are consistent

with it. We think this plan is consistent with the Alviso master plan. It does show -- one of the major concerns from Alviso was to have a buffer so we're showing some lands in between this development and Alviso that would be for burrowing owls that would be a buffer to kind of protect Alviso from this industrial -- from any type of development. Why are we doing it from an economic development perspective, well, one reason is because we could make some money but not much. It is about a million dollars in taxes to San José at ultimate buildout, this is, we are talking about after 20 to 25 years, maybe even 30 years or longer, depending when the economy turns around. There is some money for the county and the school districts and potentially ten or \$11 million in lease payments. But again, that would be only -- it's a pretty small percentage of what it costs to operate the plant. So this is not anything close to offsetting the cost of the plant, but of course it is -- obviously every penny counts, and we're very conscious of trying to keep our costs down and keeping the rates down and this would help to some degree with that. So the big reason now for economic development is jobs. That this provides the land for -- the project itself is 800 construction jobs and then at buildout, we're talking about something on the order of 17,000 permanent jobs. As you all know, San José is job poor. This is a very special place that can provide jobs that, maybe are not available in other parts of San José, and of course it's kind of a disconfluence of a lot of transportation hubs and a lot of -- so it's a great place for potentially employment lands. In terms of environmental uses, most of the land is still being proposed for environmental uses. We've talked about this before. This hasn't changed much since the last time, but we certainly got uses for both saltwater habitat, fresh water habitat, riparian habitat, and upland grass lands particularly for the burrowing owl, and creating additional riparian habitat. So we will be making major improvements out there with respect to the environmental lands, and this is an example of what the fresh wet lands might look like. Beyond that we're creating some great social benefits if this plan is adopted, which is mainly on the category of trails, 16 miles of new trails which will help us get to our goal of trails and additional park lands, potentially, active uses such as ball fields and more passive uses such as just enjoying nature. So here's what the plant would look like in 30 years, if it's adopted and built, and here's again the project time line showing action today by City of San José. Since Santa Clara is a part owner we'll be going to Santa Clara council meeting tonight and asking for their approval as well. The environmental impact analysis will take two years. Again, we can't really even start the biosolids and odor projects until the environmental impact analysis is complete in two years. Implementation would then be up until 2040. I did also want to mention, okay, then finally our recommendation, just to kind of get back to the kind of nuts and bolts, is first of all, to proceed --

we're requesting direction to proceed with the environmental impact report, and then secondly, to extend the agreement with our consultant, who is our consultant -- our environmental review consultant, ESA and J&S, to provide the compensation needed to complete the report, and then we would like to come back in May to provide an update on how we can move more quickly, and what that would mean with respect to rates, how we could possibly do that in terms of moving more quickly on odor mitigation measures and biosolids changes. That concludes our presentation, thank you.

>> Mayor Reed: Thank you. I think we'll have a few questions from the council. I've got speaker cards for people who want to speak and I have a couple of questions to start with, and that is in terms of the timing and the sequence and how we figure out what this is going to cost us. We are recommending that you come back in May with a status report on some elements of it. Also in May, we'll be looking at the five-year capital improvement program budgets. So will the next five years worth of stuff be in that five year capital improvement plan, even though we haven't finished all of the work we need to have done, when will we start the process of approving individual items or steps in terms of cost?

>> John Stuffbean: Sure and that's already started. Obviously we couldn't stop the plant improvements while we're doing this process. We have to keep flying the plane while we're fixing it. So like for example we have already proceeded with the head works project, and it's completed. Alternate disinfection project is completed, electric liability is well under way, and nearly -- very far under way. And so we are -- in next year's CIP we are showing some additional capital projects. We are essentially increasing the CIP from an average of about \$50 million a year up to \$80 million a year which is what we ultimately need for this project. So what we have done is worked hard to connect the two to make sure what's in the capital plan for the next five years is consistent with what the master plan is showing it. So as we go through the master plan, learn new information, we've fed that back into our CIP so as we proceed ahead we are proceeding with the projects that the master plan is telling us need to be done the earliest and the most urgent to get done. So we're already -- those projects are already in -- the big ones in next year are building some of the digesters, which the master plan confirmed that was something we needed to do.

>> Mayor Reed: In terms of components that some people may have an opinion on about the cost or the necessity as we go through the process, when will be the points when people can weigh in on that if they think we're wasting their taxpayer dollars on some element of this and certainly there's been questions about some parts of it. When is the time for people to get engaged in that specific discussion? Because the overall cost is potentially a couple of billion dollars over a very long period of time. We're not going to make those decisions today for sure.

>> John Stuffbean: Right, this is a different project for, for example, the project, where it's a big decision you make it and then occupy it. This is a decision of about 200 projects. As we go along. All we're kind of recommending today is approval of kind of the macro-level what are the major things that need to be done as we move ahead. And we've identified those throughout the plant. And as we for example on the digester, we looked at for example well first of all do we need digesters at all? Secondly is it better to renovate or rebuild? Third as we renovate the digesters should they -- should we change the mixing system should we change the cover system should we change the heating system how would we rebuild them? We've kind of had those major decisions. Next step would be when do these projects fit into the capital plan as far as the sequencing, that is the five year CIP then the next big milestone will be each year as we renew the 5-year CIP, what do we do this year, next four years how do those projects fit in relative to the master plan and the needs of the plant and the third opportunity is when every individual project comes forward for bidding and award then we'll be looking at here is the digester, we are going to rebuild digester 11, and here is how we are proposing to rebuild it, and here's the cost of it. So there will be many opportunities along the way to look at it as we go from kind of macro down to the kind of micro level projects.

>> Mayor Reed: This one kind of reminds me of the airport, even though the airport was, as you say, one project, actually there were multiple projects. At the airport there were couple of really big ones like the terminal. But we started on that airport project nearly 20 years ago. And we did an environmental impact report based on a master plan. And the cost was somewhere north of \$4 billion. But as we went through the process, we decided maybe some things we didn't need or we didn't need that size and ultimately we sized it down to a little over \$1 billion. And so I want to make sure that people understand, we have the opportunity here, we're talking

about as you said 200 projects. This is not approval of a single project. And as we go through this, we will have some opportunities to talk about whether or not something is needed, or whether or not we can afford it and what time frame and all those issues. And those will play out each year, at least, in the annual budget process. Because even though we approve a five-year CIP that doesn't mean that we're approving any project until we actually budget the money for it.

>> John Stufflebean: Yes and obviously we're continually looking at what is needed and what the cost of that and is there an alternative? New things may come along in terms of technologies. New ideas may come from -- we may discover new things before we get in depth on any of these projects. We're always looking at how we can keep the rates down how we can keep the cost down. That is part of the process.

>> Mayor Reed: One thing I'm liking at cards about 20 people, I think they're all here to talk about things they'd like to do with the excess land. That's interesting but this is like a moon-shot. It cannot fail. Because it could be catastrophic. So how do you build into this whole process of 200 projects the fact that this plant can never stop operating? We can't shut it down? It's got to perform 100% of the time with no failures while we're renovating it?

>> John Stufflebean: Right and that has been a challenge for all the big plants that are being rebuilt, which is all the big plants because they were all rebuilt at the same time. So you have to have multiple systems in place to continually vet what's happening with respect to these various projects. The first part of that is getting good consultants on board to help you with the design. The second part of that is make sure you have staff on board that really, again, understand the plant, that can review and double-check the work of the consultants, make sure that we're doing the things in the correct way. A third important thing is to connect to the operations. The people who operate this plant know the plant better than anybody. So it's important to connect continually with the operators at the plant, the maintenance workers at the plant, the electrical people that control systems, to make sure all those systems can continue to operate with the new changes, and as you're in the construction phase, which can get really tricky at these plants. You have to rebuild it and of course as it's operating. So all these systems have to work in concert. The engineering staff, the consultant staff, and the operations staff as we move ahead to deliver this. So that is the essential element that makes this work.

>> Mayor Reed: In terms of project management who's going to make sure that we stay focused on that critical element and not distracted with the 100 other things that are interesting but not critical?

>> John Stufflebean: So me, you.

>> Mayor Reed: Okay, that's good, you got some help.

>> John Stufflebean: We have our technical staff, and certainly the plant manager, the plant management, Bavani Hurlu who is our technical services manager, and we have some great experts on board as well. So it's a team effort of the plant led by the management staff.

>> Mayor Reed: I do want to compliment the operators of the plant. I've been out there a few times, although I've yet to take them up on the underbelly tour that they've offered me. But that plant operates all the time, 24 hours a day, without failure, and it has been for a very long time. And we're very proud of the record that the plant operation has established, and we've got to keep it perfect. And I know that this work has to be done. We have to rebuild this facility. But ultimately it will be the people on the ground, the people on the line that are going to keep it running throughout this, and so you've got to get good people out there but this is a big challenge and it's important to stay focused on the fact that this is a water pollution control plant first and everything else second. Councilmember Rocha.

>> Councilmember Rocha: Thank you, mayor. Time for a motion or do you want to wait for the public testimony first?

>> Mayor Reed: Up to you. If you want to make a motion I think it would be a good time.

>> Councilmember Rocha: I'll make the motion and I'll hold off on any comments I have until after the public comment. I think there's a lot of folks and volunteers from different groups and organizations that put a lot of time

into this. And I recognize that I'm coming at this four months since I've been in office and this is two to three years of work. Thank you for what you have done. I would like to recommend approval of the plant master plan selection of the preferred alternative memo from ESD and the City Clerk's office with additional direction, and that direction is laid out in a memo signed by myself and a number of colleagues. I want to be clear and explain myself: The intent of this direction is to ensure the master plan of the City of San José, our municipal partners, and the residents are being served and protected. In my opinion it is imperative that we mitigate and address those potential impacts that have the most exposure as early as possible. This will ensure that our master plan and subsequent EIR work is sound to legal challenges that may adversely impact our time line in the capital program. I also want to ensure the facility is able to address its capital improvement needs and any potential additional uses that may have a public benefit, environmentally or through economic development as you spoke about. With that said I do have a number of questions but again I'm going to defer those until after my colleagues have a moment to comment on the motion. So thank you.

>> Mayor Reed: All right, we have a motion on the floor to approve with some additional recommendations. Do we have some additional council questions or comments? Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor. Hey John, I know there's a lot of concern in the environmental committee about whether or not we're setting the environmentally preferred option, as it's been described I think by many in the community. My understanding is after our conversation we are including a no project alternative within the EIR that we fully studied is that right?

>> John Stufflebean: Yes that's a requirement yes.

>> Councilmember Liccardo: So although I assume that no project alternative assumes no technological improvement to the plant and equipment. I think we're studying two things, the technological improvement and the land use. As we look at the no project alternative, does it mean that both the technology and the land stay the same?

>> John Stufflebean: Well, I may have to ask for some help from the CEQA experts and the staff, but my understanding is that what we would be doing as we go through the two-year process is look at the environmental impacts of all the different potential things that could happen out there. So we will be looking at what is the impact of development, how can that be mitigated, what it would look like if there are no development. So each of those potential activities would be analyzed with respect to their environmental impact. So we would have the answer kind of I think to the question of what would an all environmental alternative look like at the end of the two-year period.

>> Councilmember Liccardo: Okay, so I think --

>> John Stufflebean: Anything to add to that Joe?

>> Joe Horwedel: No I think that's good.

>> Councilmember Liccardo: Great. I think it's important for the community to understand that we will be fully publicly vetting what the world will look like if the world doesn't change at least in terms of land use. I appreciate the enormous amount of work that's gone into this effort and I know there's been a lot of community outreach and a lot of good thinking. I think John as I've expressed both in T&E committee and a couple of our conversations the one thing I am concerned about, as we look forward, before we actually adopt the plan or specific alternative, is I think a little bit about some of the downward projections that we've seen around regional growth in just the last year or two, certainly around ABAG assumptions on jobs, around census figures on population, what we know certainly in some of the data that I've seen on sales tax revenues that we are expecting to be largely flat throughout the region for many years to come, based on what will be increasing use of the internet and so forth. And so all this suggests to me that the demand for retail space, the demand for industrial space, the demand for R&D space may not be what we all might hope it to be. And so I hope as we go through the environmental analysis and it comes back to us that we will be able to think a little bit about how we insert for lack of a better term a hurdle rate into the plan so as we recognize any conversion of what is essentially land that might be used for open space or other environmental purposes that's going to be converted to economic uses,

that's certainly an investment if it comes to a considerable cost to us and that we ought to be realize clear about the returns before we plunge into that decision. That if, as we're looking at \$1.1 million in revenues or \$10 million in lease revenues, those figures are probably a bit more modest than we had originally hoped when we first embarked on this effort and what we continue to see is declining expectations about what this means economically, at some point we should be able to step back and say well the plan might say we go forward, but really what we ought to be doing is keeping this land for open space. And I hope that the plan will incorporate really an explicit opportunity for the council to stop and say, okay, we really should simply choose Route B rather than A.

>> John Stufflebean: Sure and I guess what I would add that all these developments around the plant is kind of trigger based, that it would be based on some opportunity that the city might want to take advantage of. And ultimately it would be on the council to decide what to proceed. Development folks are telling us it would be a great advantage to the city to have some lands available so if an opportunity comes along we're ready to jump on it quickly. So none of these things would happen without appropriate triggers. And of course the council obviously could change the land use whenever they desire. Joe did you want to add anything to that? Did I get that one right, too?

>> Councilmember Liccardo: You might have a new job, John. I very much appreciate that. And I guess a lot of what is in my concern is, as we look at the general plan looking forward and we recognize how workforce is likely to be influenced by demographics and recognizing that working age or what we now consider to be working age populations is not going to significantly increase in the next 30 years unless people really start working a lot more older in life, it may be the case that we don't have an extraordinary amount of demand for job space. And I say that very tentatively, knowing that a lot of our policies are predicated on an assumption that we're going to be continuing to gobble up lands for job production. And I just think we need to be nimble enough to be able to stop and step back particularly where there are significant environmental impacts so thank you John.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. I first of all want to thank John and their staff for the tremendous amount of work and also these community members that are involved in the community advisory committee, I notice one of the member, Tony Santos is here, thank you very much for your services. I have a couple of questions. I know I probably asked you before but for the public interest I'd like to repeat it. One of the comments that I heard from many of the public members is that they didn't really have a chance to really address the community advisory group during the meeting. I attended a couple of them, I really didn't attend all of them. Could you comment on the fact that we didn't have enough opportunity for the public to comment during the public meeting?

>> John Stufflebean: Sure. And thank you for giving me the opportunity to thank the community advisory group. We really had a terrific group of 20 people who came to 20 different meetings over a two-year period. A tremendous dedication of time. They offered some very, very insightful comments and comments during the process that made it a better plan than it would have been otherwise. We definitely want to recognize their great work. I would say that it's fair that the public has had ample time to comment. There are a variety of ways we allowed the public to comment and our door has been open for that. In these particular meetings of the community advisory group those were meetings for the community advisory group. So much like city council the emphasis was on giving them information and then allowing them to have a chance to, the majority of the meeting to give their feedback and input. We did facilitate those meetings, we had a very good facilitator, and we did put off the public comment till the end and allowed the committee who were the experts to understand this issue well to really give their full and in-depth comments in consideration of this issue. There was ample opportunity for any members of the public to comment verbally or in writing on that, and we've received a large amount of material on that.

>> Councilmember Chu: I want to thank the public. I have received many public comments regarding this matter as well. The second issue is regarding the new road that's going to go across that area. Would it relieve congestion or would it create more traffic through the little town of Alviso?

>> John Stufflebean: Okay, so I'm not a traffic expert, and of course that would be part of the analysis that would be done through the environmental review. Certainly we're looking at that road just as an opportunity to provide additional access if development were to occur when it occurs to the area around the plant lands. There is concern that that might drive additional traffic to the Alviso area. My own personal opinion is it doesn't seem likely, at the end of the road, it's not through-traffic through Alviso. There is concern about that and that is something that would be looked at as part of the environmental review process.

>> Councilmember Chu: Do you have a slide?

>> John Stufflebean: Yeah, sure.

>> Councilmember Chu: So maybe we can share it with the people watching and at home, which road we're talking about.

>> John Stufflebean: Alviso is kind of to the upper left part of the scene and the development would be the lower right. And the road I think that has been of most concern is the Dixon landing section, people coming south on 880 and wanting to head West on 237, they might cut through there. That is something that the environmental review traffic report will look at in depth.

>> Councilmember Chu: I understand that Santa Clara habitat preservation plan, also trying to extend their boundary north to 237 to include the burrowing owls preservation effort. Any additional e-additional inputs or comments?

>> John Stufflebean: I will say we have been working in concert with the conservation plan, we are ahead of them in some aspects, just in terms of a time line. If there are opportunities for conjunctive entertaining between the two we are wide open to that. And I may let Joe add anything he wants to on that as well.

>> Joe Horwedel: Yes, the habitat conservation plan is looking at burrowing owl habitat, and it is one of the things the master plan for the treatment plant has accommodated, is setting aside land for burrowing owls. We are looking at this area actually up into Southern Alameda County with the U.S. fish and wildlife service, of how to have a larger base for the burrowing owls, recognizing the species is not just in San José. That does continue to move forward with the habitat conservation plan. The resource agencies have provided comment to the plant master plan in a separate series of letters that came in, in the last couple of weeks related to owls, and so we're working on that now.

>> Councilmember Chu: Thank you very much. I'll be supporting the motion.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you. I also wanted to thank staff for all the work done on this and follow up on some of the comments Councilmember Liccardo made in regards to moving forward. And I certainly appreciate the fact that it appears the EIR is going to kind of look at all the different types of development, and including no project, or simply just the technological advancements because I certainly think that's the main purpose here is to make sure this plant, both environmentally as well as in terms of efficiency, can provide us the best quality product and service for our residents. And I think that ultimately benefits the environment, as well, especially in terms of efficiency and having a smaller footprint in terms of some of the treatment plant area that's currently being used. And I would also, well, one of the concerns going forward, and having an analysis both in terms of mixed use and commercial and industrial is the expectations that may set as to how the land will be used going forward. And so I would agree, that we would need to be very clear that particularly as we analyze the environmental impacts of further development, that you know I think the preferred alternative even at once the EIR is done, given the different variety of developments that are considered, particularly open spaces, that we cautious as a council particularly since there are still other areas in San José that we have very specifically designed for further densification of industrial. I think whenever there is an opportunity to avoid, particularly here, to restore some of the wetlands, and open space, I think that our goal should be to avoid development, as much as possible. Once we have restored we somewhere the opportunity to restore these open faces. Till e-still think

that an environmental analysis is appropriate so at least we know what impacts both the technological advances have and the open space, as Councilmember Chu is referred to some of the roads, I think that may give us as much reason to not build the roads as to build the roads, once you get a sense of what sort of impact these will have vs. open spaces. There might be some unique type of industry that may make accepts, but that's a call we would have to make but ultimately I appreciate the work that's been done as well as we go forward I'll certainly be looking -- I'll be looking at the EIR and looking at any proposed -- any proposal in termination of what potential land use could be with the sense that we'd like to keep this undeveloped, unless really, there's some kind of growth in our industry or job growth that's quite remarkable and even then I think that any kind of development, industrial development should be targeted towards what benefits being adjacent to the plant and also the ball fields and all that. I think that that provides a good opportunity, but I know that even that is going to be restricted I assume in terms of what can be done, but I know there's a great demand for that, and I think that that's really where I'd probably be most interested in looking at the traffic analysis and so on, and see what kind of impact it has on the environment, if we were to have ball fields that have high volume traffic beyond the 9:00 to 5:00 of folks going to the plant, what have you. But I appreciate the work and I do think that ultimately we need to be well informed on what kind of impacts it's going to have. Because I think this is a very unique place that we have in our city and we have a unique opportunity to really create a great space for next generation and beyond so appreciate it, thanks.

>> Mayor Reed: Councilmember Rocha. Okay.

>> Councilmember Rocha: Public comment or moving on to council questions?

>> Mayor Reed: Public comment. We have people who wish to speak on this we'll take public testimony at this time. It is now 20 minutes till 4:00, we still have other matters on the agenda after this including the medical marijuana item which is going to take a great deal of time, I'm afraid. So I'm going to limit publicly testimony on this item to one minute. Please come on down when I call your name so you're close to the microphone. I'll start with Stephanie Miller, Joey McCarthy, Pat Saucedo.

>> Good afternoon, my name is Stephanie Miller, and I represent the Irvine Company. In the greater Silicon Valley region two of our properties are adversely affected by the odors emitted from the sewage treatment plant. One being McCarthy center, a million square foot campus setting located in Milpitas and north park, a 2600 unit apartment community located in San José. Tenants and residents of both locations continue to complain about the odors to our management team. On the more severe odor event days, the outdoor people and recreational spaces created at both properties cannot be enjoyed by our residents and our tenants. Over the years this known odor condition has impacted our tenant retention and new leasing programs. While we remain committed to maintaining our presence in the Silicon Valley, we need your assistance in remedying the problem plaguing our existing properties. Our future development plans in Silicon Valley include office and residential sites in both San José and Santa Clara. The most immediate being crescent village a phased 1750 unit apartment community scheduled for completion in early 2013.

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

>> Thank you.

>> Mayor Reed: Joey McCarthy, Pat Saucedo, Carol Kasseb.

>> Good evening, mayor and council. My name is Joey McCarthy. I'm here representing McCarthy Ranch. We understand the importance of the plant master plan project to the region and I would like to thank the city staff for all the hard work they have put into this plan. We would also like to thank Mayor Reed, councilmembers Rocha, Nguyen, Chu and Liccardo for their April 15th memo requesting staff to study the feasibility of odor mitigation improvements being implemented in a three to seven years and providing regular updates to the T&E committee meeting. The T&E committee to date has done a great job reviewing the plans to continue providing its input going forward. We appreciate the leadership of councilmembers Herrera and Campos have shown on the T&E committee as well as the other members who have served on the committee over the last few years. The odors generated from the plant have impacted the surrounding businesses residents schools and overall quality of the life in the region surrounding a plant which includes McCarthy ranch's property. The odors have been a problem

for quite some time and need to be mitigated. The technology is here today, it has been here for two decades and we feel it should be implemented as soon as possible. The economic benefits of mitigating the odors also can not be overlooked. Mitigating the odors will free up San José's buffer lands for development, provide construction jobs in an economy that's desperate for jobs while job growth --

>> Mayor Reed: Sorry, your time is up. Pat Saucedo, Carol Kasseb, Dean Stanford.

>> Pat Saucedo: Pat Saucedo, San José Silicon Valley Chamber of Commerce. One comment, we strongly support the inclusion of odor mitigation. Looking to the future, creating an environmental impact report that gives the greatest potential of the day once that report is done as to what we do with those lands I think puts the city in the best place possible to have the best use possible of all of the treatment plant lands that are sitting there. Thank you very much.

>> Mayor Reed: Carol Kasseb, Dean Stanford, David cook.

>> Carol Kasseb, Milpitas chamber of commerce. Honorable mayor and councilmembers. I'm representing our business community. You've heard already previous testimony about what the odor problem has caused in our particular community. We are logs businesses as well as residents because of it. We need your help in taking care of this particular matter. The emotional part of it is of course health. It affects more than just the nose. It also affects your taste buds. It also affects your roiling stomach when you experience this. So our businesses are suffering, our restaurants are suffering. If you can take care of this in prior to three years we would be most grateful. Thank you.

>> Mayor Reed: Dean Stanford, David Cook, Selma Herrera.

>> Good afternoon, my name is Dean, former resident of Alviso and I'm a design engineer of Tesla motors. Understand that the council has not been presented with public comment summary from the last plant committee advisory group meeting. Therefore I have given you the updated proposal for a state-funded park on

the plant lands that I submitted. I would like to let you know that the state parks OHNVR division is very interested in funding or possibly even operating this zero emission off road motorcycle park on plant lands. The staff member from the division attended the last CAG meeting to express the division's interest. I have also given you a copy of the state parks strategic plan that outlines their desire to open urban parks and support a zero-emission vehicle to reduce overall emissions and travel times in the system. And it covers the environmental stewardship of the division. State park grants or acquisition funds can be used to lease the land, operate a park and help fund the environmental restoration species stewardship and monitoring of the plant lands. This park would be designed to blend in with nature and park trails with --

>> Mayor Reed: Sorry your time is up.

>> Thank you.

>> Mayor Reed: David Cook, Selma Herrera, Robert Gross.

>> Thank you, mayor, city council, and John, Kirsten and Matt. I represent Santa Clara Valley Audubon society. I'm one of those representatives here today. Many of the city council persons have expressed the same doubts and concerns that the Audubon society has had about development in this area. So since that's already been covered I wanted to bring out the point that this is a real economic issue. We have a tendency to build and then they will come. So the idea is that developing this area ask you have to put the roads and superstructure or infrastructure in first which requires a huge financial investment for which it seems like from this, there is not going to be very much of a return. So we're asking the city council not only consider the EIR report as far as the economic impact or environmental impacts of these roads and structures that will be needed to support development in this area, but we also want to look at the cost and what it's going to cost the taxpayer to develop these roads and infrastructure. Thank you.

>> Mayor Reed: Sorry, your time is up. Selma Herrera, Robert Gross, Bob Power.

>> Good afternoon, two points. We don't need a road through there. It's okay for them to have it for internal purposes. I live on state street in Alviso, that's where all the traffic is going to come, they're going to go tall way down as far as they can get before they get back on 237. The other is buildings. Buildings, asphalt, water displacement. The water has got to come up somewhere, that means it's going to make the water deeper somewhere else. That also includes the burrowing owls or whatever. It's just not a good idea to build out there. Thank you.

>> Mayor Reed: Robert Gross, Bob power, Tony Santos.

>> Good afternoon, Mr. Mayor, members of the council, Bob Gross. Thank you for the opportunity to be here. But real brief. I spent 30 years in the water industry. 20 years as a director of the Water District. And I've been very familiar with I've served on state committees, chair of the water recycling, also with the alleviate committee dealing with wastewater. Extensive backgrounds. I have no problem in taking the footprint of the facility which is long overdue and I highly endorse that. However, to condense heavy industrial and commercial at that point, is impossible. The traffic is impossible. And you're going to be competing against North first street. 32,000 homes. When we have land right at first and 237, you have industrial and commercial land there. Your facilities are there. Your infrastructure is there. But to drive 237 today is a nightmare. And to bring in that much traffic, it will be just a disaster.

>> Mayor Reed: Sorry your time is up.

>> I own real estate and I found out --

>> Mayor Reed: Bob you Power Tony Santos.

>> I wore the --

>> Mayor Reed: Your time is up. Tony power Tony Santos. Richard Santos.

>> Mayor city council members I'm Bob Power, Santa Clara Valley Audubon society. Thank you for this opportunity to speak regarding the alternatives for the plant master plan. I think you're all aware by now that the Audubon Society has become the burrowing owl society. While we hope that you all will take a very hard look at the opportunity to evaluate an environmental alternative we also are asking that you direct staff to develop the burrowing owl management plan, covering any undeveloped lands within the plant's footprint. You are already doing most of what would be needed in such a plan. The plan just needs to be formalized. While the recommended alternatives include a very nice burrowing owl preserve the owls may or may not recognize our generosity. All of the lands surrounding the plant may lay fallow for five, ten, 15 or 20 years. Please manage those lands that are undeveloped in a manner conducive to the survival of burrowing owls in our community. As a member of the citizens advisory group I wish to commend the staff. Thank you.

>> Mayor Reed: Sorry your time is up. Tony Santos is our next speaker. Richard Santos, Diana Foss.

>> Honorable mayor, city council, I was on the committee, a TAG member representing the Alviso. Commend your staff, did an incredible job, dedication, professionalism. You're right, Mr. Mayor, the plant needs to be repaired, but the rest of the land doesn't need to be developed. To open up Dixon landing road, you all drive, you know what people do for 18 feet of space in front of you. They will come into our community, no matter what you do, we're going to have less policing protection than we have now because officers will be laid off. That road is also slated to cross valuable habitat. Why pay the environmentalists to study it? All you're doing is a favor for Fremont. When the 49er stadium goes in, God help Alviso for the short cuts through our community. So I endorse the project. I just don't endorse Dixon landing road. Why do a favor for the East Bay? Thank you.

>> Mayor Reed: Richard Santos, Diana Foss, Ann.

>> Good afternoon, mayor and city council, Richard Santos, I wear a variety of hats, one is an elected officials who listen to his constituents. I ask you, Mayor Reed, you and I fought this road, another road back in 2000 when you were first elected, and the city council didn't listen then when you put in this drive. Today I ask you, please, all

of you, don't put this road in. On the 2040 master plan Alviso is a village. You walk to our stores, we have a great life. Putting 8,000 cars in a bottleneck in 237 is going to destroy our life. Number two is, I'm opposed to retail, why close that Alviso and hurt our mom and pop stores on North 1st Street. Let's don't do that. Let's save this land, 2600 acres, for desalination plants for the future, recycling expansion, and maintenance yards from the City of San José. Like you said, let's do the best for the City of San José water treatment plant first. Thank you.

>> Mayor Reed: Diana Foss, Ann, David Wall, Ann, go ahead. David Wall, Shonie Klinehouse.

>> Can't you control flooding from peak flows was an illusion from New Orleans. Public Works fails to end flooding for most metropolitan and rural areas despite our growth in technological standards. FEMA introduced legislation in 1968, the first national flood insurance act that provides flood insurance for structures and contents that help define ordinance outlining minimal flood management standards. Insurance premiums are paid for by homeowners that currently have mortgages. 8,000 out of 16,000 homes have flood insurance through FEMA. The down side of the national flood insurance program is that occupies -- people that occupy renters or seniors who have paid off their mortgages have disadvantaged incomes or lower income housing, are more susceptible to complete and total loss. Thank you.

>> Mayor Reed: David Wall, Shonie Klinehouse, Brian Schmidt.

>> David Wall: A glowing tribute should be given to all the operators, all the men and women who run that plant, the water pollution control plant, and maintain it. The plant master plan in my opinion has been a catastrophic failure due to the millions of dollars invested in very little that you've gotten back. One thing that should be noted, is that there's no Alviso safety plan. The people in Japan who designed notices nuclear reactors on the ocean never thought it would happen to them but the plant failure could very well happen, Mr. Mayor and you should go to the underbelly of that plant. The ongoing building also requires a lot of more security than is out there. City security people could be reassigned and by the way, Mr. Mayor, how are you going to deal for 70,000 people lining up for a hover craft ride when you have to dredge six feet of that channel? Bye-bye.

>> Mayor Reed: Shanie Klinehouse, Brian Schmidt, Ada Marquez, Eileen McLaughlin, please come on down.

>> Good afternoon, Mayor Reed, councilmen, Shani Klinehouse, with Santa Clara Valley Audubon society, I'm an environmental advocate for the organization. For years -- for over a year now we've been asking for an environmental alternative to be presented to the public and for an EIR review of an environmental alternative. We all recognize that the plan needs to be brought up to date, needs to be functional and function well. We also aware that the no project alternative does not cover the -- what we've asked for which is what is necessary should be done and everything else should be considered one of the alternatives for everything else should be an environmental open space, ecological and recreational alternative. It is not the same as no project alternative and we ask that you pay serious consideration to that and propose perhaps an amendment to the ask for the alternatives that we've asked for repeatedly again and again. But CEQA requires a reasonable range of alternatives --

>> Mayor Reed: Sorry your time is up.

>> Thank you.

>> Mayor Reed: Brian Schmidt, Ada Marquez, Eileen McLaughlin.

>> Good afternoon, Brian Schmidt, committee for green foothills. And I want to thank staff for all the hard work on this. I would think it would be very helpful for the councilmember to go back to that issue of the no project alternative. The no project alternative will be no technological upgrades. And the environmental alternative that's been proposed is technological upgrades and no other new development that would go onto the area. So if staff is saying that they do want to see it, an alternative that is just technological upgrades which I think I hear from city council interest in, that's fantastic. But I would encourage that, I would get that into this amendment by saying you can choose whatever preferred alternative would you want to choose. You could in addition say, please include an environmental alternative that is technological upgrades alone. So that's what I would encourage you to ask and put in your amendment. Thank you.

>> Mayor Reed: Ada Marquez and Eileen McLaughlin.

>> Good afternoon, thank you. My name is Ada Marquez, I'm a mother and also a Berryessa neighborhood resident and also I'm a teacher in the department of environmental studies at San José State University, and also I'm here to support my colleagues at the Santa Clara Valley Audubon Society and I want to remind you that the heart of CEQA is to provide a range of foreseeable and reasonable project alternatives. I support including at least one sustain annual alternative which not only meets the needs and the project objectives but also, include preserving the existing public land for biotics, recreational uses, and also to prevent future impacts of climate change. Thank you very much.

>> Mayor Reed: Eileen McLaughlin is our last speaker.

>> Hello, I'm Eileen McLaughlin. I'm a member of the community advisory group and also representing the citizens committee to complete the refuge. I would like to reiterate the speakers before me and the comments that we do not think a no project alternative is sufficient for the environmental option because it will not provide for recreation planning, for trails, for nature center and we'd like to make sure those are included. I also would like to ask that the council include direction that the plant take flexibility in looking at the Coyote creek boundary, working with and talking to the Santa Clara Valley water district and perhaps the corps of engineers about changes there that may have advantages to flood plane and other eco-tone improvements in the future if they face sea level rise. That is a critical issue in this area of the county. I also want to say please, continue to allow as much communication, interaction throughout the project as possible because we need to have the public informed thoroughly from beginning to end so they continue to support it. Thank you.

>> Mayor Reed: That concludes the public testimony. Councilmember Rocha.

>> Councilmember Rocha: Thank you, mayor. I do have some questions for staff now. I'm going to jump on one. I had read the memo that you forwarded, the info memo talking about the rates and the increases, so thank

you. That was very helpful to get ahead of time. But can you please elaborate a little bit on that? I guess some of my questions are going to be -- it's hard not to take a closer look, there are some large numbers I think. As far as planning for this master plan, capitol improvement program. When did that start and talk about the increases.

>> John Stufflebean: Sure. We start by saying obviously we want to keep the rates as low as possible and avoid any increases if we can. I guess the story really starts for us in 1994. From 1994 to 2004 there were no rate increases at all, zero rate increases for ten years, it was a time of pretty high inflation. They reached a point in 2004 where we were reaching a point where the expenditures were exceeding the revenues. So some rate increases were needed. So the rate increases that occurred between 2004 and the present have largely been to catch up to the point where you could say that the expenditures were then matching the revenues, so in other words revenues were sufficient to cover the cost of the plant. What is new then since we started this project about four years ago, the idea of the master plan started about four years ago, and what is new is in addition to continuing to operate the plant, which is what the moneys had been used for, for decades, was just operating the plant, we now reached a point where it had to be rebuilt. So -- and there is no other money for that. So the fees now had to support both operating the plant and rebuilding the plant. So now we're proposing, and we've already started that, increasing the rates. Unfortunately we have to do that to some degree, to provide enough funds to continue to operate as we always have and rebuild it. So our objective is to simply have sufficient funds to accomplish both of those tasks over the next two years. So that's the story.

>> Councilmember Rocha: So in often cases Public Works projects you would look to bonds to finance some of this stuff and not have the improvements done on, if you use the term, backs of the ratepayers. But that's what you have pointed out, to fund the operations as well as capital. Why isn't that done, to consider funding to spread out the impact?

>> John Stufflebean: Sure, that is a possibility. Up until now we've used pay as you go financing. Each year there were sufficient funds to meet the financial funds for this year. This year we have around \$50 million or so in the capital program. We're building it up, there is a potential that we could continue doing that, and if we time the projects right, if you had spread them out over year after year, if there isn't one big project, there's 200 projects,

you could smooth that out so that the projects matched up. Our strategy is that we look out about three years in advance, and whenever you -- so we look out this year, next year, and the following year. And if it looks like we're going to be able to cover those years with the pay as you go, then we're fine. When we see a spike coming, where it may be higher than we could cover, then we would consider the option of going to revenue bonds. Revenue bonds obviously have an additional cost to them, as well. There is the cost of securing the bonds financing and so on. So we only did that when we needed to, but certainly if we see say four years from now because of the projects that need to be done to keep the plant operating, we need to have a transitional money, maybe we need \$120 million for one year, for example. Then that's when we would look at, okay, let's consider some revenue bonds to spread out over the next few years beyond that, so that's our strategy.

>> Councilmember Rocha: When would you have -- I mean, that financing plan is coming back in May. Is it going to be that level of detail, or are you looking for that level of detail further out as the master plan plays out?

>> John Stufflebean: Yeah, frankly what we'd be telling you in May isn't much more than I just told you. Right now we look out three years and we don't see the need for bonding. Each year, we look out and say some do we need funding how much do they need to be and then again, don't also remember is our tributary, all seven cities also have to deal with how they are going to make their consideration as well. We want plane of notice when that will begin as well.

>> Councilmember Rocha: I did have a question on the media coverage. Is this the gold-plated version or only the infrastructure that we need? These are public funds so we must be mindful of the cost. We want strong equipment that will last, I'm confident that you are able to do that but can you show me --

>> Nothing graduated whatsoever of the plan. We found additional things that needed to be done and we updated the cost. The early numbers were based on fairly high level looks at what the needs were. And as we look at the tunnels, we find out, well, there's some seismic needs, so we continually update the cost as we find more information. And that will continue for years to come. We do think that our current estimate is probably pretty conservative. One thing that has really been a positive is some areas where we've looked we found our plant was

better condition than you would expect. Our consultants would say, well, a typical digester that's been in service for 30 years, 40 years would need this much to repair it. They looked at our -- I mean, looked at our digester and said, you know, this is actually in better condition, which is again a tribute to how well we maintain -- how well our maintenance workers and operators maintain the plant. So that's a really good thing. So we're always looking at how we can keep those costs down and again, the plant is tanks, pipe, pumps, and industrial buildings to house them and that's it. There's nothing besides that.

>> Councilmember Rocha: I did read through it once and forgive me if that's in there. Grant funding any opportunities for that that would help ease the burden on this?

>> John Stuffelbean: Sure, we had one this morning, earlier today, the fuel cell. So we're always looking for grant opportunities. For wastewater treatment plants, there isn't a lot right now, especially if you have a plant that's operated well and meets all the requirements. It's funny, if you've got a lousy plant, you can get a grant. If you have one that's working well, it's harder. So it's kind of odd. But we're always looking for that. One of the opportunities the biggest opportunity is for energy improvements. So that's where we have generally been focusing our attention. The plant uses a lot of energy. If we can create our own, the fuel cell is more efficient than others. Solar panels or fuel cells and that sort of thing we're always looking there isn't a lot available right now. So I'm going to repeat some of the concern I had, at T&E about the setting the lands aside for economic development. I'm very strong on that, we need it, our budget shows that but I'm going to share some of the same concerns some of my colleagues mentioned and given the opportunities we have in North San José and I know some of the points made from OED staff and Nancy is going to make me pay for this later is available open land. We do have some, here and there, but I get the sense and I understand the concept that the larger areas will provide additional larger opportunities, that we may not have. But I'd also like to see us approach this in a way that if some of this doesn't come to fruition in terms of this North San José vision plan that we have and we're not seeing the type of investment that we'd like to see, that we have the opportunity to retain some of these lands for environmental purposes or open space purposes. I guess you spoke to that a little bit when Councilmember Liccardo asked about that, but I'm going to also really impose or make it clear that I really, really feel strongly

about that and see the need for that. I think I'll leave it at that and there's a couple follow-up questions. They don't need to be done here today in the interest of time. I'll follow up with you later so thank you very much.

>> Councilmember Nguyen: Councilmember Liccardo.

>> Councilmember Liccardo: Thank you. John, just to follow up and I know that Joe or somebody from planning may want to respond to this but just so we're clear what we're studying what we're not studying, I know we heard from leaders in the environmental community. My assumption was we in the EIR only need to study the envelope of potential possibilities, or potential options. Obviously not every one of the options within the envelope, because that could be an infinite number. Does studying the no project option within the EIR fully enable us to understand and vet publicly whatever options might exist like those suggested by folks in the Audubon?

>> Joe Horwedel: Councilmember Liccardo, I think so. If I understand what the kind of the project they would like us to analyze is essentially modernizing the plant without doing the land use.

>> Councilmember Liccardo: Exactly.

>> Joe Horwedel: Reuse, I think the no project step essentially looks at no land use changes. And we will have analyzed the impact of the plant itself of what it means for growth inducement and the actual construction effect. I think that would be covered. That's one of the things as we go and scope this out with the EIR consultants that is one of the things I would want my staff you know making sure that the plan, that the council would have that flexibility, to go down that path.

>> Councilmember Liccardo: Okay. Essentially, as long as everybody's clear, that by the end of this process we'll be able to know both what A plus B is as well as A without B.

>> Joe Horwedel: Correct.

>> Councilmember Liccardo: Then hopefully we'll all get to a place where at least we agree we've got the same set of information. Thanks.

>> Councilmember Nguyen: Councilmember Kalra.

>> Councilmember Kalra: Thank you. Joe, you indicated when you talk to the EIR consultants that that's something you'll discuss with them but I think at least from my perspective and a few of us up here we certainly would like that to be a clear I guess directive that we want that information. So you know, to whatever, I think that we understand the need for the modernization of the plant and the improved infrastructure but certainly, an evaluation of just that is really, really what I'm interested in seeing in addition to the further environmental impacts of the suggested potential development as well.

>> Joe Horwedel: Yeah my take-back is it would be direction from the council to prevent that option.

>> Councilmember Kalra: Thank you.

>> Councilmember Nguyen: We have a motion made by Councilmember Rocha. Mayor's not here but I believe we can go ahead and vote. Okay. All those in favor? Opposed? Hearing none motion carries. Thank you John.

>> Mayor Reed: Our next item are actions related to medical marijuana. This is continuation of a hearing that we were unable to completed last week. As I said we are not taking additional public testimony. We did it last week. This is the time for council to try to get decisions made. When we last convened on this, I just checked the synopsis, we finished with agenda item 3.A dealing with title 20 and we're working on agenda items B and C. Dealing with title 6 for registration and operations but we did not finish that work. For those that were here you know it was difficult and we didn't get done so we are back and I think we have some additional staff report for things that have happened in the last week and any additional recommendations they may have and answer some questions that were raised and then we'll get back into council discussion. I'll start with the City Manager.

>> City Manager Figone: Thank you, Mr. Mayor. I will kick this off this afternoon. Before the city council begins its discussion on medical marijuana I want to make some brief comments. In an effort that started over a year and a half ago we have maintained our professional goal to provide the city council with various policy options and alternatives to consider. As you know, through the multiple staff reports and the various discussions, the council have held over this past year, this is unquestionably a very complex, multifaceted policy issue. While we have responsive to the various requests from the city council these discussions reflect the complexity of regulating medical marijuana. So with that and whatever decision the city council makes today or in the future I do want to be clear that so long as it is lawful, we are prepared to implement your direction. In this regard, however, we do have some very new information from the D.O.J. literally within the last couple of hours that I think staff is going to want to update you on once I turn it over to them. Do I feel that it is very important to -- I do feel that it is very important that implementation during major reorganization will present many, many challenges. As you know there is a concern from the law enforcement side and chief Moore is with us today to cover his perspective on allowing store front collectives in San José. I also think it's important to consider the chief's perspective because we cannot underestimate the amount of time needed to implement and maintain these regulations with much less capacity. I've asked the staff to be as clear as possible today in responding to council's questions. And ensuring that you have the full benefit of their professional opinion in whatever direction you provide. I also respectfully request that the city council factor in the administration's workload, city resource constraints and the need for sufficient implementation time as regulation is discussed. With that introduction, I'll now hand it over to Deanna Santana compute City Manager.

>> Deanna Santana: Thank you. Good afternoon. I want to begin by clarifying today the purpose of these draft ordinances. These draft ordinances are to regulate the collective and individual cultivation and use of medical marijuana. And to ensure that it is cultivated and used in a manner which is responsible, lawful and in the spirit intended by the state law. While at the same time, we want to ensure the health, safety and welfare of the City's residents and businesses. I want to state very clearly that despite what you may have read or heard these draft provisions fully and compassionately support the patient's right to use medical marijuana under the state law and they do not criminalize the cultivation of medical marijuana by specifically defined persons. These regulations do contain limited requirements for individual cultivation and use of medical marijuana. And provide for collectives to

cooperatively cultivate medical marijuana. So I hope that settles any confusion regarding what these regulations do and do not do and reinforces our commitment to the compassion at use act. So with that I want to move on to what we wanted to cover for our presentation today. We wanted to begin first by hearing from Rick about the memo that he issued on Friday and last Friday, while -- last Tuesday while the chief joined us he did need to leave early and was not able to provide his input and so we wanted to make sure we built in some time for that. Then we'll pause and hear from council on how it would like to proceed and we are prepared to go into brief summary of land use actions that were taken last week and then continue the discussion regarding registration requirements and the selection process options. So Rick, with that I'll turn it over to you.

>> City Attorney Doyle: Thank you, Deanna. Last Friday I issued a memo really as a supplement to a number of council questions. After the meeting last Tuesday hi a conversation with Jeff Rosen the Santa Clara County District Attorney really following up on his office draft of proposed medical marijuana prosecution protocol. And wanted to sort of get some guidance as well as their thoughts on some of these issues. Specifically with respect to what we call sale, the issue of paid employees, the sale of marijuana products such as lotions or baked goods, and then the onsite versus offsite cultivation issue. As a result, I know the D.A.'s office has been busily putting together their draft protocol. It is still a draft, but I don't think it's anticipated that there will be a lot of changes, it is out for comment and probably within the next 30 days we can expect something in final form. They've also put that together in consultation with the state attorney general's office. There is some anticipation that the California attorney general might even come forward with some additional clarification of clarification of the A.G.'s guidelines that has often been talked about. Based on the conversations and the review of both the attorney general's guidelines and the protocol issued by the D.A. or the draft protocol we've made some proposed revisions to the ordinance. The first is sales. And what we've done is we've incorporated the District Attorney's definition of sales. There's been a lot of talk about what's a sale, what's not a sale. At the end of the day, it is limited to any transfer from a designated caregiver to that caregiver's qualified patient. Or transfers between qualified members who must either be patients or caregivers facilitated through an association of patients and caregivers operating as a nonprofit collective or co-op. And I think that we don't have any dispute with that. That's what we've been talking about all along. This clarifies that there is a definition and we know what we're talking about, that we're talking on the same page. The issue of paid employees, as far as the District Attorney's concerned, it's just say

the shorthand is, it's really a nonissue. I think they anticipate that these are businesses. Albeit nonprofit businesses. And a business would assume to have paid employees. The ordinance doesn't prohibit that, or the draft ordinance that we've provided and so I think we've moved another step beyond that. The issue of marijuana products, the sale of something other than the cannabis itself, but in the form of baked goods, lotions, or ointments, that again, our ordinance does not prohibit them. The District Attorney is comfortable that that is something that could be permissible as well. The one area that we have not changed is the onsite cultivation requirement. This is in consultation with the DA that he feels very strongly that the onsite cultivation requirement is necessary for proper law enforcement. As has been discussed, a closed loop for investigation purposes to be able to have some kind of control, whether during the process. And so that, we've not changed the ordinance, or our draft of the ordinance. With that I'm going to turn over to chief Moore who's going to talk about some additional issues.

>> Mayor Reed, members of the council Chris Moore Chief of Police. I'd just like to begin by reiterating what the City Manager's has said. I'm very, very proud to work for a city whose council has worked so long and so diligently to try to come up with or fashion some regulations that might be able to accomplish what many believe is a viable path forward for medicinal marijuana. I would feel remiss if I did not offer up some Public Safety impacts that perhaps have not made it through the staff reports as of yet and that I wanted to share with you last week and was unable to do so. So I'd like to share with you a number of events that have occurred in the past year and a half, not quite year and a half since January of last year, 2010, some rather violent events that have occurred in the dispensaries or grow-houses associated with them. There have been seven violent armed robberies in the dispensaries and grow-houses, three of them were in council district 7, one in council district 1, two in council district 3 and one in council district 5. I'm going to go into some details because I think you need to hear them. We also had six burglaries of dispensaries, three in district 7, one in council district 3, one in council district 4, and one in council district 6. Of the grow houses there were two burglaries, and they were both in district 4, and also disturbingly we've had a number of fires at residential structures where grow operations were taking place. Two of them were in council district 2, one in council district 3, two in council district 5, two in council district 7, one in council district 8 and two in council district 10. We have also had 12 marijuana grows, we don't know if those are related or not to collectives, these stats, but they occur in districts -- one in district two, one in district 3, one in

district 4, two in district 5, two in district 7, three in district 8, and two in district 10. Now, I mention those just because they're raw numbers, but I want to share with you just a couple of details of events to describe the types of events that are occurring. I'll begin with the most recent one, that was January of this year, January 31st, where suspects armed with handguns robbed a dispensary in the 2400 block of Senter Road, in council district 7. The suspects were wearing latex gloves and masks, and one of the suspects pistol whipped one of the victims in the head. They took cash and marijuana. The suspects then fled and were involved in a hit and run accident. They were then arrested by patrol officers. And notably both suspects were from Las Vegas, out of state. We've seen this on more than one occasion. Moving back a month before that, in December of last year, suspects armed with handguns robbed a collective. The victim had closed the business and was leaving for the day when he was confronted by multiple suspects, one with a gun who knocked him out of his wheelchair. The suspects found the victim, took cash, marijuana, and the victim's car. There are no current leads in this particular case. And that occurred in district 1 in the 600 block of Saratoga avenue. In September of 2010, suspects armed with handguns robbed a dispensary and pistol whipped one of the victims in the head with a handgun. Suspects bound the victims, they took personal effects of the victims, marijuana, and cash. Those suspects were indeed arrested, and that took place in the 2300 block of Aiello in council district 7. In September suspects armed with handguns bound employees, took marijuana, cash and a gun from a dispensary. No leads in this case, and that occurred in the 1600 block of Monterey road in council district 7. In May of 2010 four suspects armed with handguns robbed a dispensary where the victims were tied up and robbed of personal effects, marijuana and cash was taken from the business. These suspects were traced and arrested in Arizona. The suspect when asked the suspect asked why since they were out of the area why did they come to San José, they knew that San José had dispensaries had high quality marijuana and cash on premises. Again the list goes on, can I go into details of all the robberies, the burglaries. But I think the point is pretty clear is we have set ourselves up I believe as a target in this city unfortunately, while I think well intentioned as a and I will say this publicly that I voted for 215 I don't think I envisioned and many others will only talk for myself envisioned the type and amount of dispensaries that are operating here in San José. Bans or moratoria and using the numbers from Americans with safe access, 84% of the counties and cities that's 273 have voted to ban these types of dispensaries whereas 51 have actually enacted ordinances to allow it, so it's 84% of the cities. And I think they have learned that at this point with the state of the law being uncertain as to California law as to what is legal and what is not, and the fact that it is

undeniably illegal under federal law that it is not a wise course of action. It is my opinion and I feel obligated to tell you about that. Lastly I want to leave you with a letter that the manager referenced that we received just today, April 14th of this year, it's last Thursday and it's addressed to the honorable Christine Gregoire, the governor of the state of Washington. She and her staff had solicited input from the two U.S. Attorneys from both the eastern district and the western district of Washington concerning proposed regulations similar to our own, although not identical, for regulations of these types of operations. The letter came back very clearly and said that after consultation with the attorney general and the deputy attorney general, and I will read just a portion. That the prosecution of individuals and organizations involved in the trade of any illegal drugs and the disruption of drug trafficking organizations is a core priority of the department. They do consider that and I'm not reading now but they do consider that marijuana is covered under the controlled substances act unless the number of violations that would be included under their proposed regulations, and the most troubling one for me and one that I really think we need to take pause before any other action is taken by this council is the line at the bottom that says, in addition state employees who conducted the activities mandated by the Washington legislative proposals would not be immune from liability under the controlled substances act. In other words, if we were to have our police officers, code enforcement officers, or any other employees engaged in regulating this type of activity -- and this is a letter to the state of Washington -- that they may be criminally liable for violations of federal law. That concerns me greatly, that I'd have police officers placed in that particular position. And again, this is new information that we will provide this letter if it hasn't already been provided to you. But I think it might be wise for us to take stock, and perhaps Rick might have a suggestion that we might seek counsel and guidance similar to that the state of Washington did. And with that I'll turn it over to you Rick.

>> City Attorney Doyle: I'll just note for the record that this is not all that different from a letter that was written by the -- Melinda Haig who is the U.S. Attorney for the Northern District of California to John Rousseau, who is the City Attorney for Oakland. In Oakland, you may remember in the press when Oakland attempted in I believe it was in February to propose an ordinance that would allow large scale farms essentially within the city, both U.S. attorney and the Alameda County different said, sent letters cautioning the city, and the City Attorney in this case, of any proposed action. Again, it noted that the current position of the justice department pursuant to an October 2009 memorandum, it's frequently referred to as the Ogden memorandum, basically said that they would not

focus its resources on seriously ill individuals who use marijuana as part of a medically recommended treatment regimen but the concern was large scale operations and I think that's the concern both in the Oakland case and in the Washington state proposal as well. So I'll turn it back to you.

>> Deanna Santana: With that I want to add an additional comment to what Chief Moore said, staff is not limited to enforcement and police, it's part of this panel as city employees. There's an option in terms of how we can proceed with that information. We could and Rick I would depend upon you to go into a little bit more detail, but we could advance our regulations to the U.S. attorney Melinda Haig and ask for a review and get input and guidance. Specifically because if you look at the letter that was issued to the Washington governor and I just realize this information I received at 1:30 but I can just summarize quickly on page 2, there are some issues that are stated as -- that are not limited to criminal provisions of the controlled substance act. And some of those items are included in the regulation, either by topic, I see in here that there's issues around manufacturing and distribution, there's issues around leasing and rental spaces, and as well as sensitive use -- sensitive distance requirements of a thousand feet from schools and colleges. So we could seek guidance to understand their perspective on our regulations or we could take some time and evaluate this information and come back to you in a couple of weeks in terms of how we should proceed. I think we should all pause and just hear what the chief had to say, and recognize these letters and decide how we'd want to proceed.

>> Mayor Reed: Anything else from the staff?

>> Deanna Santana: We're prepared to proceed as the council desires.

>> Mayor Reed: Well I'd like to hear a little bit more from the City Attorney on the letters. I know that he's just seen some of these a couple of hours ago. I got one an hour ago, I looked at it and I've got some questions. But I do know the position of the U.S. Attorney's office in the northern district which is Melinda Haig with Oakland. And the language in her letter is very similar to the language in the letter to the office of the governor, which I note was a response to a letter from the governor to the U.S. attorney general. 24 hours later they got a response back. It's clear there's guidance inside the Department of Justice that is evidenced in these letters. And the list that Deanna

was talking about that the U.S. Department of Justice is concerned about, there's other code sections that make it illegal to manufacture distribute or possess with intent to distribute any controlled substance including marijuana, unlawful to knowingly open, lease, rent, maintained or use property for the manufacturing, storing or distribution of controlled substances, unlawful to distribute or manufacture chromed substances within 1,000 feet of schools, colleges, playgrounds and public housing facilities, and within 100 feet of any youth center, public swimming pools or video arcade facilities. Illegal to conspire to commit any of the crimes set forth in the controlled substance act. So I'm concerned about the advice given to Oakland by the Oakland City Attorney about liability for councilmembers. Taking actions in Oakland. Now they were doing it differently than we were. But the original letter or guidance from the U.S. attorney general referred to lenience towards individuals whose actions are in clear and up ambiguous compliance with existing state laws. I'm interested in whether or not the staff recommendations in front of us in the title 6, if you complied with those, would you be in clear and unambiguous compliance with state law, or is there anything that's clear and unambiguous about the state of the law in California?

>> In answer to your question mayor I do not believe that we -- there is clear -- clarity or unambiguity with respect to California state law. Others may disagree, and I am sure many others might, but when I posed the question to Mr. Sibley, the Deputy District Attorney that Jeff Rosen has asked to look into this, if any of the dispensaries that are operating in our city today were in compliance with current California law he said no, none, so with that in mind that's not to say that others might try in a very limited capacity to try and reach that I think it is so unclear and I think it really belongs -- it's in the problems of the state legislature to really come forward with clear and unambiguous law on how to proceed with this. I also believe that for those who believe it should be legalized, I'm sure we're going to see another ballot initiative on legalization, but until that passes I also have concerns and I've shared this with some of you about the uneven prosecution across the state of California, typically youth, typically of color, that are being put in prison for these types of violations that aren't associated with a dispensary. And I think that we really do need to push our state legislators to act upon this to give us some clarity so that the City of San José or any other city or county isn't put in the position of creating hodgepodge regulations.

>> City Attorney Doyle: Yes, let me sort of echo some of the chief's concerns. I think it's pretty well understood that it is very ambiguous, and what you really can point to is the fact that you don't have clear legislate and prosecutors throughout the state have a different view. Just as an example, the Los Angeles County District Attorney's office has a very different view than the San Francisco District Attorney's office, and more importantly, for our purposes, apparently the Santa Clara County District Attorney's office, which is the reason we turned to the Santa Clara County DA. Because at the end of the day, all this is, is a defense to criminal prosecution. So we have sought to make sure whatever we do, it's not going to -- it's going to comport with at least their view of what the criminal laws are. I think to your question, mayor, about the U.S. attorney, it's inescapable that Congress has determined that marijuana is a controlled substance, category -- schedule 1, it is a violation of federal law and no U.S. attorney is going to tell you anything different. That being said, both letters from both in Washington and the one here in Northern California the city of Oakland really talked about large scale operations. And we know that Oakland, San Francisco, some other cities in Northern California have collectives. We know that there haven't been prosecutions although there have been raised for illegal activity and the chief is well -- his point is well taken that there's a serious question whether any in Santa Clara County is operating in accordance with the law. So I think our goal is trying to craft something that is clearly what we believe passes state law. It doesn't allow large scale operations but I don't know if we sent it to the U.S. attorney they'd say this is okay. I think we'd get the same guidance that it's a violation of federal law and that they will not prosecute in those cases where there are seriously ill individuals whose marijuana is part of a medically recommended treatment regimen. I don't know if we'd get anything more than that but we'd certainly seek it.

>> Mayor Reed: Well I'm just reading from the letter of April 14th back to the governor of Washington. Where they maintain -- this is from the U.S. Department of Justice, we maintain the authority to enforce the controlled substance act vigorously against individuals and organizations that participate in unlawful distribution activity involving marijuana even if such activities are permitted under state law. So even if we have a regulatory system that we think is clear and up ambiguous under state law, everybody is still in the dark about what the U.S. attorney may or may not do. And that's just the way it is.

>> City Attorney Doyle: That was certainly the position of the Clinton administration as well as the Bush administration.

>> Mayor Reed: Okay, anything else staff? The changes in the staff recommendation are all in title 16 that Rick Doyle talked about. So otherwise, previous set of staff recommendations, Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor Reed. I just want to say on the last conversation we're having here with these letters that have just arisen and some being there for a while this ambiguity between federal and state law is there and we're not alone. There are 15 states in the United States that allow medical cannabis. California is not unique to this as is counted. The important thing is the people are counting on us today and I'm confident we're going to get to resolution. This council did act last week in passing regulation in regard to land use, so I think as it might be perceived to be small, it was actually rather large. The land use regulation alone is going to close about half of the facilities that are open. So that's a tremendous step. I strongly believe that the facilities that will be closed are often the ones that were maybe troublesome or problematic for the adjacent property owner and so once they are closed that solves that issue. That leaves us with the balance. Chief Moore very appreciative of the comments. You had mentioned there were seven robberies for medical cannabis. But in the year 2009 we had 1,295 robberies. In 2010 we had 1,249. When I read the police blotter -- [applause]

>> Councilmember Oliverio: Shhhh. When I read the police blotter and each of us read it, I'm sure, it has a lot of stories that contain gruesome details on any crime that gets committed in a major city. And when we peel back the numbers on the robberies the reality is, the majority of these things are convenience stores, liquor stores, banks, jewelry stores, shopping centers, parking lots. And it's the reality of the big city, but I just want to put things in perspective from seven to nearly 1300. That's a big difference on the total amount of crime that happens in this city. So we have a memo before you that's signed by councilmember Donald Rocha, councilmember Ash Kalra and myself that we believe provides a sensible way towards regulation. We are adamant and strongly support a limited number of these facilities and want to set up this specific number together with all of our colleagues once staff returns so we can make an informed decision with the criteria we set in the memo. This would also allow the CEQA process to be done once, and not again and again. We want to ensure that the RFP process is 100% cost-

recovery and in fact allows us based on the application fee, to retain two to four city employees who will otherwise be laid off, to manage this application process. Between the fees for the applicant, and/or the city council raising the measure U tax temporarily, we can assure that staff time is 100% compensated, allowing other city priorities to be addressed. The memo is offered in a sincere effort to achieve a goal of limited number limited places regulated and taxed. We do not believe a ban would be best serve the people of painful elements of a doctor's permission to obtain medical cannabis, under state law, versus the suburban drug dealer. We also do not believe passing this on to the county government, as this is something San José should and can solve. In addition, I want to make sure San José regulates, instead of the county, since it would allow for city workers to retain employment in San José with fees and taxes collected. In addition, I believe the county could possibly allow these facilities in existing county pockets within San José which would not solve outstanding issues for us as a city. So in our memo we would like to incorporate the Vice Mayor's memo, items C through E, to our memo to which we have penned. And I just also want to point out when it comes to the District Attorney's draft, it contains the notion of patient cultivator agreements, leads me to understand that there's some idea of managing the cultivator. And I don't see it expressly written that it says onsite cultivation only. I feel that force onsite leads to large scaling operations which is some of the problematic situations our Attorney talked about in Oakland. In addition, our memo acknowledges any new written opinions that will come out from our District Attorney and the attorney general. So I want to make a motion, to move the memo signed by my two colleagues as well as incorporating items C, D and E from the vice mayor's memo.

>> Second.

>> Mayor Reed: All right, we have a motion on the floor. Let me just see if I understand it. So we have the memorandum signed by Councilmember Oliverio, Rocha and Kalra. And then out of the memorandum authored by the Vice Mayor item C which is a 30-day submittal period to establish the acceptance of applications and then D, allow both an onsite cultivation, with the limitation on number of offsite to be determined and then E, expand the category of allowed medical marijuana to extend to edibles, ointments and other products. Those three bullets, not the entire memo. So hopefully some members will have the memos so I'm not going to read the entire memos. On the motion, KOMO-4 or Vice Mayor Nguyen.

>> Councilmember Nguyen: Thank you, mayor and thanks Councilmember Oliverio for incorporating some of the recommendations in my memo. Obviously very thankful for the chief's comments regarding the facts that we just heard. I wish that we had heard these facts you know prior to this meeting rather than hearing this today. But for all that's worth, I really appreciate you sharing that information. I strongly feel that we need to do something today. We need to get something done. I don't think that we can defer this issue any longer. I don't think that we need to have the Board of Supervisors vote on this issue, or even discuss this issue. This is something that the City of San José has to do and we as elected officials sitting up here have the responsibility to address this issue because it is in our city. And so I'm definitely not supportive of a ban. I think that there is a need for medical cannabis. Obviously people who have come here meeting after meeting have expressed a need for that and we simply cannot turn our backs on these people. A ban is not something I'm willing to support. However hearing the gruesome facts that the chief just shared it's really troubled me to not to create some kind of number or ban on some of the collectives. Obviously, the 110 is way too much. I was very open to 30 collectives but I'm also very open to perhaps decreasing that number down so that we don't have to take a toll on our law enforcement officers as well as the workload that staff have to deal with in regards to addressing this issue. I haven't yet come up with the right number. I really appreciate the fact that Councilmember Oliverio's willing to incorporate some of the recommendations that's in my memo. But I feel strongly that we need to get to the right number. So I'm going to have to make a substitute motion and I hope we can get a second so we can have a thorough discussion on this. But I'd like to move -- I'd like to make a substitute motion to move my memo April 13th, 2011 with a slight modification and that is for section A to read as follows: Approve a cap of ten medical marijuana collectives in the City of San José and remove the per district requirement and the rest will remain the same.

>> Councilmember Liccardo: I'll second for purposes of discussion.

>> Mayor Reed: We have a substitute motion on the floor based on Vice Mayor Nguyen's memo. I'd like to have staff talk about the processing issues, the motion on the floor contemplates ten collectives eligible based on a first come, first served approach. So the maker of the motion -- excuse me -- I assume that includes the staff

recommendation for the prescreening, the checklists and all those things so the first come first serves are people who actually meet the qualifications based on the way I read the memo.

>> Councilmember Nguyen: Yes, absolutely.

>> Mayor Reed: Staff you haven't had a chance to talk about the other proposal that was in Councilmember Oliverio's memo and I don't know if this is the time to talk about the RFP process versus the other selection process. But this motion changes your recommendation from a first one who gets pulled out of the hat process to a first one who comes in the door process. So could you talk about how we sort out who gets the first come first served?

>> Deanna Santana: Certainly and I wanted to get back at the appropriate time for some additional comment on the original motion. Under the first come, we do have a slide here on the selection process. Under the first come first served process, what we would require is that the applications be due on a certainty date. And I do want to get back to conversations around a date and what the time line is, just be mindful of the City Manager's comment. We would ask that the City Clerk be the neutral entity to receive the applications which would be maintained sealed and sometime stamp the applications so that there is a clear order of the sequencing of how applications are received. We would for clarity and transparency purposes publish the order of which we received those applications, so that everyone is fully informed of the process order that we will review the applications. If we accept this process, we do have some concerns about maintaining an orderly process knowing that some will compete or vie for early slots in submitting applications. But we would propose on a first come first served basis that we use the registration process that we put forward which is usually based on a past sale and it is based on a rigorous selection process. I would go over those slides as well. Would you like me to move on to the RFP process?

>> Mayor Reed: I'd like you to talk about how you screen out the people who aren't going to be qualified whether it's an RFP process or a first come first served process, ultimately some decisions have to be made about the quality of the application.

>> Deanna Santana: Absolutely. These are the requirements, we reviewed them last week. I noted these are covered in ten pages of conversations and disqualifications. This is part 3 of your ordinance. What we would require is a fully completed registration form that contains questions about the owner and manager. Criminal background information as well as fingerprints, to cover who is applying for an operating license. We would also want to know about the applicant's involvement in other collectives both within the city and outside of the city. We would want some form of land use verification based on the council's direction and if they are new collectives entering the application process we would want proof of authorization to use the proposed location that they're putting forward. There is also about seven key operational areas in the ordinance that we would want to understand about their operations plan. And the in parts 4 through 9 there is more detail about the operating requirements, that they would need to pass on -- they would need to pass, under these seven sections, in order to proceed with the process. Then there is the requirement of proof of payment of taxes, as well as the application fee. And we did talk last week about, if there is a new applicant entering the market then they certainly would have the opportunity to be waived, since they haven't paid taxes nor have they operated. The zoning verification would need to be submitted in the application, as well as any other information deemed necessary by the City Manager. Once we receive that sealed, we will -- if they're selected or based -- if they are one of the first to submit we'll open it up and we will do a pass-fail on some really basic sets of minimum qualifications. You either have your application processing fee in the application, and we'll cash that as soon as we start incurring expenses to review your application. We'll ensure that you have approved zoning verification by working with the Planning Department to make sure the proof is a valid document. If you are already operating we'll ensure that your proof of payment of taxes is valid. So provided that you pass that we'll then look at your application to make sure that it is fully and completely filled out so that then we can incur police officer resources to begin the backgrounding and begin to review that information. And I think it's important to have either chief Hober or Chief Moore talk about the way that we proposed the ordinance where it includes misdemeanor and felonies versus what I see in one of the memos is proposed just a felony. From there, you either pass or fail the background information and then we test against the collective operations. If you past those operations, based on what your operation plans say, then you proceed with registration and the authority to operate.

>> Mayor Reed: What's it going to cost? I think if I remember last week, your estimates of cost estimates are going to depend on what we ask you to do and I don't know if you can give us a cost.

>> Deanna Santana: In this approach where we review the applications once received, we are proposing an application processing fee of \$4975. Recognizing that not all applications will look the same, in some cases you'll have two applicants, in other cases you may have 10, we do anticipate incurring more cost to complete the investigation. So we also propose an hourly investigation fee at \$167 an hour. So the key thing here if you listen to the sequence of how I went through a checklist, we will only advance your application for backgrounding once you've passed the minimum standards which is the zoning, your payment of taxes if you're existing and a completed application form, where everything that we're requesting and requiring is provided. Then we'll move you to the investigation process and then if we allow for 16 hours of investigation, if the police department is going to need more to complete its work, then it will pause, provide an estimated number of hours, and cost to the applicant, so the applicant can decide if they want to incur that cost to complete their application.

>> Mayor Reed: And what about the cost of regulations? Assume that we get ten that qualify and ten that go into operation there's also a fee to be set on that. I know we regulate two card rooms in the city and it costs about \$1 million a year to oversee their operations for each of them.

>> Deanna Santana: So as part of last week's council recommendation we did include direction to staff to come back through the managers budget addendum process so that we could cost out a staffing plan based on the decisions that the council makes on regulations recognizing that if you choose 20 or 30 we'll need to up our staffing plan. If it's at ten then that's what we had assumed in our recommendations, that's where we'll stay. But through the MBA process we did want to fine tune our staffing plan as well as the annual operating fees. Last June when we were before the council and in December, we did have an annual operating plan that were \$104,000 a year. Those are fiscal 2010 year so I'd want an opportunity to look at 11-12 numbers and bring that back to you. I also did want to include as part of my comments that in Councilmember Oliverio, Rocha and Kalra's memo there is an action C which allows for staff to amend its recommended fee as necessary to cover any additional processing fees. I just want to make sure as this is considered that the direction in E was also for the

annual operating fee. So we want to come back with a whole package if council wants to approve regulations of everything, all of the fees at once so that the schedule of fines is considered at one time. Schedule of fees and fines is scheduled at one time. Would you like to hear about the RFP process?

>> Mayor Reed: Yes, because that's -- that's where we came a-croppers last week, on discussion of RFP versus other process, although Councilmember Oliverio's motion has some sort of a hybrid version. So it's -- you have the first come first serve if you're qualified version, you have the first name to be drawn out of a hat if you're qualified version. You have the RFP and then you have, in Councilmember Oliverio's memo, an application ranking process using objective criteria and previously approved council direction so staff can determine which applicants are most capable of operating safe and appropriate collectives. So I'm not sure how that fits in there, but could you just talk about those processes and the difficulty and time constraints.

>> Deanna Santana: The first two processes assume a pass-fail registration process as the one I just described. So those are the streamline process that the council asked for. A couple of weeks ago. An RFP process or I just want to put out there very clearly, there isn't the in-between between a lottery concept and a pass-fail or a hybrid. It's either an RFP process, where you do review based on scoring and weighting or pass-fail. I think we need to be very mindful that an RFP of this high profile and complexity, that from a professional standpoint, it would be very incumbent upon us to bring forward a process that has a lot of integrity, because if it's challenged, it will pass the test of time. So I did confer with our finance department to make sure that that was the case, and we've confirmed that in fact he will present more fully on the RFP process. But going into the RFP process, we did put forward some preliminary assumptions on issuing an RFP. The first is we heard last week that the cost of the RFP must pay for itself. And we would be able to recover the cost by a fee. However we would need to assume a number of the estimated applications. That's very difficult because the fee may cause for people to decide to opt in or opt out. So we would need some time to think through how we would create a process where it's unknown how many applications are submitted but yet we still make it cost recovery. So that's just something to flag. At this point, we are assuming two temporary positions, one for the police department to support the background investigation processes, and one for the City Manager's office to support the day-to-day RFP. We also recognize that, as with any high profile RFP, the likeliness of needing procurement consultants just

due to the capacity constraint of the finance department as well as industry consultants, we anticipated nine to 12 month process just to bring to council a decision of the outcome of the RFP from there we would require some transition time to work towards implements. So with that I'll hand off to Scott to go through the details of the complex RFP process.

>> Scott Johnson: Thank you, Deanna. Mr. Mayor, members of council, Scott Johnson, director of finance. So this first slide is, so what it would take to get us started with regard to a complex procurement process that is very unique. Just want to say obviously during our very difficult budget challenges we have continued staffing reductions, we will need to pull in industry experts, temporary staff, and some workload will have to be absorbed by our existing staff. But saying all that, you know, our staffing, especially in our procurement area in the finance department, is very thin. The fee that we are looking at based on this model, is -- ranges in total, the costs that would have to be covered would be between 520 and 560,000. I do want to caution, I think with latest information that we receive some additional research in regards to the cost for a procurement expert, we think that that estimate there between 50 and 70,000 is very low. We were checking with ESD and you know the finance staff on what the cost was for a procurement expert related to our solid waste procurement, and it was significantly higher than that. So if we assume cost recovery per council direction, you know the fee would be based on the number of proposals that we would receive, and each proposer then would pay a fee based on that number, basically dividing this cost into the number of proposals received. On the next slide, just want to briefly go over the procurement process. Clearly we would follow the process integrity guidelines. First I want to say that you know, the council, you know, we've gone through a lot of lessons learned in regards to our procurement, especially related to high profile complex procurements.

>> Councilmember Liccardo: Mayor, point of order. I'm very sorry to interrupt. But we're spending a lot of time talking about what's not on the table, and it's not in the current memo. And I know we're very short on time, trying to get through this, and I'm very sorry for interrupting, but we're spending a lot of time on RFP. I know it's not on the table now, and I don't think it was even in the motion of Councilmember Oliverio. Is it possible we could return to this --

>> Mayor Reed: Well, I think it is in Councilmember Oliverio's motion.

>> Councilmember Liccardo: Well, it's not in the substitute motion that's on the floor, and I believe in the original motion actually they don't call for an RFP but for some kind of hybrid. I just think this might be better taken up if in fact an RFP gets back before us.

>> Mayor Reed: Well, I'm -- certainly can do that but this was the main point of discussion last week, and I wanted staff to have a chance to talk about it.

>> Councilmember Liccardo: Okay.

>> Mayor Reed: You've heard some of it. We could save the rest for later if this motion fails. If this motion passes, then the RFP issue is moot, and it's a different process. I'm happy in the interests of time, if that's okay with staff, we can come back to that.

>> Deanna Santana: That's fine.

>> Mayor Reed: All right, so the motion on the floor does not contemplate the RFP. It's a different process, first come first served, and qualification. Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. Again, I believe in this tough budget times is really not a good investment to continue asking our staff to spend their time on some issue that might invite a lawsuit from the federal government. When Scott did the cost estimate, the cost, I didn't see a line item, that they -- well, what happened was there was a lawsuit, there was some attorney cost that wasn't in there. And my -- I had a memo dated on April the 14th which pretty much indicated that I supported a ban in the City of San José for now. And then ask the county supervisor to take on on this issue, if we wanted to have more local control of this substance which is deemed illegal in the federal court, and we wanted to make some exceptions here locally. And I state that for a couple of reasons. First of all, I believe they have a more legal but because the District Attorney, like our City

Attorney just referred to some of the issues to the county District Attorney so I guess they have more of a legal judgment there. And also, when we're talking about allowing the other form, you know the edible product, the county Public Health department has to be actively involved. And our colleague like to cited examples from other cities or states and I would also like to point out that in the City and County of San Francisco, regulating medical marijuana is actually the responsibility of their Public Health department. So I don't really see any reason that we need to spend so much time, the staff time as well as our time, to continue on this issue. And the investment term I believe we should just cut the loss and move on with it. Thank you.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. I'd like to ask the maker of the motion if she'd be willing to consider two friendly amendments. Let me describe each in order. First, that there would be a cap, that there would be no more than two dispensaries -- or I'm sorry, two collectives located in any one council district, that would be the first request for friendly amendment.

>> Councilmember Nguyen: That's fine.

>> Councilmember Liccardo: Okay, thank you. The second --

>> Mayor Reed: I'm sorry, who had the second?

>> Councilmember Liccardo: That was me.

>> Mayor Reed: It's okay with the seconder.

>> Councilmember Liccardo: Okay with the seconder.

>> Mayor Reed: The friendly amendment is accepted.

>> Councilmember Liccardo: The second is that staff would formulate restrictions on pedestrian-level use, that is typically ground floor uses in strategically important retail areas, Valley Fair, the Plant, downtown, other areas, Oakridge, Eastridge where staff recognizes there may be concerns and conflicts around adjacent retail uses.

>> Councilmember Nguyen: That's acceptable.

>> Councilmember Liccardo: Thank you. I wanted to express my support for the motion. Obviously, I seconded it, so I do support it. I appreciate very much all the work that Councilmember Oliverio and as well as other colleagues, Councilmember Rocha and Kalra have invested in this and I think that we can get to a place where we can move forward but I think it's very important that we do move forward and that we actually move forward with a cap. And that we enable our staff to be able to really winnow down the number of collectives, so we can actually focus our regulatory resources in a meaningful way. Because I can tell you today it is out of control, because the San José PD is overwhelmed, because code enforcement is overwhelmed, we have a lot of very reasonable complaints from nearby residents, from nearby retail and restaurants, and we simply can't respond to them. We're simply not able to regulate reasonably. I think we would all agree that well regulated marijuana collectives can be an asset to our city, particularly to the extent that they serve a critical medical need. But we have no hope of getting to a place where we can regulate them sensibly if we are constantly chasing our tail because of the sheer number and volume of the dispensaries and of the complaints. I do appreciate very much the concerns that the chief has raised and I'd like to ask a couple of questions about that. But before I do that I want to focus for a moment on that letter which is to the Washington governor. I haven't actually seen it. I understand it didn't come from main justice but from the District Attorney's office in the state of Washington. Is that right?

>> City Attorney Doyle: Right, it's exactly the same as Melinda Haig's letter to Oakland in that respect, but in the letter the U.S. Attorneys, both in Washington and Northern District, say they have consulted with the attorney general and deputy attorney general.

>> Mayor Reed: Okay.

>> City Attorney Doyle: They reference the fact that they have consulted with the Justice Department.

>> Councilmember Liccardo: I appreciate that. I think, though, that as we all recognize, I used to be an assistant U.S. attorney, and I used to prosecute drug laws down in Southern District of California, although certainly down there it wasn't a couple of ounces of marijuana, it was usually 500 pounds, a little different issue. The -- as a practical matter, it was incredibly challenging to ever prosecute a government official on very serious allegation relating to drug crimes around bribery and corruption. I can't imagine as a practical matter any U.S. attorney's office prosecuting a government official acting in good faith and reasonable reliance on a local ordinance that appears to be reasonably compliant with state law. It just would be shocking to me. And so I'm a little puzzled about the extraordinary concern around these letters, because we've all known there are these conflicts in law. And I don't think there's really any significant chance that anyone's going to get prosecuted unless they're taking bribes. So what is it that we're really concerned with?

>> City Attorney Doyle: Councilmember I think as a practical matter you're right. The concern is that the U.S. attorney's office has put in writing the fact that they reserve the right, they may prosecute government employees that enforce those laws. So it's not -- it's not make-believe, it is the fact that the U.S. attorney's office has put that about in writing and the likelihood of prosecution is probably remote but the fact that it's there in black and white at least raises the specter.

>> Councilmember Liccardo: Well, as I understand it, and again, I haven't even seen the Melinda Haig letter, I'd be interested in seeing it. But my understanding, it focuses on large-scale cultivation, is that right?

>> City Attorney Doyle: Exactly. Both -- one is the Oakland warehousing, the large scale farms and the reference in Washington State is large-scale operations. But there -- as any lawyer would write, if you're a federal prosecutor, and you know that Congress has a law, and you're charged with enforcing the law, you're going to reserve your right to enforce that law. That's the comparison.

>> Councilmember Liccardo: I appreciate that. I mean, we also appreciate that Eric Holder has also spoken on this issue more broadly and expressed the view that for the Department of Justice in main Washington, prosecuting medicinal marijuana where it is legal in those 15 states is not a priority. And so I certainly appreciate the need and would support submitting our proposed regulations to the U.S. attorney for the northern district. I just don't see this as being a major roadblock that's being suggested. I understand everyone's trying to be careful and the U.S. attorney's office wants to reserve their rights but unless there is a major change in administration it just doesn't seem realistic. I guess you know certainly greater concern to me are the issues around Public Safety, though, and I understand you know well intentioned people in this industry are certainly creating risks for themselves and for people around them. I want to ask about folks who may not be well intentioned, chief, and specifically, you know, as San José PD observed any of the -- any concerns around how dispensaries today are getting the marijuana, and where the money is going?

>> Councilmember, thank you for the question. I'm going to refer to our deputy chief of investigations David Hober.

>> Mayor, councilmembers, Dave Hober San José police department. So it's very difficult for us to say exactly where it's coming from. We do have different information about where it's coming from. We know we've seen an increase in marijuana grow-houses in residential homes. And I have some specific cases where we know that those places -- or we have indications that those places are providing that to dispensaries. Not very many, and it's very difficult for me to say that. Often times in these residential grows we will find the grow, and we won't find people there. So it's hard for us to hassle those folks. We've talked previously about the fact that we've seen an increase in drug trafficking organizations, and those drug trafficking organizations being Mexican drug cartels. We know that they have moved north of Mexico to grow in the United States, and in fact we've had two incidents in the last, I think, eight years where we've had two incidents where police officers have been involved in shootings where these marijuana grows have come from. Now, can we connect those directly to these dispensaries? I'll read you one case. In November of this year, our NCI unit or our narcotics enforcement unit assisted the bureau of narcotics enforcement, which is a state drug unit, with the service of search warrants and arrests at the

culmination of a long investigation. Suspects were members and associates of an Asian gang. Approximately 20 pounds of manicured and bulk packaged marijuana was seized in addition to several firearms. During the investigation investigators learned that the gang was involved in several shootings and weapon brandishing incidents. B and E also learned that the gang ran several marijuana grow houses for intended distribution to marijuana dispensaries, so we had that information. In December, on one of the grow-houses that was robbed, the victim answered his door, one of four suspects removed a metal object out of his pocket, held it to the victim's neck, the suspects demanded marijuana and money, and the suspects threw the victim on the floor. The suspects ransacked the residence looking for money and marijuana. The victim grows marijuana in his residence and said he sells the marijuana to legitimate cannabis clubs. So we have different situations where we have information from different people, that's where it's coming from. The DEA and I believe the state Department of Justice through B and E have stated that they believe that Asian organized crime and other crime groups are clearly -- there's been an increase in marijuana grows, and that's going to some of the dispensaries. To answer some of your question, that is part of the information we have and we believe that some these organized crime groups or groups related to organized crime are in fact supplying the dispensaries. As far as I think you asked about the profit.

>> Councilmember Liccardo: Where the money is going.

>> Where the money is going? Don't know, and that's also very difficult for us to determine. I will tell you that I believe that there is clearly profit being made at the dispensaries. I think that if we look at other parts of the country, I think that somebody spoke last week about how this is an oasis and somebody talked about the amount of money that's being made here. So where is that money going? I don't know. I know that with many of these Asian organized crime groups that are responsible for many of the residential grows that that's being put back into the gangs to buy weapons and things. I specifically through the dispensaries it's very difficult for me to say where that profit is going.

>> Councilmember Liccardo: Thank you Dave. I appreciate that perspective because I think it's something certainly it's not something that's visible to us on the street and understanding what's happening here. I don't

doubt that there are many well intentioned people, who are growing marijuana for purposes of distribution for people who need it for medical reasons. I don't doubt that for many enterprises there are folks that are less well intentioned. I think we need to be at least mindful of what might become the for lack of better term the marijuana industrial complex here, that could run over the city. And I think there are reasons why we should rather than jumping in, should dip our toe in the water here and have some constraints around the size of this industry and how well we can at least manage it and recognize that we're not going to get it right the first time. So I hope that those who are supportive, of going forward with an ordinance today, that allows medicinal marijuana in the City of San José will consider how we can constrain it to a manageable size. I think if we don't, we're doing so at our peril. And I think even if before you get into the really serious concerns, that chief Hober identified, I think you know the every day issues that come up in our neighborhoods and the reason why I asked for the cap from Vice Mayor Nguyen was because, you know, I recognize that where the pawn shops go and the bars, and the liquor stores go, invariably is in communities that are challenged by a lot of issues. And invariably goes into high-crime communities, and the residents who are there suffer the most. And I would like to ensure that if this is going to be a city that provides for compassionate use it's done so evenly and fairly and that the everyday challenges of residents who have to see, for instance, as we've seen in various communities in my own neighborhoods, you know, people out there on the street soliciting others to come into the club and so forth, that's not the kinds of thing we want in our communities. It doesn't help our neighborhoods. So I hope we'll go forward with a very measured approach and I hope that we can put those limitations in place today.

>> Mayor Reed: I have a question for the maker of the motion. I'm inclined to support the motion but if you can accept the friendly amendment that, and that is, in the area of the prior felony convictions, I'm looking at the language in the staff recommendations that would prohibit certain people from being involved in the collective as manager and engaged directly or indirectly in the management of the collective and that would include people who have had conviction within the last ten years of any misdemeanor or felony involving the use of violence force, fear, fraud or deception, unlawful possession, sale, distribution or transportation of controlled substance, use of money to engage in criminal activity. And I can't tell from your motion, with a reference to merely a prior felony conviction, what you would do about somebody that's got priors that are misdemeanors because there are

lots of misdemeanors that are very nasty crimes that I really wouldn't want people involved in these collectives so

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>> Mayor could I speak to that as well?

>> Mayor Reed: Yes.

>> Again deputy chief Dave Hober. One of my concerns is if we don't include misdemeanors as many of the members of council realize as being former prosecutors and defense attorneys that oftentimes what occurs is that people are charged by the District Attorney's office to a felony and then pled to a misdemeanor. Convicted of a felony or charged as a felony and pled out as a misdemean.

>> Mayor Reed: Vice Mayor Nguyen.

>> Councilmember Nguyen: Thank you, mayor. I think it's justifiable and I will include that in part of the motion.

>> Mayor Reed: That is okay by the seconder. The amendment is amended by friendly amendment in that category. Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I just noticed that a lot of these are listed in the staff's recommendation so if we could fold those into your recommendation might expedite the process. I just want to relay something that happened in my district. I have one store front. And kids go into the adjoining hair salon begging for money. Not a lot of them, there have only been two so far. But the fact that there is that happening, absolutely blew me away. These are about high school aged kids. And that is one of my passions. I really do want to separate kids from drugs, until they have got an education. So I don't know, chief, if that's something that you've encountered as well. I know can you get it on any high school campus.

>> And this was not scripted, I must tell you but I have on my hand a flier that was dropped on campus, a group, a stack of them at pioneer high school, the principal and assistant principal, I get my medicine, at medmar. .

>> Councilmember Pyle: Not only pioneer high school close by but also Gunderson. Oakridge shopping center, near pioneer village. I never could understand why that went in and we hope to keep kids out of there. Councilmember Rocha.

>> Councilmember Rocha: Thank you. I won't be supporting the substitute motion. Would prefer to support the memo that I co--wrote with Councilmember Oliverio and Kalra. I want to thank Councilmember Oliverio for very well presenting the memo and the intentions here. I'm going to read one part of this. Let's see here. Item A. Number 2A. Staff will return to council within 120 days with a report on the following: Policy language to allow city council to establish a maximum number of collectives and to address potential overconcentration. I'm going to read that again. Policy language to allow the city council to establish a maximum number of collectives, and to address potential overconcentration. What I am not understanding from my colleagues is the urgency to pick a number today. We have debated that issue over and over and some of my colleagues have gone from ten to 15 to 30 all in one meeting. It is clear this number is an arbitrary number worth throwing around over and over and over again. I completely agree with the motion in terms of establishing a maximum number, absolutely. But I'd like to go through the process and find out how many we're left with after we regulate this. At the last meeting I asked the question, how many have we closed, as a direction of past council back in June, the answer was two to three. If we do pick a number today which again I'm not opposed to but I'm not understanding why may I ask staff how many are we going to close within the next 30, 120 days or a year? I hear over and over again we don't have staff to go through the process of doing that so let's just say hypothetically if I can ask staff how fast can we close 90 of them if we do adopt a number today? We still have to go through the application process or RFP process or a first come first serve process.

>> Joe Horwedel: I think it is really going to be a function of Rick's staff and my staff, as how fast we can work through those. We would follow up with the letters out to the property owners who have said -- council has set these rules and has now made a decision. I think that would make a large number of them go away, but as we

saw with the three that we did close, it took an extensive amount of work, of Rick's staff and my staff in court to deal with the legal proceedings to shut those down. And so I would say, we're fighting, we may be a year or so.

>> Councilmember Rocha: Ten months two or three, looking at 90 -- I can do the math -- we are looking at a good ten, 12 years.

>> City Attorney Doyle: Council, if I can chime in. The issue of resources is the primary one from my standpoint and my staff's standpoint. I think Deanna mentioned that they would be coming back with proposed staffing, we would do the same as part of the budget process if this were to go forward with what it would take. With that, the - there's a key distinction. Last June the council directed us to focus efforts on those problem collectives. And that's what we've done but we've only been -- there's two to three --

>> Councilmember Rocha: The pace is going to change now?

>> City Attorney Doyle: Well, just my point. My point is it's resource driven. But the point is we've focused our direction on problem collectives that we've received a number of complaints. Still, given limited resources, understood. But the difference is, is that if there is an ordinance in place it's a lot easier to walk into a court that says these aren't allowed because this law says they're not allowed as opposed to this is a nuisance and then we have to prove you up a nuisance issue. We can't do this every night. It is a resource issue it's going to take time no question about it and there may be other things we have to just deal with it.

>> Joe Horwedel: One piece I'll add, our experience with the code inspector who is doing this kind of full time is kind of chasing after the dispensaries --

>> Councilmember Rocha: How many code officers do we have?

>> Joe Horwedel: I have six citywide to deal with General Fund, I have one set aside so all those will come through so we have continuity. What my code inspector has found is that property owners, it's much harder to get

them to begin the eviction process. Where they know that we collectively have not made a decision about where we're going with them. We have been successful in getting property owners early on to go through and evict businesses where you say this use is illegal and we'll go through the compliance process. But as the debate has lingered on, property owners have gone and taken a, well, I'll wait and see where it goes before I'm going to incur the cost to evict the tenant. So I do think that we would see a number of them disappear that way. But I do think that there will be a substantial number where, because of how the leases are set up, how the property owner is willing to go kind of fight for a good tenant, that we would be in court, kind of dealing with that. And it would be a year or two of significant staff resources to do that.

>> Deanna Santana: I would just add for the conversation that we, in June and December, advanced a schedule of fines for illegally operating establishments, as well as for noncompliance for those that end up being registered. The fines are pretty hefty and they were designed that way, so we would bring that forward as well as part of the MBA process.

>> I also add what you've heard described is on the civil side. In the criminal side there are a number of cases that are pending in the District Attorney's office, that affects some clubs that are operating way outside the lines. And that number of those would be closed through the criminal process.

>> Councilmember Rocha: Say that again, could you repeat that again, please?

>> Certainly. The civil process that's described on the code enforcement side does not take into account the number of the criminal investigations that have been ongoing at both the federal and at the state level for some of these operations that are clearly operating outside of any possibility of being included in 215 or within state law. I think the number of those would close down so I can't give you an exact number but I do know that some people realizing that they may be operating similar to the way those that were prosecuted and they would shut down as well.

>> Councilmember Rocha: Thank you. I'm going to shift tracks here and ask a question about last meeting when we did approve item A and it was the understanding of the City Attorney within that we did pick a number. So we clarified I'm assuming that we didn't pick a number last meeting?

>> City Attorney Doyle: The written ordinance that was attached to the memo has a limit of 10. The council direction is, that goes to the Planning Commission for review and comment. You may remember, subsequent to that, Councilmember Nguyen and other councilmembers said they were concerned about that number. Councilmember Herrera made a motion to limit it to 15. That failed. So the reality is, that the papers, the draft that goes to the Planning Commission will have the language in there that says 10. But there will be a cover memo that explains that council didn't necessarily give clear direction on 10. That's what's in the ordinance but we're really looking to the Planning Department to come back with a recommendation. If this motion passes today that would be clarified.

>> Councilmember Rocha: All right, there was also a point made about CEQA analysis at the last meeting, the amount we would need for EIR consideration, from -- and it seems backwards to me at the time where if we put ten in and we ended up approving 50, we wouldn't have to do additional environmental review, but if we put one in, no, the other way around. If we put 100 in and we only allowed 10 we would have to do additional review because the impact would be more specific. So I didn't get any clarification since that last direction. Can you please give me a sense of that?

>> Joe Horwedel: It is, I would say, a little bit counterintuitive. But how I would couch it is that think about gas stations, and there's a finite need of gasoline in San José. And that if you could only do that at a large gas station where it had 50 pumps, that has a very different operation of how it affects traffic in the neighborhood, than if you took those 50 pumps and scattered them with four pumps per gas station, is that that traffic is very dispersed out in the city. What we have seen with the medical marijuana dispensaries and collectives is that we have about 100 of them around the city. That we are not seeing traffic impacts associated. We are seeing some operational impacts that the chief talked about and Councilmember Liccardo talked about. But the concern that I think was raised at the last meeting was if we went through and had a very small number, and that you do have in fact a

demand of whatever the number is of residents of the county or the city for this product, you concentrate it in a small area which creates those operational impacts, traffic impacts, everything gets magnified at a small location.

And that there is at least an argument that could you have the CEQA impacts. We aren't there yet to say that in fact there would be, but we think it needs to get looked at and analyzed so at least we could be sensitive through getting the ordinance adopted.

>> Councilmember Rocha: Should we put one?

>> Joe Horwedel: Well, if we were doing one, I would say -- I would be looking really hard at whether we just start and do an EIR on that. Because I think it would be pretty hard to argue that there would not be any potential of a significant impact not occurring. So the bar is so low on that, I think what it is we're talking of 10, 15, 20, 30, that dissipates what any sort impact might be, at such a level that would be very hard, I think, to argue that there would be a significant impact. So it's just one of ultimately where we'd to go, I think ReneÉ was trying to be -- just provide counsel that you need to recognize there is a consequence to go really small on that number, recognizing there's a reason to do that for other reasons, and we'll just come back with that analysis, it's that.

>> Councilmember Rocha: So then I'm going to shift tracks again over to the RFP to the first come first serve for the lottery discussion. Lieutenant, I guess we're looking at a motion for first comb first served? Have we ever done anything like that? In my mind I'm picturing a concert that everybody wants to go to, we're going to have folks lined up down the street to apply, and I'm trying to understand why we would even suggest something like that, and how we feel that that's going to be a good representation? A good representation of which clubs we prefer to have that are running safe, effective, and compassionate facilities.

>> Deanna Santana: Well, I did mention that we are concerned for sustaining an orderly process, because we do recognize that on a first come, first served basis people will vie for the early slots so that they're first in line. We would open up a period of when the applications could be submitted. In the past, for the Department of public works, for capital projects, the City Clerk's Office would receive those bids, time stamp them, hand them over,

open them and hand them over to the process. So this is not an unusual or unique approach. It is modeled after an approach that has been part of the City's processes over time.

>> Councilmember Rocha: It's not unique to what type of --

>> Deanna Santana: Capital projects. In fact, when we started the decade of investment it was the clerk and we had hundreds and hundreds of capital projects. It was the clerk's office that would receive the bids, keep order to them and keep track of them and then open, unseal them on a certain date and time, and make the information available to the department to begin reviewing and processing. So that is what the process is modeled. We would want to spend a little bit of time to focus on the orderly process. We think it's accomplishable. We did entertain whether proposals could be electronically submitted, we checked our bidsync technology, it's not there yet. And there would be concern from a time stamp perspective and e-mail servers, and we just couldn't overcome a technology solution given the current technology that we have now. So being short of that, a first come, first served, we would offer the -- sorry, Dennis, but we would offer the clerk's office as the neutral ground to receive the application.

>> Councilmember Rocha: Well, I again reiterate, my preference is to the safe, most well run, best located, collective, that keeps in mind the compassionate use for the patient, and a first come, first served, doesn't address that. So I'm going to ask a question, you talked about the RFP process in that we can't legally do an application process where we rank them internally? I've never heard that so that would be the first.

>> Deanna Santana: We talked over the last week of what are the processes available and given the --

>> Councilmember Rocha: Can we legally do our own internal ranking process? Legally?

>> Deanna Santana: Our own internal ranking process?

>> Councilmember Rocha: Yes, administrative.

>> Deanna Santana: Yes, and that in itself is a request for a proposal process, when you have a weighted process of which you then apply scoring and make a selection.

>> Councilmember Rocha: So we could go through a checklist that we establish locate he it in the right place, pay their taxes, conforms to this, no felony convictions we could do that internally?

>> Deanna Santana: That's the pass-fail process that we've put forward.

>> Scott Johnson: Councilmember --

>> Councilmember Rocha: I'm going to close here. Go ahead Scott.

>> Deanna Santana: I'm sorry?

>> Councilmember Rocha: Go ahead, Scott, I'm sorry to interrupt.

>> Scott Johnson: I apologize for interrupting. I just wanted to add that in that bid process, we do have a process where there has been -- in the past where there is a prequalification process. So what we're outlining here in the application process would be similar to that.

>> Councilmember Rocha: I'm talking though scale, from what we talked about, nine to 12 months, thousands and thousands of dollars, as opposed to one person going through a checklist. Thank you, I'm going to leave it at this, I can't support the motion.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. I have a few questions. First, in relation to the onsite-offsite cultivation. My understanding is that the motion allows both, and I can't remember if it was the chief or the City Attorney who addressed that earlier. But I'd like to ask if they could reiterate their comments on the issues that are related to offsite cultivation.

>> City Attorney Doyle: Well I'll take it first because my conversation was, I mentioned it and it was based on the conversation with the District Attorney's office or the District Attorney. I think the issue, we have proposed onsite only in the draft ordinance. The District Attorney agrees with that. I will let the chief or chief Hober address the law enforcement concerns.

>> I'll start and turn it over to chief Hober. The idea is closed loop, so we can maintain close control or the source, no adulterant and it's local.

>> Yes, the importance of having the closed loop is so we can regulate and we know where that marijuana is coming from. As many of the cases that have been outlined here, if we don't have a closed loop system or system where it's grown onsite then I don't know where it's coming from and that creates great concern for me because questions that come up then are, are we then as a city then supporting organized or any other type of crime groups because I can't say where it's coming from. And so if we have it where it's grown on site, there's no question. My regulators can go in there and figure out exactly what's going on and it also allows us to not necessarily police but maybe others look at how -- what kind of chemicals they're using to make sure they're not using other types of chemicals to make sure the marijuana is being grown in a way that isn't going to affect health. So I think that there's many reasons that we would want to keep it in a closed loop system. And then the third reason is, obviously, if it's open to other sources, then those are other places that I would have to try to regulate or follow up, or if it's onsite I would know exactly what to do to do all of those things I've previously described.

>> Councilmember Constant: To either of the chiefs, I assume that this would also cause some concerns regarding the transportation of the product after it's grown, and going out to whichever collective it's going to, what would the impacts from your perspective be there?

>> Yes, well, I think that several issues would come in there. Not knowing where it's coming from and through transportation, could that set up other issues for us? As far as whether that's legal or not, and I don't know that it is. Depending on the amounts and that kind of thing could there be the potential for violence happening when people are transporting and those kinds of issue become paramount as well.

>> Councilmember Constant: Thank you so continuing on that vein to Joe Horwedel how would we address the offsite cultivation from a zoning perspective?

>> Joe Horwedel: How we look at it is more akin to agriculture. Greenhouses we do a lot of agricultural activities inside buildings open fields or greenhouses. So which I can do in just about any zoning district including our industrial.

>> Councilmember Constant: Okay, so we have a method for that but it's not necessarily outlined in what we have in our staff reports, correct?

>> Joe Horwedel: It's already in place in our zoning codes. I think we're okay from that end and it's more about the security regulatory side that the chief is concerned with.

>> Councilmember Constant: And then Deanna, you mentioned some of the fees for noncompliance. Do we envision, and this could be for either you or the City Attorney, do we envision other municipal codes that need to be required and steep administrative penalties and how the due process of all that would work for people who ultimately if we pass either one of these decide to not operate within those guidelines?

>> Deanna Santana: What we have is, we have a schedule of fees that will outline the application processing fee, the hourly investigative fee, and the annual operating fee. And just to the extent as Chief Hober explained the offsite, we would accommodate for that to allow staffing to regulate offsite locations, and that would present itself in the MBA that we bring forward. The second part of the action is the schedule of fines and that reflects hefty fines for noncompliance. We would bring all of that forward. I don't envision any other additional action on cost of. I would look to Rick but those are the two key documents where we charge fees and fines.

>> Councilmember Constant: Okay, that kind of leads me into my next question. Because we know that clearly, there's some people that have the medicinal need for marijuana. It's a decision made between them and their doctors and they've made that determination. But I think many of us would also agree that there's a large number of people that don't fit into that category that have become participants in this activity. Whether it be because they don't have a card, and they act as if they do, or they responded to one of the multitude of advertisements you can find all over, got a problem, get a card in five minutes, and get your marijuana. Or quite frankly, doctors who just decide to give out cards without any prerequisites. What, from our perspective, what enforcement can we do, do we have tools to deal with that now, what tools would we need to deal with those type of situations?

>> As you have appropriate identified, it's very, very difficult to enforce when you're talking about the medical profession. Doctors that may or may not be adhering to best practices of medicine. With respect to those who might be issuing cards where they probably are not appropriate, we have done some enforcement operations and actually have some cases pending at the District Attorney's office on those very issues but they're very time intensive investigations to do that and particularly with respect to the medical providers it's very, very difficult for us to participate in any of that regulation.

>> Councilmember Constant: So to operate a sting type investigation is a very costly endeavor. And having been involved in those myself when I was at the department I know it's not as simple as deciding you're going to do an undercover operation. How does that fit within your workforce that you have right now? Or might have in a few months?

>> As we all recognize our staffing challenges are going to continue in the upcoming years. We're looking at reduction in our workforce. It would be very, very difficult, it's difficult to do now and would be even more so moving forward with our projected staffing.

>> Councilmember Constant: If we move forward if one of these motion ultimately passes and we end up with five, ten, 30, whatever the number that may end up, we obviously have the fees to get them operating, the application fee and all that stuff. Where do we envision coming up with the resources to have ongoing monitoring and effective ongoing regulation and enforcement for X number of businesses within our city?

>> Deanna Santana: The staffing plan that we would bring forward in the MBA, would be the staff assigned to monitor the regulations. What we did in December it reflected 5 FTEs. Based on the actions taken by council we'll have to go back and evaluate whether five is still the right number. We'll weigh that against proposed cuts. I know Joe may want to talk about his code enforcement resources, but we will weigh that -- we'll balance that out against the proposed operating budget and how we can bring forward a good staffing plan that will uphold the regulations.

>> Councilmember Constant: What about the revenue to support that? Are you looking at would it potentially be a model like the card club teams that regulate the card clubs or the dedicated -- there's a dedicated funding stream for that?

>> Deanna Santana: Yes, the annual operating fee, the term of the registration is for one year. Each year the collective would need to reregister and submit the annual operating fee so that those staff costs are covered.

>> Councilmember Constant: Okay kind of continuing in that vein, chief, either chief, have you had discussions to a great extent with other police departments that have -- where their cities have allowed collectives in any, whatsoever form, to discuss the challenges that they've had in regulating and enforcing them?

>> I've had a number of conversations with chiefs all over the state. Large and small. And for a large number of them as reflected by the numbers of those jurisdictions that have bans, to them it's just not worth the headache for them and they've shared that with their council. For those who operate and I speak specifically with the major cities in California it's a challenge. It's one that they would prefer to have but their councils have moved forward and as is their responsible as would be mine given direction from council to make it work. And I know they're struggling with it and they will continue to struggle with it but we will do our best.

>> Councilmember Constant: So let me just be blunt. Given the motion that's here right now in front of the council, what is your opinion?

>> Given the state of the law, appreciate the question first of all. Given the state of the uncertainty of California state law I am uncomfortable with moving forward with any number. Having said that, what we have now is Councilmember Liccardo stated is unacceptable. We need to move forward. This is truly the wild West. There's a lot of people that are operating well outside the law. In anybody's definition. So as you move that number down to, say, ten, what -- I would prefer a ban if that's what you're asking but if council sees fit to move forward with a number that's much smaller than 100, and say 10, we would do our best as staff and that means not only the police department but I'll speak for the rest of us to enact what council wants us to do but professionally, I think it would be best given the uncertainty of the law that we waits until we get clarity in that law before we engage in this.

>> Councilmember Constant: And then there was reference made to the number of violent robberies versus the statistic of overall robberies. I'm sure many people are aware but can you clarify the difference between a violent robberies to the stark contrast to the other robberies we may have that are technically robberies, theft from a person versus violent robberies where there's guns and invasions and takeover type stuff?

>> Under California penal code section 211, robbery is defined as the taking of property by force or fear. When I used the term violent robbery, you heard the description of the people being pistol whipped or being shot. Those are really egregious. They're all egregious, but those types of cases are really bad, where people are trying to

inflict harm rather than just force or fear. To Councilmember Oliverio's point though, we do have a lot of robberies, not relative to other major cities we do not but it's still compared to the seven that we've seen in these dispensaries. My concern is this, though, is we're not getting some of these reported. I think when we've seen these operations where we've responded to these robberies we ends up taking enforcement action and taking custody of some of the -- of the marijuana and so I do beef that we are seeing events that have occurred. After the fact and said that they'd never been reported. I can't confirm that because they're not reported. But I do believe that taking place and to use an analogy and it's not the best one, but things that are occurring in some of the clubs downtown that were not being reported that are pretty egregious I suspect some of these things would be happening in these clubs or in these dispensaries.

>> Councilmember Constant: I think it's important to point out, because I know that in my short number of years on the police department I responded to a lot of robbery calls and took a lot of reports in robberies, but a very small percentage were violent robberies, or of the magnitude that you described. And I think that's important to keep in mind, because statistics don't always paint a clear and accurate picture of what we face. My next question, hopefully I'm getting to the end here, sorry mayor for taking so long. And this is I guess to Rick. Given your interpretation, of prop 215, does the motion as it sits right now satisfy those definitions of collectives?

>> City Attorney Doyle: Yes. As I understand the motion, it is taking the staff report, and the proposed ordinance, as modified by my supplemental memo on Friday, and then as modified by the Vice Mayor's -- further modified by the Vice Mayor's memorandum. And let me point to the purpose and intent section of this ordinance. Frequently, any recitals and you look at purpose and intent and it doesn't really provide a lot. But here it's clear that we reference state law and specifically say it is the purpose and intent of this chapter to regulate the cultivation of medical marijuana to make sure that medical marijuana is cultivated in a manner which is responsible and as intended by the voters of California in enacting proposition 215 while at the same time protecting the health, safety and welfare of the residents of San José. Given the reality that federal law is makes it illegal, this is the best we can do I think and that's the spirit and the intent of these regulations.

>> Councilmember Constant: Okay and I have to tell you I've had mixed emotions on this issue from the time we started. Because not only of the number of twists and turns it has taken, but the information, and really, trying to reconcile as I think Councilmember Chu mentioned federal law that's inconsistent with state law that's inconsistent with local application with just the void of any regulations at our local level. So I still haven't decided how I'm going to vote, so I guess you guys will find out when I figure it out. So I think it's important that we do one more thing and I've brought this up in other meetings, is I think we need to continue to lobby and keep it on our priorities, legislative priorities at both the federal and the state level that we get some resolution to this. Because just because we get one or the other or some thirds alternative today, the problem is not necessarily going to be any clearer. And while the current administration has taken one stance, but it was very -- very, very narrow because it said will not focus on seriously ill patients, it's a very, very narrow interpretation of things. We all know administrations change, subadministrations within administrations change, and we could have a new president at any point. We've had vice presidents become presidents in the past for a variety of reasons. There are a lot of things that can change, they can change at any time and put our city in a lot of upheaval. So I would like to also have -- and I don't know if the Vice Mayor would take this friendly amendment to the bunch of other friendly amendments, that we convey by council resolution to our governor, and this California state legislature and the attorney general and the Congress of the United States, that their failure to create a sensible approach to regulation of medicinal marijuana has placed an undue burden on cities like San José precisely when we lack the resources to adequately address those burdens and that in addition, we continue to work with the cities association and the league of cities and other organizations, to push that the federal schedule either gets changed and the FDA takes over the process like they should, or some other resolution that will have it treated like other drugs that have medicinal purposes. That was a request.

>> Councilmember Nguyen: That would be acceptable.

>> Councilmember Constant: Thanks.

>> Councilmember Liccardo: I emphatically agree.

>> Councilmember Constant: I still don't know whether I'm going to vote for it but it's in there.

>> Mayor Reed: That's another friendly amendment. Councilmember Herrera.

>> Councilmember Herrera: Thank you mayor. I appreciate all the questions been asked by my colleagues and I appreciate the seriousness which we've approached this. In spite of the comments that we have taken our time or changed our minds or whatever has been said, I think it's because we take it seriously and all of us are analyzing it and trying to make the best decision we can. I have co-authored a memo in the past that went to rules asking for ten collectives. I have never supported anything greater than ten. That was the number that I randomly selected. Pretty much one per each district, and I'm glad it's come back to that number. I have been going back and forth in terms of, since I had spoken with our chief, and learned about some of the other serious Public Safety issues, I've been quoted as wanting a ban. And I want to explain what I mean when I say ban. I mean ban on the illegal entities that exist in our community. I think whatever we do going forwards and I agree that we need to make some decision and move forward. I think that's very clear. And I also don't think there is a pathway that we can choose today that might not risk -- that would guarantee that we don't have litigation. I think that it's fraught with potential issues and controversy no matter what we do. So I don't think we're going to totally avoid that prospect. But I think what we need to do is make sure we're in compliance as we can be with 215. That's the one law we ought to try to be as compliant as we can. We're going to be out of sync with federal law we all know that but we need to be in Singh with 215. Some of the areas I'm concerned about. I want to make sure what we end up with are collectives not dispensaries. When I made a motion to ban back in December my intention was to ban dispensaries and contemplate collectives, the legal entities that were allowed to exist in San José. As I said before at our last meeting, we are not here to debate the therapeutic use or value of marijuana, but we do need to be in compliance with 215. So I have a question -- a couple of questions also for the chief, I guess, and whoever wants to answer this. Whether this council approves a limited number of dispensaries, 10, to exist, or decides to ban them, San José PD is going to be tasked with closing most of the dispensaries that exist in San José. How do you see this being accomplished, what are your concerns, both legal and staffing?

>> Clearly, with the staffing levels that we have now and that are projected to have in the upcoming year, it's going to be difficult. I see it operating on two fronts, one as you've previously described by Joe, and that is on the civil side. Whatever process we go through to identify the ten, any others would be out of compliance. We would probably also engage in a number of investigations on the criminal side for those that are clearly the outliers. Through those two processes we would see the reduction in numbers beyond the ten or whatever number would be there. It wouldn't eliminate them. I don't think anybody in the room believes that we're ever going to get rid of all of those who are selling marijuana or any other drug in this city but it would be a strain on our resources. But I any between if we had clear direction the civil side would be effective as would the criminal side.

>> Councilmember Herrera: So chief, the clear direction, us being unambiguous in making a decision, would be -- would give you a better tool than moving forward to implement whatever you need to implement?

>> Absolutely. I think one of the strongest things and best things this council can do is make a clear definitive policy statement on if it is a number or a ban, whatever that is, and also, if I could endorse the recommendation, whether it's appropriate for me to do so, on Councilmember Constant asking for clarification from our federal and state legislators, I think that would help us as well as other cities in California that are facing or would face this issue.

>> Councilmember Herrera: So I'm concerned, one of the areas I'm concerned about in the motion is the offsite cultivation. That's the one area that clearly we're out of sync with 215. Would you agree with that chief?

>> I'm going to defer to chief Hober on that.

>> Councilmember Herrera: And I'd also want to hear from the City Attorney on that.

>> Yes, that causes great concern for me with the outside cultivation, for the reasons that I already described in regard to having it not onsite where we could then regulate. So that would cause the greatest concern for me.

>> Councilmember Herrera: And City Attorney.

>> City Attorney Doyle: And that's the same with me and I would confirm again my mention with the District Attorney who raised the same concern about offsite cultivation.

>> Councilmember Herrera: So I would be inclined to support the motion, the substitute motion if we can take offsite cultivation out of the motion, so that we're compliant with 215. I think that there's already some risk. Those of us up here voting for this and the city staff we're asking to support it, because I think we're on the bleeding edge, we're going to join other cities who have done that. But at least I think we ought to go in, being compliant with 215 and listening to the recommendations that are being made by our staff, by the police department and by the City Attorney. Would you accept a friendly amendment?

>> Councilmember Nguyen: Councilmember Herrera, appreciate the concern, I think it's the same concern raised by Councilmember Constant and because I have already agreed to limit the number to 10, I hope that the 10 will just go to the collectives and not the offsite cultivation site, so that would be acceptable by me.

>> Councilmember Herrera: Thank you. And I'd also like to include --

>> Mayor Reed: Sorry, let me check with the seconder?

>> Councilmember Liccardo: That's fine.

>> Mayor Reed: It's okay, so another friendly amendment is accepted.

>> Councilmember Herrera: I'd also like to include the District Attorney's draft regulations. I know they're going to be looked at, but I want to explicitly call that out because I think that again --

>> City Attorney Doyle: And when they become final that would supersede the draft.

>> Councilmember Herrera: Great. We have the draft right now. Great, I really appreciate that. This is a tough decision for me because I want to make sure that we're doing -- you know we want to do things that are legal. We're sending a message not just to the folks that need medical marijuana but to our entire community by the decisions we make that today and so I think we have to really be mindful on that I feel much more confident now that by moving forward we are fully compliant with 215. I have one more question, I'm not sure who I'm directing this Tao to. If a collective wants to sell to another entity, I would -- I want to know how that would be handled. That's an issue right now in Oakland where a dispensary, and I don't want dispensaries so I don't envision collectives could be sold. Would you address if they try to sell and we end up with another owner that might not fit the kind of ownership we might want in a collective how are we addressing that in our --

>> City Attorney Doyle: You remember last week when you adopted the land use ordinance, we had a verification of zoning. We do not give collective anything that runs with the land so it is unique to that owner. Similarly the registration process of the police department is unique to that owner. So any new owner that come to the city would have to qualify et cetera, et cetera.

>> Councilmember Herrera: I thought that was the case, I just wanted to make sure because that is a current item that Oakland's dealing with right now. I will be supporting the motion. I really appreciate all the work that my colleagues have done on this issue.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you. And if I can have clarification, for a moment on what was just added to the motion from Councilmember Herrera?

>> Mayor Reed: It was a friendly amendment to the motion which was accepted to modify the recommendation in Vice Mayor Nguyen's memo to delete the section allowing offsite cultivation.

>> Councilmember Kalra: That's what I thought I heard in the back. Thank you. First of all, some of the concerns that have been addressed or expressed regarding conflict with federal law or with lack of clarity or at least not being totally, the state law not being totally clear. We knew this and had known this for a very long time, even when a large majority of the council voted to put the tax on -- to tax the collectives and dispensaries back in the summer and it went on the ballot in November. You know those are the kinds of discussions that we actually did have and should have had and to hear now that there's this grave concern about it when we had no problem when it comes to taxing the collectives now we have a problem all of a sudden when it comes to regulating them. And so I don't see that as an issue. Do I think that local jurisdictions especially when it comes to these kinds of laws have to clear up the ambiguity by pressing forward. I think that's what we're doing is pressing forward. Since the state hasn't taken action you have a number of jurisdictions around the state now that have, municipal jurisdictions whether it be county or city can help inform the state as to how to better clarify their position on some of these ambiguities. In regards to some of the issues regarding crime, and the indication that you know we've set ourselves up as a target yes, we have because we don't have regulation in place and we have a number of collectives that are operating in a manner that we don't want to have in our city including the way that they're doing terms of security, how they're -- you know how they're collecting whether it be cash or whether it be the marijuana itself. So we're going forward in order to create regulations that create a safer environment for the patients, that's the goal. We don't have that right now. Going forward we can put that together and that's ultimately the goal. In terms of the crimes that are occurring, you know, I think that when you mention anecdotes like that, it certainly raises fear. And when you raise fear you sometimes have a fear of moving forward in a way that's more liberal in terms of allowing the more number. I don't think the crime has to do with the numbers rather than the lack of regulation. The numbers that Councilmember Oliverio, Rocha and myself put forward does not say we should have a limit as Councilmember Rocha says, it says we should be more informed when we decide what that limit is We don't know what the number up to ten whether CEQA analysis will be necessary or not. That's a huge factor to take into account, as Rick indicated, a concern of the federal government in these letters, which apparently are form letters, because they're pumping them out in 24 hours. If we ask for advice, we'll probably get one on the fax machine tomorrow morning. Because it's not an analysis of our policy, of our ordinance, that is just a standard, by-the-book, on-the-cover policy. But clearly they have given

an indication that they will allow for states that have passed medical marijuana ordinances, compassionate care ordinances, to at least dictate how they are going to handle this as long as they don't become criminal operations. Having a limit of ten creates the specter of large scale operations, especially if you are create onsite. We are going to create an environment that's going to create large scale operations that may trigger a greater concern from the federal government. And we're creating a problem that we're not aware of because again just as the Vice Mayor indicated and others have we don't know what the right number is. To pretend we do without taking under serious consideration of putting that limit in both in terms of Public Safety in terms of opening ourselves to litigation or risks from the federal government both the collective as well as the city creates grave concern for me. Now, when it comes to concerns about oh, well they have people that are getting cards that they may not have cancer, they may not be seriously ill, the reality is the voters passed prop 215. Prop 215 does state cancer, chronic pain, any other illness for which marijuana provided relief. The voters voted they were going to give a broad range of doctor-patient relationship that is going to determine when and if marijuana can provide relief to that patient. We may not like it, it may not be how we would have written it as individuals, but that's the way the law was stated that the voters of the state passed it and the voters of this county passed it as well. In terms of some of the -- the draft from the DA's office. I do appreciate that he's indicated that the sale component is a nonissue, because you'd have to operate it -- the more you operate like a business, the easier it is for us to regulate it. The easier it is for us to have the books, for people to look at them, to have payroll, to have health care, it's way easier than having to give marijuana as payment. I also appreciate the comment on edibles. Now, I feel that we are going too far in terms of picking a number at this point without having all the information before us, both in terms of CEQA analysis as well as Public Safety issues. One of the issues raised that was also added as a friendly amendment was the felony misdemeanor issue. You know, the reality is that I would be very cautious about that. First of all, especially if you have patients that in the past -- the law was very different -- may have had a misdemeanor involving possession of marijuana, and since that time there have been laws put in place that now allow for that individual to possess or use marijuana or be part of a collective. I spent over five years in the drug courts, and I'll tell you in this county, they don't reduce felony sales and what have you down to misdemeanors. It just doesn't happen. So again, just from -- it's great to put anecdotes out there, the reality is, though, that I think having a process that's more extensive than a first come first serve lottery gets rid of a lot of these problems. The ten -- the three choices are a lottery, a lottery gets you the ten luckiest. First come first

served gets you the first ten the fastest, the one that can wait in line for a week. An RFP or ranked selection system gets you the 10 best. Again I don't agree with the number 10 but I think the way we're going about this is not going to produce the best results. If we can come up -- I don't think the first ten on a pass-fail basis, based on a basic set of minimum qualifications, is going to create the safest collectives for our community or for our patients. I think you have the best chance of getting that, of getting well intentioned operators, when you have some kind of ranking or scoring system and you're less likely to have the criminal element involved the more exhaustive you are in looking at these applications. And so I don't -- I'm really puzzled as to how first come first served has suddenly become the choice when it really -- I mean it doesn't give us the quality that we seem to be concerned about, in terms of our public safety ramifications, and in terms of the kind of operators we want in our city. So I cannot support the motion on the table. The main two reasons are, I think that putting a cap of ten is premature. It's not an informed decision as, has been indicated. We've been jumping around on the number. And equally importantly, I think the first come first served system does not provide us with the quality establishments we'd like, and I don't see why we can't do some kind of scoring or ranking system and why that seems to be one system that the staff seems to have the biggest problem with, when we don't seem to see the problem about the first come first served system and I don't look forward to seeing what's going to be outside City Hall when the data is announced because there will be people waiting for weeks.

>> Mayor Reed: Councilmember Campos. All right folks, don't interrupt the meeting, we got work to do, just be calm. A little bit of applause is okay. Just hold it down. Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. Given that this is a continuation of the meeting from last week, I'll keep my comments short. My position still hasn't changed. For me it comes down to again to the availability of resources to be able to not just monitor but enforce whatever ordinance comes out. And I do believe an ordinance is going to come out today. Which motion, I'm not sure. But my position hasn't changed and it's actually gotten stronger, given the information that came in later today. I thank the chief for his honest and candid opinion. As the leader of our police department we rely on your professional opinion to help us make these decisions and not only that, but we also got the draft from the District Attorney, the medical marijuana prosecution protocol, in which in this entire document, the only section that is not just bolded, but it's larger font, says warning, and I'll read it,

marijuana is illegal under federal law, no action by the California voters, California legislature, or policy of California prosecutors or law enforcement can or will change that simple reality. And for me, that says it. I think, again, reiterate the feds need to grab ahold of this. This is an issue that they cannot continue to dodge. Because again, as I said before, we know that there are benefits for medicinal uses of marijuana. We know that. But the feds need to deal with it so that we can have pharmacies, in my opinion, that are the place to dispense medication. And other than that, again, if we have a ranked system, which I do agree with Councilmember Kalra, that would be the best system, because then you have to do through this rigorous process. However, there are still ways around it and I have no doubt that the cartels are out there looking, how do we have a legal way of moving product? With that I just simply cannot support an ordinance that would provide the abilities to sell marijuana in City of San José. Thank you.

>> Mayor Reed: Councilmember Liccardo. I'm sorry. Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. As you know, I did not push my memo forward. This is memo-wars time. But there was a reason for it. And Rick would you like to explain it a little more than --

>> City Attorney Doyle: The item under your sunshine rules to take up an ordinance, to ban, would required two-thirds vote of the city council to move it forward. Aside from the action itself. So you withdrew it. So --

>> Councilmember Pyle: Yes, and I would like to say that I most closely agree with what our staff has proposed which is very much reflective in Madison Nguyen's memo. You have given this quite a long amount of deliberation, isn't it nearly two years? And you came up with the number 10 and that seems fairly reasonable. I think too there is some misconception that we won't be thorough with the applications that come in and Deanna I've talked to you privately and you have made me feel more relaxed that it would be very, very thorough, and that each person that submitted an application would be given a very strenuous look. Would you want to comment on that?

>> Deanna Santana: That's correct. And earlier in this presentation we did walk through the registration requirements and as I noted this week and last week they cover about ten pages of the ordinance.

>> Councilmember Pyle: And the other thing is anybody who's doing kinds of a start-up company which you could think of in as, because of the time and investment you're going to be putting into this, I'm hoping at a future time when things look like they are moving ahead, that we could address some of the money for that. This could be on for another session but we do have to provide what you need north to do the job right. So with that I'd like to call for the vote on Madison Nguyen's memo.

>> Mayor Reed: All right, we have a call for the question, that is a request to cut off debate. Those issues are decided without debate, but it requires a two-thirds vote to cut off debate. So that is the question. So on the call of the question, all in favor of terminating debate? Opposed? Opposed: Kalra, Chu. Motion passes on a 9-2 vote. So that closes the debate on the substitute motion, which is on the floor. Which means now we're going to vote on the substitute motion without further ado, is that right City Attorney?

>> City Manager Figone: Mayor could you clarify the motion for staff?

>> Mayor Reed: I will attempt to restate the motion, I may have to ask --

>> Councilmember Nguyen: I can do it.

>> Mayor Reed: Okay, I'll ask the maker of the motion to restate the motion.

>> Councilmember Nguyen: Thank you. So the motion in front of us is to approve my motion of April 15th, 2011, with the following amendments, from Councilmember Liccardo: No more than two collectives in each council district, and collectives should not locate in pedestrian-sensitive retail areas such as the plant, Eastridge Mall, Oakridge Mall, and the rest staff can determine. From the Mayor, background checks should include misdemeanor convictions. From Councilmember Constant, we should submit a resolution to the governor, the

AG, the federal government for further clarification, help on how to address this issue. And finally from Councilmember Herrera, to eliminate the offsite cultivation and also include the draft from the District Attorney's office.

>> Councilmember Constant: And don't forget yours that was ten instead of 20.

>> Councilmember Nguyen: Yes, and my initial change to approve a cap of 10 medical marijuana collectives in the City of San José.

>> Mayor Reed: City staff, are you sure you understand what the motion is?

>> Deanna Santana: Yes, I did hear the motion. Maybe I wasn't listening, was there -- I believe there was reference to incorporating the D.A.'s draft and then the final.

>> Councilmember Nguyen: That's right.

>> Deanna Santana: Okay, that was stated. And councilmember Liccardo, Laurel brought to my attention, you made reference to ground floor uses. And we just want to understand that a little bit more clearly.

>> Councilmember Liccardo: Sure. I was referring, for instance, in the downtown, as I hope downtown would be included among the sensitive retail areas, we have restrictions on office use on first floors. As I talked to my colleagues about how these impacts might affect different businesses we recognize that in some places like valley fair you have pedestrian access on second floors. And so I specifically asked for a friendly amendment to focus on retail at pedestrian level.

>> Deanna Santana: Okay, that's clear.

>> Mayor Reed: Okay, that is the motion on the floor. On the motion, all in favor? Opposed? Kalra, Oliverio, Chu, Campos, that's four. Five with, the guy down at the end, Rocha. I need better glasses. So I believe my count that passes on a 6-5 vote. So the motion is approved. There are other matters that are part of the staff's recommendation. I believe it was staff's recommendation to come back with different numbers on the -- some of the issues, we don't need to approve specific numbers tonight. There's going to be an MBA process, manager's budget addendum on some of the numbers. Is there anything in the way of formal action that the council needs to take at this time?

>> Deanna Santana: I would like to just restate what the City Manager said. We will prepare an info memo on the process and the schedule. As the city council noted earlier the timing and amount, having given ourselves sufficient time is going to be important, so that will follow by an info memo.

>> Mayor Reed: All right, the last thing on our afternoon agenda, even though it's evening, is the open forum. Are there any cards? There are no cards under open forum, so we have completed our meeting. We are adjourned.