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>> Mayor Reed: (gavel strike) Good afternoon. Call the San José city council meeting to order for the November 2nd, 2010, happy election day everybody. We will start with the invocation, something a little different it seems today. Councilmember Pyle, if you want to introduce the invocator or invocators, I guess.

>> Councilmember Pyle: I absolutely do, mayor. You know, animal care is something that all of us care a great deal about. And November hosts animal shelter awareness week. So today we have members from the animal care and services division to lead our invocation. San José's animal care and services is a full-time division that offers the community many valuable programs and services. For example, it provides shelter and field services for San José residents, as well as those of Cupertino, Los Gatos, Milpitas and Saratoga. That little songbird is bound to be the star of the show today. But with us too is director John Cicirelli, who does a marvelous job, along with administrator Dottie Barney -- can you raise your hand, Dottie -- and shelter manager Stacy Danes, field manager Leslie Tisdale and public relations Julie St. Gregory. And now we'll begin with John telling us a little something about our visitors.

>> Well, thank you, Councilmember Pyle. Thank you for helping us raise awareness about animal shelter appreciation week. We're the largest animal shelter in the area, we're taking in about 19,000 animals a year. And so we brought some for you to see and hear a little story about today, and hopefully, either it might interest you, or your friends, or your neighbors. We certainly encourage you, if you're looking for a pet or if they're looking for a pet, to try out our animal shelter. It's on Monterey road, 2750 Monterey Road. Great big facility. We always have the largest selection of animals available of any agency in the area. We have great prices, great services, they already have all their shots, they're spayed and neutered and they have microchips. And the -- what we sometimes like to call in our business, they are certified preowned animals. [ Laughter ]

>> So we'd like to do other services, too, like low cost spay-neuter services for the community, so if you have a cat that's living out in the be about a that's having kittens we would love to see you out there. We also have a Website, SanJoséanimals.com. My friends, first Captain Tisdale has CC. She made it into our animal guardian program. We don't have the means to fix every animal that comes in with broken parts, CC gets a second lease on life, we repaired her leg. As you can see she's actually standing now, and she'll be available for adoption very

soon, and she's a great sweet friendly dog. And right here on my left is Norm. We think he's a Chihuahua and Pomeranian mix. He's a great little guy, he's available for adoption now, really friendly, very good around people in all situations, just a wonderful dog, particularly for like a low-key lifestyle. And then right next to Norm is a little baby kitten, which we get many of, thousands of them a year. This kitten we have named Nancy, in honor of Nancy Pyle, the councilmember who has helped us bring awareness today to our cause. Nancy will be available tomorrow for adoption, so if you're looking for a kitten, we have lots of other types of kitten. And then next to Nancy is Pendleton the rabbit. You might not know this but rabbits are the third most popular pets that people keep for companions. We see a lot of rabbits through our animal shelter. Pendleton's a great guy, you can see most people think of rabbits as being really fearful or scared easily. But you can see he's hanging in there, even in this different environment and with all these eyes staring at him. They make great companions. You can even train them to use a litter box, just like a cat in your house. On the end are a couple of success stories. With Julie, in her hands is the cat PJ, he is a Persian, had a lot of respiratory problems, things like that. Julie actually wound up adopting him, he's Julie's cat. And you can see his little friend on her left shoulder there, if you're looking closely, is Kitty, a lovebird. Kitty also came through the animal shelter and was rescued through the animal shelter. So we get all types, we get all kinds, and we take all types and all kinds. So when you're thinking about pets, you're thinking about adding a new companion to your home, we want to ask you to think about our animal shelter. And even if our animal shelter doesn't have what you're looking at, think about the other animal shelters in the community. We all try to work together and support each other to find new homes for these second-chance animals. So thank you again, Councilmember Pyle. Thank you to the council and the mayor. We appreciate it.

>> Councilmember Kalra: Thank you for bringing your feathered and furry friends with you. Thank you.

>> Mayor Reed: Thank you. Next we have the pledge of allegiance. Please all stand for the pledge. [ pledge of allegiance ]

>> Mayor Reed: Orders of the day. Are there any changes to the printed agenda? I have a couple of modifications. 9.1 and 9.2 will be considered in a joint city council-RDA board session and item 9.2, the amendments to the General Fund for 2010-11 rebalancing actions related to the redevelopment agency

reimburse programs will be heard concurrently with item 8.1 on the redevelopment agenda, and then we will move the City Manager's report and take that up before the ceremonials. Any other changes to the agenda order? Motion is to approve the orders of the day. All in favor, opposed, none opposed, that's approved. We will adjourn this meeting in memory of Ed Beckman for his outstanding dedication of over 50 years of service and volunteerism to the San José community. Vice Mayor Chirco has some additional comments.

>> Councilmember Chirco: Thank you, mayor. I've awarded many District 9 stars during my eight years in office but only twice asked us to adjourn a council meeting in memory of a person with an outstanding commitment to the City of San José. Today I requested adjournment in memory of Edward Donald Beckman but I'm not sure many of his friends or even Dottie his wife would recognize that name. He was Ed. He was a Cambrian volunteer extraordinaire. He did not give hundreds of hours of his time and energy but years of dedicated service in a variety of ways from using his insurance background as a tenacious counselor to the elderly with health insurance problems through the health insurance counseling and advocacy program which we commonly know as high cap. For the past 24 years, to do fundraising for children's service as a 40-plus, 40-plus, wow, a lot of people in this room aren't even that old, a member of the Cambrian park Kiwanis club, he fought for children's health insurance, affordable housing, and youth programs as a 20-year leader with people acting in community together, pact. He served his church, Cambrian Park United Methodist, in so many capacities that the minister nicknamed him Rev. He had the honor of being selected as one of the Olympic torch runners for the 1996 Olympics as it passed through San José! Ed had a big heart and all of San José appreciates the many ways he made our community a better place. Up until his death at 87 Ed was hard at work helping his elderly clients with their health insurance problems, while battling cancer himself. At his memorial service many spoke of his honesty, tenacity, reliability and his big heart that touched so many lives. I will miss Ed and his ability to volunteer me for many of his community efforts. Ed not only volunteered himself generously but took his friends with him, and I am grateful. He was raised in Pennsylvania and moved to San José for a job in the dairy business. In 1969 he started a successful insurance business from which he retired but never stopped working for the betterment of others in the community. A navy veteran, Ed is survived by his wife of 65 years, Dottie who is with us here today, three sons and their families. And we are grateful to have Dottie join us today in honoring this wonderful man who contributed so very much. Thank you, mayor.

>> Mayor Reed: Thank you, Vice Mayor Chirco. First item of business would be the closed session report, City Attorney.

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

>> Mayor Reed: Take up item 3.1, report of the City Manager's.

>> City Manager Figone: Thank you, Mr. Mayor, members of the council. It's my pleasure to introduce to you today 18 elected mayors from cities in the state of Sinaloa, Mexico. San José is playing host to these mayors this week. The delegation of mayors is here as part of a four-day study tour arranged through ICMA which you know is the international city county managers association and is sponsored by the economic development council of Sinaloa. Over the week they are visiting four Bay Area cities, seeing how we develop policy and foster public engagement under a council-manager form of government. The visit is focused on learning more how we advance economic development, environmental and planning issues. This morning we had a chance to discuss the organizational structure of our city and the council-manager form of government and they had a particularly interest on our budget issues and how we work through them over the last nine years. This afternoon following their time here at council meeting there will be a tour of City Hall and then they will be focused on economic development, learning about the City's clean tech clusters, Green Vision and innovative partnerships. On Thursday they will get a tour by the Redevelopment Agency staff of some of our downtown development projects and discuss our efforts for job creation and business expansion in San José. They will also visit Roosevelt and Mayfair community centers and discuss our gang prevention activities. In addition to San José, the delegation is spending time in Burlingame, Mountain View and Redwood City. Please join me in welcoming the delegation of elected mayors representing the 18 cities in the Mexican state of Sinaloa. [applause]

>> Mayor Reed: Thank you, welcome. Happy to have you visit us. I got a chance to meet some of the mayors before the meeting. And as always mayors commiserate over the same thing: Not enough money, too much work, and mayors have to figure out somehow how to make it all work out. Welcome, and hope you find some

things useful here that you can take back with you. We'll now do the one ceremonial item we have. I'd like to invite the Bay Area affiliate of the pancreatic cancer action network members that are here to join me at the podium. Today we're recognizing the modify of November 2010 as pancreatic cancer month in the City of San José. About every 12 minutes another American is diagnosed with pancreatic cancer. It's the fourth leading cause of cancer death in the United States. Highest mortality rate of all the major cancers. Only 6% of the people who are stricken with it will survive five years and most will die within the first year of diagnosis. There have been no significant improvements in the outlook for pancreatic cancer patients in the last 40 years. Every year more than 35,000 Americans will die from it. And probably nearly 4,000 will be from California and certainly many from the City of San José. Federal government invests significantly less money in pancreatic cancer research than it does in any other leading cancer killers. Only about 2% of the national cancer institute's funding goes to pancreatic cancer. So we're working to bring public awareness to this devastating disease hoping of advancing research and developing early detection methods and more effective treatment and hopefully even cure. So we're joining with 27 other Bay Area cities as well as the state of California in declaring November to be pancreatic cancer awareness month. And I have a proclamation here I want to present.

>> Thank you, Mayor Reed, and the city council of San José. My name is Sharon Burkitt, and I'm a four year survivor of pancreatic cancer. When I started looking for information and guidance, I found the pancreatic action network. And today as a volunteer I accept the proclamation of November, as pancreatic cancer awareness month for the City of San José, and Mayor Reed. I was fortunate that my cancer was discovered early. Enough that surgery was an option. Many are not so blessed. Pancreatic cancer has the highest mortality rate of all major cancers and is the only one of the top 10 cancer killers that still has a five year survival rate of less -- single digits, 6%. There has been no significant improvements. However, new research suggests that early detection could vastly improve the outcome of pancreatic cancer patients. In that way we are asking for public awareness of this devastating disease and to provide -- to help research towards developing early detection methods, more effective treatment and even a cure. Let your Congressman and senators know that we need action so that we can improve the outcome for pancreatic cancer patients. Thank you.

>> Mayor Reed: Thank you. [applause]

>> Mayor Reed: Next item to consider is the consent calendar. I have a couple of requests. People to speak on the consent calendar. I'll take that testimony now, before the council decides what to do here. Scott Strickland and Louis Robert Chermonte Jr.

>> Thank you, mayor and council. Scott Strickland representing one of the airport concessionaires. Item 2.11 is an audit report of the concessionaires. The airport had shared with us a draft copy. We just saw the final copy which includes a recommendation that could lead to renegotiation of the airport concession agreement relative to pricing and how that's calculated. That's a big deal. We would appreciate a chance to comment with some thoughtfulness and so therefore, we respectfully request that this item be held one month to allow us to submit comments. Thank you very much.

>> Mayor Reed: Thank you. Louis Robert Chermonte, Jr.

>> Hi, I'm one of the owners of Chermonte's at San José international airport. We're a local business and we've been having quite a bit of problem because of the price restrictions. Since opening we've been subject to a very strict interpretation of item 6 of recommendation 1 in the City Auditor's review. We've been forced to base all of our street prices off a location that is located in a blighted area of town, and therefore, has much lower prices than comparable restaurants owned by other companies. Basically, the Max's Deli that used to occupy the space we're in charged 30% more for items similar to ours and they used the street pricing scheme and the reason some restaurants come out better with the street pricing scheme, if they're just comparing it to their offsite restaurants, they charge a lot more then they all of a sudden have street pricing at a different level than another restaurant such as ourself which charges a lot less at other locations. We're -- the slowness of traffic at the airport is quite a big deal. Our small family business is really struggling. And the low artificially low prices are really driving us towards bankruptcy. So I just wanted to make that known.

>> Mayor Reed: Thank you. That concludes the public comment testimony on consent calendar. Are there items on the consent calendar council would like to pull off for further discussion? I'd like to report, travel report on item 2.5. Councilmember Liccardo.

>> Councilmember Liccardo: 2.11, please.

>> Mayor Reed: Vice Mayor Chirco.

>> Councilmember Chirco: Sam pulled it off.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you. 2.11 as well, so.

>> Mayor Reed: Okay, so we will consider the rest of the consent calendar in one motion then excluding item 2.5 and 2.11. We have a motion to approve the balance of the consent calendar. All in favor, opposed, none opposed, that's approved. Item 2.5 I want to report on two trips actually. The trip that I took last week to Seattle, as part of the city to city trip, the annual trip that some other folks went on, you might want to add some items to my comments. Very interesting city, to see how they're struggling with some of the same problems and solving some of the problems, very helpful thing to do. I did get the chance for the very first time to visit the pike place market, they have a much better idea what we're trying to do with the downtown urban market. I'm looking forward to seeing that kind of operation in downtown. I think it will be a great success, but I learned a few things just by being there and seeing it. It's been described to me many times but it's not same thing as seeing it. So that alone I think was an important part of the trip for me. There were several other people on the trip who got to see different things and may have had other impressions but I do know that if you have Puget Sound as your living room, you can have some pretty nice waterfront property. And they had a lot of that. But they're struggling with some of the financial issues that we are. Arguing about whether or not to tear down a freeway and put it in a tunnel. So it was interesting to see some of the same discussions and slightly different setting. So that was last

week. And then I also took a trip that I don't think I reported on, we talked bit at Rules and Open Government Committee and that was the Silicon Valley Leadership Group September 28th to Washington, D.C. to meet with the administration officials and the Department of Commerce, Small Business Administration, Department of Energy, half a dozen senators, Speaker Nancy Pelosi, the center aisle caucus, which I'd never heard of before, but was an interesting group, the House New Democrat coalition and others, as well as the California congressional delegation, to talk about issues that affect San José and Silicon Valley such as immigration, BART funding and how we can play an important role in the president's national export initiative. And some of those issues we've been talking about for a long time like BART. And it's good to see some approximate and being well received. And I did get to talk to senator Inoue, who is chair of the senate appropriation committee, knowing there will be an appropriation coming through one of these days for BART. Wanted to make sure he understood how important it was to our area. With that any other trip reports or comments on those trips or any other trips that anybody wants to report on? Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I was also with the city to city trip last week in Seattle. And it was also -- it was very, very helpful to see how Seattle is coping with some of the same things we face. Interesting, one of the interesting things we saw was a very large private redevelopment project going on on Seattle's waterfront and really utilizing a lot of the resources that come now from a very mature Microsoft community. Paul Allen is one of the leading investors in it and literally redeveloping the south end of Seattle. So kind of looking at -- makes you think about some of the possibilities for San José. A really strong investment in light rail there. And the citizens willing to tax themselves and to really support transit. One of their big issues is of course they get different kind of weather than we do. Their roads become impassible if they have snow and ice so there's a lot of motivation. I think that it was very impressive. They have a light rail going from their airport to downtown. They've got -- and it's -- this rail is not just a theory. They're actually building it. So it's going to extend up into Redmond, all over. They're really committed to transit and increasing transportation. Also the fact that they're doing a lot of regional planning with Puget sound, which encompasses a few counties. So luckily they're the only big fish up there, so it's easier for them to do that, but the regional planning was impressive. I also attended the D.C. trip along with the mayor and others and was very proud to be part of a group from Silicon Valley talking about creating more manufacturing jobs, bringing manufacturing back to Silicon Valley and to this country. And we were

very warmly received by the delegations there who really are looking to Silicon Valley for ideas on how to improve our economy. Thank you.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. I as well was on the city to city trip to Seattle in addition to all the things previously mentioned, I had the opportunity to do a full tour of their convention center and talk with their convention center operations folks on how they handled their expansion that they've had several phases of expansion. Which I think is again another timely discussion, given the expansion process that we have going forward for our convention center. Also took a look at their public art program and how it is administered specifically at our convention center. And they have a very different program than we do, that involves an art foundation and an integration of corporate art collections, museum art collections, and convention center owned art collections which is a separate facilities district and then city-owned art and how it all works to be exchanges of their collection and how they generate the money and the participation, very interesting. So I think it's something that I would like to explore further for us here in the City of San José. Thanks.

>> Mayor Reed: Councilmember Nguyen.

>> Councilmember Nguyen: Thank you. I just wanted to disclose also that I was on the D.C. trip with Silicon Valley Leadership Group along with my colleagues and I think it's really important that we were there really to show in person our support for funding opportunities for BART and high speed rail as well as preserving the importance of manufacturing jobs. Obviously in my council district, manufacturing jobs is something we wanted to appreciate, it's good to see that people are looking at this at the national level. Thank you.

>> Mayor Reed: Think that concludes that trip reports. We don't vote on that, those are just reports. We'll take up item 2.11. Councilmember Liccardo did you have some questions on that?

>> Councilmember Liccardo: Yes, thank you mayor. And Bill thank you for coming down. I know you've got a set of conflicting interests here. You've got an auditor's report that is saying prices are too high. You've got business owners saying prices are too low and you're in the unfortunate position of trying to play Goldilocks. From the standpoint of pricing as -- with regard to Lou Chermonte's and their business, my understanding is, they're in somewhat of a more difficult position, location strategically in terms of the amount of foot traffic at their site. I don't know this, this is what I'm hearing from various sources. So the question is, is the one size fits all approach on pricing some is there any flexibility to consider locational advantages or disadvantages and how we regulate the pricing?

>> Bill Sherry: Yes, Bill Sherry, director of aviation. Councilmember, I think what I would recommend, as opposed to having different pricing strategies, is to better balance the terminals. And that's a work -- that's a work effort that we have underway, right now about 70% of the foot traffic is going through terminal B. And that obviously stresses terminal B, and it has the concessionaires and airlines in terminal A with excess space. We're in the process of negotiating with the airlines for moves. And I would hope to try -- I don't think we can ever achieve a 50-50 but I would like to achieve you know a 40-60 or a 45-55, something along those lines where all the concessionaires have basically equal foot traffic.

>> Councilmember Liccardo: Right, okay. And with regard to the auditor's report was there going to be -- you know I see that the report came from Sharon Erickson to you. Was there going to be a for mall response from you to the city.

>> Highlights those and it makes a number of recommendations which we concur with. I don't disagree with anything that the concessionaires said up here at the podium and that the agreement puts a hardship on them and it actually puts a hardship on us because it's very rigid in terms of how those price being strategies are established and enforced. You said I'm Goldilocks. I'm Goldilocks, but I have no latitude to make those kinds of adjustments because the agreement is very specific. So I think what the auditor is recommending is for the airport to establish a pricing policy and if that were the case, we would have to negotiate with the concessionaires and

bring back amended concession agreements incorporating that pricing policy. And I think that's the right approach. It will help them and it will help us.

>> Councilmember Liccardo: That is where my question was going which is what's next so I appreciate you letting me know.

>> Mayor Reed: Bill, before you go I think we have another question or two. Vice Mayor Chirco.

>> Councilmember Chirco: Thank you, Bill. You mentioned a pricing policy, what would be an anticipated time line to complete something like that?

>> Bill Sherry: Everything at the airport is need to have done yesterday. I would hope first quarter of next year, and the only reason that I can't commit to this quarter is because we're moving the administrative offices and we're also working diligently on the competition plan. And those two things are really consuming a lot of our resources. So this would be something I would hope to be able to bring back to council maybe the first quarter of next year.

>> Councilmember Chirco: Yeah, I would like to see this, you know, I realize there's only so much two hands can accomplish, no matter how many people or how few people we have. But this seems like it would be a priority because it does offer a variety of services to our customer base and we really wanted kind of a sampling of San José to brand the airport. And so having that as a priority I think would really be helpful. And also, give some hope to some of the businesses that there will be a consistent pricing model out there, hopefully for merchants such as the gentleman that spoke, that they might be able to, knowing that there's something in a fairly short time line, be able to hang on, knowing that there is something coming down the pipeline.

>> Bill Sherry: I don't disagree. And it is a priority for us. Among many other priorities. But I think the thing that can bring the most help right away is rebalancing those terminals. There are a few airline moves that we can accomplish in the short term, and then a few others that are more complicated that may take a couple months to

get done. But once we did that, we've got concessionaires in terminal B that are doing quite well, comparatively speaking, and concessionaires in A that are literally starving. So the rebalancing I think would really help all those concessionaires.

>> Councilmember Chirco: I know there are many priorities and fewer people. So thank you for all your hard work, Bill.

>> Mayor Reed: Some additional authority that we might want to extend to the airport director to be able to get the Goldilocks and get it just right if this contract is exceedingly rigid, then that is something that could be fixed it seems to me and question is, is there something we could do today to direct staff to be able to do something to put you in a position where you could solve the problem more quickly.

>> Bill Sherry: I guess that's the question more for the City Attorney. These -- the current pricing strategy is written in the agreement. So I think for us to alter from that has to have both parties in agreement to it in order for us to implement any different type of pricing strategy.

>> City Attorney Doyle: The council could direct staff, the director specifically, to go and negotiate whatever changes would be fruitful in terms of accomplishing the pricing structure he thinks is best. To have that formally executed it has to come back to council in the next couple of weeks, has to have a resolution delegating that authority to the director. So the idea is to give the director flexibility to both negotiate and execute we'd have to come back with at least a resolution delegating the authority. If the direction is just to go negotiate and bring something back you can go do that right now.

>> Mayor Reed: Do we as a city have the ability to waive a provision of those contracts?

>> City Attorney Doyle: Yeah, you do but it hasn't been agendized. This is just accepting a report so we have to come back with something.

>> Mayor Reed: Could we give the director a authority to waive a provision of this even though it is not negotiated with 42 entities but if he had a power to waive some provision, not that we're going to do it today but we could direct staff to bring us back something that gives him the authority to waive provisions under certain circumstances.

>> City Attorney Doyle: That's correct, you could under the circumstances or renegotiate. However -- whatever, my recommendation is give him as much authority as possible to renegotiate, whether it's the form of a waiver or the form of a renegotiation.

>> Mayor Reed: Well, it might do both. I'm just trying to get there sooner rather than later. Because if you've got an outcome, and everybody says, this is crazy, this is not what we intended, but I'm bound by the contract, there's nothing I can do --

>> City Attorney Doyle: Right.

>> Mayor Reed: -- then maybe we need to give him the authority to do something.

>> City Attorney Doyle: And that would be something we could bring back as soon as next week actually if you wanted to a resolution giving him that authority. You can direct him now but that is the intent of the council. But the formal action of the council would have to be in the form of a resolution.

>> So moved.

>> Second.

>> Mayor Reed: I understand the motion.

>> Councilmember Liccardo: Motion to return to council with either the effect to renegotiate or waive.

>> City Attorney Doyle: Can you give him the direction to do that now.

>> Councilmember Liccardo: Okay.

>> City Attorney Doyle: But in terms of actual authority that he could carry it forward, we would have to come back.

>> Councilmember Liccardo: Okay, exactly what he said.

>> Mayor Reed: Okay, we have a motion on the floor. Vice Mayor Chirco, do you have anything else?

>> Councilmember Chirco: No, thank you. I think it will accomplish what Bill hopes to achieve and what we need to have accomplished out at the airport so thank you very much, bill.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, just Sam's comments regarding what you are going to do now that you have this audit report done, the audit you requested going forward. I know month Strickland was representing the concessioner, going forward with these recommendations, what process are you going to go through to make sure that the stakeholders are there at the airport understand how you are going to follow through with them or not depending on the feasibility?

>> Bill Sherry: Well, if I understand the question, how are we going to engage our stakeholders? The first thing for us to do is to figure out precisely what that new pricing policy will be and how we can streamline it and make it less burdensome on the airport staff, as well as the concessionaires, and more accurately reflect what I think the intent of the agreement was, which is street pricing plus 10%. Once we have that policy kind of roughed out, then I think we have to engage all of our concessionaires. There's really four concessionaires, master concessionaires,

two retail and two food and beverage, host being one of the food and beverage and retail concessionaires. So we will reach out to them before we bring it back to council to make sure we have got everyone's input.

>> Councilmember Kalra: Yes, it sounded -- those requests, accepting an report, upon accepting the report there's still work that has to be done.

>> Bill Sherry: Exactly.

>> Councilmember Kalra: This is just the auditor's report. You still have to evaluate what to do with it and that process I think it would be most helpful for you to work with the four main concessionaires to make sure that as you develop these price points that they're part of that discussion as you're doing it as opposed to you put it together and take it to them, you know?

>> Bill Sherry: Right. And I commit that we will do that.

>> Councilmember Kalra: Thank you.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. I assume that the motion include accepting of this report. I'd like to find out if we postponed accepting of this report for one month, as Scott Strickland suggested, what was the negative impact?

>> Bill Sherry: Well, I certain -- there's no -- other than what has been noted previously in terms of the essence in getting this thing done I don't have the problem to postpone it for one month. I don't see it accomplishes anything. Accepting the report and instructing me to go out and develop this new pricing strategy in concert with our stakeholders and bring it back to you I think is the most expeditious way of proceeding.

>> Councilmember Chu: Sounds like we have an agreement, thank you.

>> Mayor Reed: All right, we have a motion on the floor. I just want to clarify the City Attorney, we can grant the director the authority to waive without coming back to council and we're also directing him to bring back a pricing policy to modify the contract as well?

>> City Attorney Doyle: Right, and my question was to the extent that you wanted to give the delegation of authority to either the City Manager or the director to sign off on anything, that's what would have to come back.

>> Mayor Reed: Any further discussion question on the motion? All right, all in favor? Opposed? None opposed, that motion carries. That concludes the consent calendar items. We'll move to item 3.2, discussion and action on proposed moratorium regarding marijuana activities that could be allowed under proposition 19. We'll find out about that in about six hours I guess and 15 minutes maybe.

>> But who's counting.

>> Deanna Santana: Good afternoon. Today's actions request that the city council consider setting an urgency and regular moratorium on commercial uses of marijuana or its derivatives that involve the cultivation, dispensation or distribution of nonmedical marijuana, should state proposition 19 pass today. As state in the pass report if proposition 19 passes it would take effect tomorrow. A moratorium would prevent the potential proliferation of nonmedical marijuana, uses that businesses might believe are authorized by proposition 19 and it would avoid potential Public Health and safety impacts while the city makes determinations on how it would like to proceed. Since the city council has not had made any determination on whether it would like to regulate nonmedical marijuana, nor has it considered any regulatory framework, this proposed moratorium preserves the status quo while the city council examines these issues. Today's action would not impact efforts underway to establish local regulations pertaining to medical marijuana. However, I should note that there maybe impacts resulting from proposition 26 if passed or other unanticipated issues that arise as more analysis is needed than gathered. In the report, there is discussion about the California government code and city charter that allows for

adoption of a proposed urgency and regular ordinance. If the city council finds that there is a current and immediate threat to public safety, health or welfare then the city council should approve the recommendation. The report provides nine current and immediate threats for the purposes of state law and city charter that justify the city council's approval of a moratorium. These nine current and immediate threats can be found on page 4 of the staff report. The staff report also outlines the moratorium process and schedule for both an interim and regular ordinance. If proposition 19 passes this evening and the city council approves staff's recommendation then the moratorium would be in place today and we would return next week to request an extension of the regular moratorium for up to 22 admonition and 15 days. This moratorium allows for the city council to take the time that it needs whether it would like to regulate recreational marijuana, set a regulatory framework, or ban it. That concludes our staff presentation. We're here to answer questions if there's any.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks Mayor. I just want to thank Deanna, Joe and all the folks who have been working on this effort, ReneÉ. I certainly support the staff recommendation. I submitted a memorandum dated November 1st to take a step further as well. Regarding the medicinal marijuana dispensaries that currently populate our city and seem to proliferate at a rate that no one could or seemed to anticipate at the time. I suggest that we really adopt essentially a moratorium on those as well, given the number and given the extent to which our resources are largely overburdened in trying to impose a sensible scheme and recommendation on those establishments. I've been told by Rick that moratorium is probably not technically the correct or the best approach. And I wanted to perhaps solicit some guidance from the City Attorney about how we might move forward with a ban on any new dispensaries regardless of what -- however we may regulate the existing 81 dispensaries that populate our city.

>> City Attorney Doyle: Councilmember Liccardo, the direction in June from the city council was to focus enforcement efforts on those what we call problem dispensaries, or collectives. The focus was either were they near sensitive uses or we were getting complaints. And that's what we've done. But all along, under the municipal code, these collectives or cooperatives or dispensaries are not legal and they have not been legal. And it was

essentially direction from council to focus your -- because they're given limited resources, focus resources where needed. If in fact the council wants to prohibit any additional dispensaries, or at least get the word out that we are going to prohibit it, that's what the council would have to do, would actually prohibit, which would be a statement of existing law, except it would be an express prohibition. This law, this ordinance as proposed takes effect only if prop 19 passes. If prop 19 doesn't pass, it's of no effect. So you would have to still take independent action on the medical marijuana collectives, if you want to go there. From a BANEX standpoint, you cannot take that action today, that's going to have to come back but we'll take direction if the council wants us to.

>> Councilmember Liccardo: Yeah, and I anticipate we couldn't act today on that, I know that. What I was hoping to do was to set us on a course to make a clear statement on prohibition. I understand that while technically because of their status under federal law, all establishments were illegal in this city but I think it's clear that the message that was received in the relevant business community was one that San José was more or less open for business, and we've seen a real rush of establishments from Southern California that are coming from cities that have enacted stiff moratoria and been very explicit about it. And I guess what I'm hoping is that we will make a more -- a similarly explicit prohibition here in San José so at least we can hold the line until we can better understand how we can regulate these establishments. So I guess my motion would then be to accept and approve staff's recommendation, return at appropriate future date, whether that's two or three weeks, whatever staff believes is necessary, with an ordinance that explicitly prohibits any new additional dispensaries or other establishments that distribute marijuana.

>> Councilmember Herrera: Second.

>> Mayor Reed: All right, we have a motion on the floor. Councilmember Constant.

>> Councilmember Constant: Thank you. And Sam, I appreciate your memo. You know, this is kind of the sentiment I was expressing a few months ago, when we were talking about this, that we have been dancing that line and almost encouraging it by not taking any action in any one particular manner. And the fact that these things are sprouting up like weeds, actually, everywhere, that you can't control, and there's just too ripe for

commentary on this or jokes. But it's serious. It's a problem. I hear from it my neighborhoods. Throughout my district. They just, everywhere you look, they seem to be popping up, another one here, another one there. We saw as you pointed out in your memo, at least a couple of strong arm robberies. I know of one, I think I saw the press release of an armed robbery in one of them. They are going to continue to be burdens and problems in our neighborhood. So I think we have to be more definitive. And then my question to staff, I know this is a question you probably don't have an answer. But what type of resources would it take for us to fully service all of the dispensaries, not necessarily just the ones that we happen to get the most complaints on?

>> Deanna Santana: The first issue I'd like to clarify is we have in our staff report that there are approximately 81 dispensaries out there. And the way that we have determined that there is 81 is very informally. We have tracked through code enforcement, as well as through business tax, to compile a list and an inventory of what we know. So to the extent that there are names of businesses or they're just not known to us, there could be a higher number out there. So 81 is not necessarily a definitive amount. However, given that high number, if we were to explore the regulations that we put forward, I think we should look at the staffing complement that we put forward. And in fact, after the council deferred the item in June we revisited the issue and we did ask ourselves whether we had advanced enough staff resources to support the regulatory framework. At the time we had proposed ten and we recognize that the permit fee was set at approximately \$97,000. We wanted to start small, so that we could manage. However, given the recent activity with number of fires, number of crime and the violence that is certainly focused around these dispensaries, we would need to revisit that and bring back to you a more accurate prediction. My guess is, it's going to probably be higher.

>> Councilmember Constant: I think that's important to focus on, because I tell you there are people in my district that have given up complaining on them because they see that we're really not taking a hard stance on them and they see them popping up and they hear the stories of neighborhood association X who worked diligently to try and do something and they got nowhere. And it's just -- it becomes frustrating for the neighborhood leaders. So if we could just get an idea of whether it's how much per dispensaries it takes to take a case through or how much overall, and I don't need it now. If we can come back --

>> Joe Horwedel: We can come back with that.

>> Councilmember Constant: Thanks.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. The message was pretty loud and clear nationwide to the 14 states that had legalized medical cannabis. That's when the president's administration reversed the Bush policy. So really, the green rush started outside of any action or comment San José made. Those happened nationwide to the 14 states that that was allowed. Back in October '09 anticipating that and seeing the issues that could come out of unfeathered regulation and not limiting the number was something that dates back to then. We finally took that conversation up in March 2010 at the council, we did not have the consensus for moratorium, even though -- or prohibition is something that I wanted to see, and it's taken us which happens a lot of times to have the issues come about and then you realize it. So I'm certainly supportive of staff's proposal to manage if prop 19 passes I'm certainly supportive of the appropriation to have prohibition as we should have had a while back. I think that's the prudent thing to do. We certainly have enough for the population that needs that with the doctor's permission and then of course that is always a question of who's getting that permission. And then Scott, since you're here if the voters of San José pass measure U tonight, does that mean tomorrow, finance can go to these 81 facilities and say, I need a certified audit from you to see your financials and give it to me in 30 days or something, prior to council adopting exactly what the tax rate would be?

>> Scott Johnson: Mr. Mayor, members of council, Scott Johnson director of finance. Councilmember, if measure U is approved we are anticipating we would implement it effective the beginning of March but our plan would be, to come back to council in the special meeting in December or council would identify what the rates would be, that you would determine to tax this new business tax on the medical marijuana dispensaries.

>> Councilmember Oliverio: So when you're saying March 2011 or March 2010, retroactive? What are you saying?

>> Scott Johnson: March 2011.

>> Councilmember Oliverio: Okay, then question for you, for council to make that call on what the tax rate is, wouldn't it be beneficial to understand what the gross receipts are at those facilities?

>> Scott Johnson: It would be. We have limited data that we have compiled from the state based on sales tax permits. There are 26 businesses that are currently reporting income that is subject to sale taxes, where we receive the 1%. However, there's about 52 other permits that we're aware that are not being reported, you know, to the franchise tax board, state board of equalization, excuse me. So we need to do some more research and outreach in regards to that effort.

>> Councilmember Oliverio: So just as a specific question. So does measure U give you, the Finance Department of the City of San José, the ability to require some type of audited financial from this facility, collective, et cetera?

>> Scott Johnson: The ordinance that we put in front of the council, in -- in conjunction with measure U, does have provisions where we have the ability to audit financial records for the dispensaries that are conducting business in the City of San José. I will also say that for any business that's remitting sales tax, we also have -- through our partnership with the state an ability to review those records as well.

>> Councilmember Oliverio: Okay. And I'm not sure if this is a separate discussion or City Manager but should this pass I think that's really crucial to obtain that information ASAP so we know what is the gross receipts and also, are these operating under state law, are they truly nonprofits? And I think the financial audit would tell us that. And I don't know what the industry standard turn around time for asking for that to come around. But I certainly think with the passage of U that would give us great benefit to have that night.

>> Mayor Reed: City Attorney has the answer.

>> City Attorney Doyle: Councilmember, I would want to -- first we would have to wait for the ordinance or election returns to be certified so it's probably not until December. But I want to verify that we have the ability to go in and audit in advance, as opposed to after the fact. Generally, when you have audit provisions in the tax measures, it's making sure people have paid the appropriate tax based on gross receipts.

>> Councilmember Oliverio: Thank you.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you. In reading the memo, it looks like although the city election must be certified, that prop 19 itself would actually go into effect immediately, briefly, tomorrow if it were to pass, is that the understanding, Deanna?

>> Deanna Santana: Yes.

>> Councilmember Kalra: The motion on the floor is simply targeting any commercial sales are marijuana, No. we have an opportunity to see what -- to put something together. But the other provisions of prop 19 which my understanding is, it allows recreational use, it does not allow public use. So if it were to pass, it would be legal, I guess, for individuals, to recreationally use under an ounce of marijuana or they would have to do it in the privacy of their home, or somewhere, they can't just be walking around the street, like a lot of people were around Giants -- around AT&T park over the weekend. They can't just walk around the street openly doing that.

>> Deanna Santana: That's correct.

>> Councilmember Kalra: And so, what is the time line you think in putting this urgency owners in place, what would be the time line if 19 were to pass in which we could come back and I suppose we would also have to kind of wait to see what the federal reaction is and what have you. Do you have a sense, I know we've been putting a

lot of energy and a lot of time into the medical dispensaries but is that something that you're going to have to wait for direction from us in terms of where we want to go with it and then in the interim just have this urgency ordinance in place?

>> Deanna Santana: So the next steps would be if the council approves this recommendation next week we would return with the regular ordinance to have that extended to allow the full two-year term to have a moratorium. We have a special city council meeting set for December 13th. Originally it was contemplated to be a study session, but given the actions of our -- given that our request requires some action by council on the 13th, particularly approval of a ten-day report, we would bring, on December 13th, the opportunity for council to take action and shape policy around 19, if it were to pass. From that input we would return in early 2011 with a policy framework that sets out how we regulate. By that time we would have the opportunity to begin talking with other cities and other experts in the field in terms of what the approach might be.

>> Councilmember Kalra: Thank you.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Just a quick question about enforcement, and Joe I'm sorry to put this before you without really not -- I'm sure you haven't worked out all the details on this. But if we had a blanket prohibition, is there any way at the window where someone's trying to get a business license they can actually be notified of the prohibition of this? Because what we often here out there is, well, you know we didn't know about the moratorium. We got a business license so our city must sanction our business, whether it's a bail bonds business or a American business or something else, is there any way we can be clear at the outset?

>> Joe Horwedel: Councilmember Liccardo, that is possible. It's one of the things that the Finance Department, now through the business license, is looking, asking some questions based on some of the business that comes in just to see really, is it a medical marijuana collective, or is it something different, just to try and track it.

>> Councilmember Liccardo: Sorry, that is actually in Scott's department, it's not in yours?

>> Joe Horwedel: Yes, but we both get those questions coming in through our counters. That's one I think we would want to have a unified answer, what are the questions that our staff collectively should ask, what guidance do we give people. We've put together some information around that, but we would certainly need to go back and redo that, retrain our staff on that new answer.

>> Councilmember Liccardo: Okay, that would be great. I know that you're dealing with the permits side, I guess Scott's team is dealing with the business license side. Just as long as we could say it clearly up front, if in fact this does get enacted, because what I'm really worried about is all the conflicting pieces of paper about whether or not the city is really sanctioning the activity or not.

>> City Attorney Doyle: And councilmember I just want to note, we can do that but that's a change in normal policy. Normal policy is the tax is paid independent and is ode whether a business is legal or illegal. That's something that we want to make sure we have that coordination.

>> Mayor Reed: Questions or comments? I believe there are no cards from the public to speak on this item. We have a motion to approve the staff recommendation, plus the addition from Councilmember Liccardo. All in favor? Opposed, none opposed, those are approved. Our next item is 4.1, actions related to the development of the North Fourth Street apartments project. Motion is to approve. All in favor? Opposed, none opposed, that's approved. FM mayor.

>> Mayor Reed: Sorry, I had a little trouble with my paying attention here. Councilmember Oliverio.

>> Councilmember Oliverio: Yeah, I wanted to register a no vote on that item. I didn't support this project the first time, and I just wanted to point out that because we're building a not for profit, affordable housing project in a redevelopment area, not only do you lose on the no property tax, you don't -- you lose the opportunity on the tax

increment. So as we're faced with a shrinking RDA budget land uses like this really hurt the Redevelopment Agency's potential to pay off bonds and fund other economic development. Thank you.

>> Mayor Reed: All right, that motion is approved on a 10-1 vote, Councilmember Oliverio in opposition. Our next item would be 4.2, rezoning of property at the Northeast corner of Clayton road and Hickerson Drive. I have some requests from the public to speak on that item, I'll take that at this time. I'm not sure if the applicant is in the pool here. The applicant wishes to speak I'll take the applicant first. We allow five minutes for the applicants on zoning matters and we'll take public testimony.

>> Good afternoon. On behalf of Chinmaya mission San José, I'd like to thank the council for giving us a decision on this project. I'm Prangi Lodia. And I'm one of the directors of Chinmaya Mission San José. We are a religious nonprofit organization, and we currently have a facility on park avenue which we have outgrown for some years. In 2008, we acquired this property on Clayton road and since that time we have gone through an arduous process in getting various approvals and the reports and studies done on the project. The good news at the end of that is we had a Planning Commission meeting last week and at that meeting the project was approved. So we are very pleased that we're at this point and on behalf again of the Chinmaya mission San José, I'd like to thank the Planning Department and the Planning Commission for their work and support on the project. Just a little background on Chinmaya mission west, I mean Chinmaya mission San José. I represent Chinmaya mission as a director and I'm also on the national organization, Chinmaya mission West. Chinmaya mission west was founded in 1978 and is a religious nonprofit corporation. Currently, in the United States we have about 22 centers in most major cities. And by centers I mean these are places where there are activities similar to what we plan to have in San José. And the unique thing about the mission is that we have no paid employees. All of our volunteers carry identity the programs which are the religious instruction, we carried out classes for children in cultural activities. And this is one of the major activities that will be located at the new site once we construct it. We have developed a very beautiful design with the help of our architects and we will bring some real new value to the area. And Councilmember Campos has been familiar with the project and has monitored us throughout this process, and I appreciate her help on it. At this point we feel that with an approval we would then go ahead and start construction as soon as possible. We would have to submit construction drawings, and thereafter, sometime

in spring, we would break ground. The other interesting thing about Chinmaya mission is that Chinmaya mission San José is funded for this project and for all of its activities by the grass roots support of the congregation. So even though I'm on the national -- treasurer for the national organization we do not provide any funds to the local center. Each center operates autonomously and will have the funds raised from our congregation in the Bay Area. So we're widely supported community group. We have our activities which are related to our core values, and the spiritual guidelines that are provided by swami Chinmaya, and we are an international organization, also in that we have our headquarters in India, but have a presence in every major country in the world. In addition to that, we also are part of a good community value in that we have various different activities where our members of our congregation provide community services, whether it's, you know, taking sandwiches to the homeless, distributing sleeping blankets during the winter. So there are lots of different things that we do. The building that we're planning will also provide a very good, safe place in the event of an emergency, because it will be constructed to very stringent new standards. And I hope that we're able to get approval to move forward on this project. It's been a long journey, and we have many supporters here. But I'm the one that's speaking here and I also have our architect here so if you have any questions concerning specific design issues, we'll be happy to have him address those. If you have any questions, I will be happy to take them.

>> Mayor Reed: No questions at this time.

>> Thank you.

>> Mayor Reed: We have some people from the public who wish to speak on this, we'll take that now. Teresa Convil and Ian Able. Please come on down.

>> Good afternoon, I'm Teresa Convil. I'm the compliance director at the diocese of San José. The diocese of San José has a neighboring parish to the Chinmaya mission. And during a recent parish visit I was speaking with our pastor and I saw the plans for the project. According to the City's supporting documentation for this project, which we found on your staff report, the analysis of the neighborhood compatibility, parking, the environmental review for traffic, this project allows for a maximum of 370 persons. 242 students at one time. And the associated traffic

study says the project would not cause a significant increase to traffic in the area due to the square footage change. When I took a look at the City's permits for the drawings, I did not see the square footage documented on the drawings that were located there. I did see the overall design, and the drawings other than that. I e-mailed the project manager, Jody Clark, and I also called the city requesting specifics on the square footage for this project. I did not receive an e-mail response and I did not receive a phone call back. To further my understanding in this late revealing of this project and its impact to the diocese, I went to the Chinmaya mission San José's Website which was very informative. I wanted to understand what they were going to use this project for and see their plans.

>> Mayor Reed: I'm sorry, your time is up. Ian able is our next speaker.

>> Good afternoon, my name is Ian able, I'm director of facilities for the diocese of San José. Upon review of the Planning Department documents and then looking at the mission's Website, I feel that the characterization on the website is a little different than what's been disclosed to the planning department on how the facility is to be used. This will be a consolidation of locations to this one center so traffic their currently usage is going to increase. The plans show 84 parking or 86 parking for 26,000 square feet. I'm a little familiar with the assembly space. I've received conditional use permits from the city for various churches and assembly. And typically I'm required one parking for every four seats. Most of the churches are 7,000 seats, I have over 200 parking -- excuse me -- 7,000 square feet for four to 500 parishioners. So I think the parking here is a little undersized. And then looking at the schedule of classes from the Website, we have concerns that as one class is over, people will be coming, and there's going to be an overlap between people coming and going that's going to impact the traffic in the neighborhood. So with that we would ask that the conditional use permit look at the functions they have at the same time, if they're having religious services it's limited to that and no other social functions and vice versa. We also ask that the city look at enforcing assembly the way the layout is with 20 classrooms 40 people were classroom, assembly space it would be very easy to get over a thousand people in the facilities. That would pose a problem for egress of the facilities in the emergency or emergency apparatus to come to the site and an emergency having that many cars parked. Thank you.

>> Mayor Reed: That concludes the public testimony. The applicant had about 30 seconds left of the time if he wanted to reply to anything. Not to have some questions for our director, you want your last 30 seconds, sir?

>> Yes, please. We have been advised of the position of the San José diocese, and they are neighbors and I believe that we will be good neighbors. We have some synergy in that in the past we have used their parking lot, and they have used ours. I believe that the Planning Department has dealt with the space, the parking spaces that we have allocated, and also, in spite of the fact that for a project such that is this we were not required to do a traffic study, a traffic study was ordered and that traffic study showed that we would be able to support the traffic in and out of facility. Thank you.

>> Mayor Reed: All right. Joe Horwedel you had some comments or things you wanted to add.

>> Joe Horwedel: Yes, thank you Mr. Mayor. The development standards for this planned development zoning does address the allowed uses of the property. It does recognize that both assembly uses typically religious services are limited to 344 people on the property. And that classrooms are also allowed with a maximum of 370. And that those cannot run concurrently. The project is required to meet the normal city parking requirements. While this is a planned development we did not reduce the parking requirements with this project recognizing it was in the middle of a neighborhood. We have built in a provision that allows because of those festivals that do occur at this site, just as most religious assembly uses have festivals during the year that they do have the ability to do a special parking program, and that is a separate permit that would be required to be obtained from the city and as you heard from the applicant, they have done that previously, where they provide shuttle bus service to adjoining parking lots and bring goers into the site itself and that's very similar to how we operate these types of assembly uses throughout the city. This is a planned development zoning decision. The ultimate decisions about the final design of the building, the final configuration of the parking lot, the final number of parking spaces will be at the PD permit stage. So we are setting the basic zoning standards. And as I said we're trying to follow the citywide standards that we use for these types of uses for parking, and for concurrent use.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Joe, thank you for those comments. And I appreciate the public comments, as well. I just want to disclose that Javier Gonzales from my office met with Chinmaya mission representatives and the applicant, and so I'm very familiar with this project. Joe, I know that they also -- the applicant also did, and he did state earlier that they did a voluntary traffic study to address the concerns of the neighbors and the neighborhood surrounding. Can you talk to that a little bit?

>> Joe Horwedel: Thank you, Councilmember Campos. The traffic study did look at how traffic would operate in this area, and as with most assembly uses, that traffic is occurring during off peak hours. So while the time that the maximum use would be occurring on this site is whether the streets are really empty. And so that's part of why we allow assembly uses in residential neighborhoods. We recognize that kind of off peak working, we do look at usually the biggest issues with these are just how they flow, how the traffic comes in and out. And so those are the types of things operationally impacts we look at. We will look at the PD permit stage to make sure that there is proper signage about how people come to the site. The proper operations for when festivals operate. But there clearly is not a traffic impact as a result of this development. We would -- did not see any operational hazards that would get created as a part of this project. The Planning Commission did talk about that issue, it was raised at the commission meeting, and our public works staff is very facility would operate.

>> Councilmember Campos: Thank you. I'm excited about this project. I think it is going to be a beautiful project. I believe it's going to integrate very well into the community and into the existing neighborhood. And they, along with our Planning Department, have worked very close to make sure we do address the concerns of the community and other concerns. I'm confident that at the PD permit stage a lot of the other concerns will be addressed. I encourage my colleagues to support this. And planning director, I encourage to continue to work with the community as well as the applicant to make sure that we can get a win-win, and that this project is successful. Because their success means that the community is going to be satisfied and it's going to be a great neighbor for our community. So with that, I move for approval. Thank you.

>> Mayor Reed: We have a motion to approve. I think Councilmember Kalra had the second. I'm not sure I heard from it down there. Councilmember Kalra.

>> Councilmember Kalra: Thank you, Mayor. I just wanted to thank the Planning director and his staff. I know this has been a challenging project, part of it because of the geography of the space. And the leadership of the Chinmaya mission. I know that they have been working for a long time on this, and it's been a priority of theirs, and so it's nice to see there's some conclusion in sight. It's good also to hear the diocese representatives are here. Hopefully that's a good sign that going forward, not just with those neighbors but also with the residential neighbors, that everyone can continue to work together. And particularly, I think when there's special events, the community will require some logistics and good planning ahead of time to make sure everything runs as smoothly as possible and that no one's overburdened. And hopefully there could be synergy there with both of the religious uses there. I want to thank Councilmember Campos as well. I know that her office has looked closely in overseeing to see this through, as well. And I look forward to this new project and I think that it's something that hopefully the members can enjoy for many years to come.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor. Rick, just a quick question, I assume if I'm a parishioner in the San José diocese that doesn't automatically bar me from voting, does it?

>> City Attorney Doyle: No, you -- merely because you're a parishioner doesn't mean you have a financial interest.

>> Councilmember Liccardo: Fabulous, Thank you. Joe, if down the road there's a conflict that arises, perhaps because, let's see for instance there was some overlapping use between the classrooms and the church facility. I assume that nearby, churches or other neighbors could simply call code enforcement, is that right?

>> Joe Horwedel: That is correct, Councilmember Liccardo. That if we are having parking problems that you know, a lot of parking's occurring in the neighborhood and the neighbors, the neighbors, adjoining property owners are concerned that permit conditions are not being followed, that they can file a complaint with code enforcement. We will investigate to see what's going on.

>> Councilmember Liccardo: Okay, and those conditions will be publicly available for the church next door or anybody else to see?

>> Joe Horwedel: That's correct. They're available online based on the address of the project site.

>> Councilmember Liccardo: Thanks Joe. I echo Councilmember Kalra's comments, that you know I'm really hopeful that the two organizations can work together to deal with offsetting parking uses in a way that might actually be able to facilitate both establishments, if there's overflow parking perhaps we can find a way to cooperate and collaborate and being able to make this all work. I know it's always a challenge. I've got a lot of church uses in events downtown area and I know there's conflicts with neighbors and it takes creative thinking on how to solve those and hopefully we'll be able to do that here. Thank you.

>> Mayor Reed: We have a motion to approve. All in favor? Opposed? None opposed, motion is approved. Our next item is 4.3, historic landmark nominations. We have four of them, A, B, C and D. We have a motion to approve we have at least one request from the public to speak. We'll take testimony on all of them. Any of them, all of them at the same time. Bonnie Lambert. Okay, Bonnie is here in case anybody has any questions. I don't have any questions. We have a motion to approve. All in favor? Opposed? None opposed, those are approved. Now take up in joint city council/Redevelopment Agency board session, item 9.1, inclusionary housing requirements for new rental development meeting certain development time lines. Take a minute for the staff to get into place. I'm pleased to have this in front of us. This is something that started back in September when I had a meeting with 15 developers and real estate brokers as part of getting ready for redevelopment budget study session. And I posed some questions to them about what the economic world looked like, and what the reality was, and what the prospects were for them starting some projects that might fill up the pipeline in the city and the

agency and help generate some revenues. And I learned in that meeting that there was certain amount of optimism that we're showing some job growth, turns out it was the last month was the first time in 23 months that we had net job growth year over year. And they're looking at that and figuring in two years from now they need to be out there with some product. But there's some uncertainty, still. And even though some them were self-financed and don't have to go get permission from a bank to make the investment, they thought that if we could reduce some of the development uncertainties in a couple of ways, that they would be willing to take the risk amounting to maybe \$1 billion of investment in San José. I thought that was a really good idea, each though it will be a while before the pipeline results in any tax revenues, so you got to get started, got to fill up the pipeline. And so I asked the manager and the City Attorney and executive director to put together a team of people to work on this, to see if we could do what was necessary in our side of the equation to get these companies to take the big risk and write the checks for hundreds of millions of dollars to create investment in the City of San José and lots and lots of construction jobs, as well as a few permitting fees and some jobs for city employees and agency employees, with the work that needed to be done. And I just want to acknowledge the work that's been done by this team. I call them the jobs and revenue generation team. I don't know what the City Manager calls them. The team, I think. But the team has done a great job. And while we don't give them Jerseys and we don't have parades, you know they deserve that kind of recognition for moving these projects along. Because we are talking about potentially \$1 billion that could be invested in the city with jobs and benefit. So leading it on behalf of the City Manager's office was Paul Krutko, and on behalf of the housing department, Leslye Corsiglia, Jackie Morales-Ferrand, Tom McCrostie, for office of economic development Nancy Kline, Redevelopment Agency, Richard Kete, City Attorney's Office Ed Moran, Tom Murtha, Planning, Building, and Code Enforcement, Joe Horwedel, Jeannie Hamilton, Ed Tolentino and Kathryn Sedwick. They've done an extraordinary job, and it was kind of interesting to find out that we were prepared to move faster than some of the developers were prepared to move. So we are working at the speed of business, and making it possible for some of these projects to move ahead. And today's actions are part of the work that needs to be done. There's more to be done but I'm confident the staff will be able to do it. And put it together, and we do have some very real projects that are very close to breaking ground and creating some jobs immediately for people in the City of San José and filling up that pipeline. Although it looks like it will be 2012-13 fiscal year before we see tax increment. But I do want to note that as part of this process in developing this, preparing for this meeting, my staff and I had meetings with the Irvine

company, Essex property trust, equity residential, Fairfield residential, Sobrato development, LCOR Eric Shanehauer for the Shanehauer group, and Tom Armstrong from HMM, all of whom are very interested in moving ahead. And we're doing everything we can on our side and I know that they are on their side to get these projects moving. And so with that I want to thank the manager executive director and the City Attorney for letting their people, allowing their people directing their people I don't know how you did it, I don't really care, you made it happen. And the staff that did this is really to be commended. Because I have talked to a lot of people who appreciate the work. And are prepared to make some major investments. So with that I want to turn it over to the City Manager who has some additional information.

>> City Manager Figone: Just a few comments Mr. Mayor, thank you. Yes, it's a great team, and I think oftentimes we forget that one of the most powerful economic development tools we have is the relationship that we build, and those relationships open doors. And that's exactly what you did for the city when you met with the group that you mentioned. And so we are very pleased to pick up the challenge, and I'm going to turn it over to Leslye Corsiglia now to take you through what the staff has worked out with the property owners to facilitate this development and the actions before you that will hopefully clarify the path. But I just wanted to reiterate what you see here is really representative of the critical work that goes on day in and day out to work cross departmentally and cross city agency to make sure that we do deliver to the best of our ability and provide a leadership at least that the administration can bring to the table to make these sorts of projects happen. So with that I'll turn it over to Leslye.

>> Thank you. Leslye Corsiglia, director of housing. I'm going to give a brief presentation, but I have with me Nancy Kline, from the Office of Economic Development, Richard Kete from the Redevelopment Agency, and Tom Murtha from the general counsel's office. They'll fill in what I forget or else be available for questions. I wanted to mention a couple of things. The mayor has mentioned how important this is for the economy and getting things moving forward. In the last 12 months, a total of 896 units have been permitted in San José. And of those only 260 were market rate units. The rest were affordable development. With the actions that we're proposing today, we will push forward development of over 4,000 market rate units. It's really important for us at this time, because really, the last two years we have seen next to no development. The other piece of factual news is that our

vacancy rate has really decreased over the course of the last year. We were at 6%. Today we're at 3.9%. A health market is about 5%. So that's going to continue to reduce, unless we can see more housing construction come online. And without that, whether or not it's market rate construction or affordable construction, if there is an insufficient supply to meet the need, rents raise, and San José becomes less affordable. So this is a very important affordable housing action as well as an action to create market rate housing. As far as the current situation, the council previously took action to suspend rental development from the inclusionary requirement in response to the Palmer decision, which many of you will remember, that determined that inclusionary requirements for rental property were invalid. So we do currently have the suspension in place for any rental project an RDA area that begins construction today. But there are concerns whether or not there will be attempts to overturn palmer, either legislatively, or through the court system. So in order to provide that certainty, the developers have asked that if they start construction, and make that initial commitment of funds to provide the infrastructure for these projects, that we provide them with some certainty regarding the inclusionary requirement for future phases. So before you today, what we're recommending is that we approve an amendment, further amendment to the RDA, city, inclusionary housing policy. And I want to reiterate. This is RDA policy, not the citywide inclusionary policy. We're not talking about that today. That suspends the inclusionary requirement for large, multi-phased developments that meet certain milestones, including agreeing to start construction by September 30th of next year. We're also asking that the council give the executive director of the Redevelopment Agency and the housing director the authority to negotiate the terms of these agreements with each of the developers, and that will include time lines for compliance. Additionally there are three other things that we're asking. One, we have a supplemental report that would allow for a 30-day extension beyond that September 30th date. If it's determined by the Redevelopment Agency director and housing director that the developers had made significant progress but were just going to not quite meet that date. We wanted to provide a little bit of flexibility. We also are adding a force majeure, and if you have more questions to that, Tom is leer to answer, to that satisfaction agreement that really says if there's a major disaster, we suffer an earthquake or some major event or if there's another event that's outside of the developer's control that these dates could be adjusted. And then last, we'd like to add the mayor's recommendation that was in the mayor's memo on this item, that would name policy to provide a notice period before we implement the rental inclusionary requirement if indeed Palmer is overturned. So that it's not overturned immediately but the developers have a time period to be able to

respond. So just in summary, we really do think this is a good idea. It is going to spur development. Housing development is economic development. It will create jobs. It creates tax revenue. It creates jobs that are not construction jobs. And so it's something we really think is important. And I'd really, especially like to thank, we had a lot of team members who worked on this but I'd especially like to thank Nancy Kline who really did a lot of the legwork and also Tom Murtha who in the background has been working on a lot of these agreements and working with the developers on the terms. And with that I'm available for questions or if anyone wants to add. Nancy does.

>> I just had one -- Nancy Kline, economic development. One thing to mention: That in terms of economic development and the housing, all of these projects are over 55 dwelling units to the acre and provide their necessary park or in-lieu fees. So these projects are very much in keeping with the planning director and the envision 2040 notions so we're moving forward on several different goals at the same time.

>> Mayor Reed: Thank you. Do I have some people here I think I'll take the public testimony at this time. We have some of the folks trying to make the big decisions and writing the big checks for the investment, want to acknowledge that. I have Ed McCoy, Eric Shanehauer and John Udy who want to speak, come on down, Jason Fong is also here from Irvine company.

>> Thank you, mayor. Members of the council. I'm Ed McCoy with Fairfield Residential. It's my pleasure to be here today, and I want to say that I commend the mayor, especially, as well as his staff for recognizing the hard choices that we've been faced with the last couple of years. It's really a breath of fresh air to see a city step up and understand that there is a relationship between development and running a city. And that we do appreciate the efforts of this staff, and we strongly urge you to support this recommendation. And again, thank you, Mr. Mayor and staff, and we look forward to moving forward with our project very soon. Thank you.

>> Mayor Reed: Eric Shanehauer and then John Udy.

>> Good afternoon, Mayor Reed and members of the city council, my name is Eric Shanehauer and the Shanehauer company represents equity residential in this matter. We'd like to thank Mayor Reed and his staff for their leadership in making this happen, and also very much the city staff and redevelopment staff are working together to bring this policy forward. We're always grateful when the city works another the speed of business but we're additionally grateful when the city works with the mindset of business. That's really what this change is about. The operative mindset is establishing certainty. Most of our projects in North San José are large, multi-phased projects that will have to be built over a longer period of time. And therefore, we have concern about any changing policy or fee regulations that could occur over time. And what you're doing here is establishing certainty on this policy so that we know we can build all of the phases of our development under the same rules, and they're not going to change mid stream. So we thank you for that and we look forward to getting the jobs and the revenue going up in North San José. Thank you.

>> Mayor Reed: John Udy.

>> Thank you, mayor and councilmembers. We create housing. I think all of us that are here today got our PD permit, our approvals in the last two years, got derailed by the economy. The last three months working with staff to accelerate our staff has really gone a long way to get us to a point where we can be in construction next year. The 3.9% vacancy that was referred to is before the actual job creation starts to kick in full steam and if we don't do this, you're going to see a big housing shortage for the workforce folks and we're really appreciative that we can be in a position to help, it gets everything kick started and as the last gentleman mentioned, having a commitment to know where we're going to be when we start is really important. Because these don't just start tomorrow. There's a lot of money that has to be spent to get to the position of breaking ground next summer sometime. I want to commend Nancy Kline for putting together the team, and Ru and everybody helping accelerate. We've been work 24-seven to work civil permit in the next couple of weeks and working drawings in the next three to four months. Appreciate it, thanks.

>> Mayor Reed: I just want to add a couple of things the reason certainty is so important, certainty is always important to people doing development projects. You probably notice the economy is not that good and there is

not much margin of error on these development projects and being able to take some of the uncertainty out is really critical to the decision to go. And if they have to hedge against some things that could be negative in the future, then that drives up the cost and makes things not necessarily a good decision. So while we haven't taken all of the development uncertainty out, there are some things we have control over and being able to do that is critical to the decision that each of these companies has to make to build and invest in the infrastructure. They have to put a lot of this money up front before they get to start the first unit and that infrastructure will be important to all of the phases. They can't just build one phase and make it pencil out. It doesn't work that way. I want to thank staff for making this possible, and ground breakings and lots of people wearing hard hats over the next custom of years. Not enough people wearing hard hats in the past time and I want to see them again. Councilmember Liccardo.

>> Councilmember Liccardo: Thanks for Ru and your team and all the folks sitting on my right. I appreciate the desire here to create a clear set of rules. I've certainly been a strong proponent of inclusionary housing in this city but recognize that what we need to do is make sure that developers know what the rules are and ensure that they know that their pro formas are not going to change by virtue of city fiat midstream. One question I had was what happens down the road, if in fact the Palmer decision is weakened in some way. I know we keep using the term overturned, that is certainly one logical way that Palmer may be invalidated if there's a Supreme Court ruling. But certainly it could be superseded by statute, it could be depublished. There could be other ways in which Palmer somehow no longer binding or not quite as binding on us. The question I have is do we have the ability, are we so confined in the language of whatever ordinance that we're implementing today or in the past that we're not able to re-implement an inclusionary housing policy either RDA areas or citywide because we're somehow hooked to the word overturned?

>> Councilmember, no. The Palmer case has already been -- the Supreme Court refused to grant cert. So that Palmer is out there. I think we see probably more of a legislative solution, and when that occurs, we -- basically we would change the policy. So the way we've set up this amendment is, we've recognized that the council has that discretion once Palmer is legislatively changed to change -- the rent go back to the rental policy. So basically, that's what we're acknowledging with this -- the agreements we've provided here, under this amendment, is the

developers would have basically as long as they're under that agreement and are proceeding according to a phasing plan, then they're basically protected from --

>> Councilmember Liccardo: Yeah, and I understand the desire to do that.

>> Right.

>> City Attorney Doyle: The term, the overturn language is not limited to judicial action. It contemplates legislative action, which is going to be more likely the case. Given fact that the Supreme Court has denied cert.

>> Councilmember Liccardo: Right.

>> Does that answer your question?

>> Councilmember Liccardo: Yeah, it does. And if -- I know since the Supreme Court hasn't squarely addressed the issue, if another case comes up and the Supreme Court actually decides that issue -- this issue on the merits, I know we won't have an explicit overturning in that case, either would have essentially holding from the Supreme Court which is contradictory to this appellate decision. So I just wanted to make sure we've got the bases covered so that we're not handcuffed from going forward even after the Supreme Court has said, or any other relevant body, the legislature or otherwise, has said this is not the law of California.

>> City Attorney Doyle: Yeah, it's the rule, as stated in the Palmer decision, by the court of appeal, if that rule is overturned. Whether by a subsequent court decision, not this specific case, but a subsequent court decision or legislation then that would apply.

>> Councilmember Liccardo: Great, then would I like to make a motion to approve.

>> Councilmember Herrera:

>> Mayor Reed: Leslye outlined them three different.

>> Councilmember Liccardo: And that incorporates the mayor's recommendation as well.

>> Mayor Reed: Great. Councilmember Chu.

>> Councilmember Chu: I just wanted to thank mayor and the team for doing the work. I have talked to Eric Shanehauer and possibly one other developer in the last four, six months, and I think this approval is very important. Most of the development will be happening in District 4 and approval of this memo will give the nudge that is very much needed to kick-start the housing opportunity and job growth that would directly and indirectly stimulate to our economy. So I urge my college to support this motion, thank you.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I just want to thank the mayor for the leadership of this of realize moving this forward, and staff, Nancy Kline and Leslye. This is just so important, with 30%, last time I checked, unemployment rate in the construction trades, with just the economy still languishing, and 11.2% unemployment. I think just the jobs alone is great. And we're getting it moving quicker. And so it's really great to be voting yes on a policy that's going to help bring some jobs. This is when government really can make a difference. So I'm very happy to be voting yes on this and look forward to seeing the construction begin.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you. I wanted to, mayor, I wanted to thank you, your staff, all the staff of the city, they got this to move. Obviously it's been said many times but something had to change or they were not going to make the investment. In addition I wanted to echo Leslye Corsiglia's comments and Nancy Kline, A, these are built at a high density, these are the ones that pay enough property taxes or close enough property tax

to pay for city services, two, these are all for market, so they're all paying their park fees, their road paving fees, and then property taxes to ongoing pay for city services. So again, thanks to everyone.

>> Mayor Reed: I think that's it for the discussion. We have a motion by Councilmember Liccardo. All in favor? Opposed? None opposed, thank you very much. That motion is approved. Look forward to seeing some ground breakings. Now we're going to take up two items together. Vote separately but we'll discuss them hear them together. It's item 8.1 on Redevelopment Agency agenda, and 9.2 on the council agenda. 8.1 is agency's FY 2010-11 revised capital and operating budgets which we approved last week, but we got them in final today and 9.2 are amendments and General Fund amendments for 2010 rebalancing efforts related to Redevelopment Agency programs executive director is going to take the lead.

>> Harry Mavrogenes: Yes, Mr. Mayor and members of council, these are follow-up actions to the actions you took last week. Additionally, we have a supplemental memo related to an addendum that the mayor added in the budget for the \$50,000 to our capital budget to marketing small businesses in the neighborhoods and we're recommending including that as well. Staff is available to answer any questions that you may have on this item, and the city follow-up item on the rebalancing, 9.2, I think city staff is available for that, as well. We recommend your approval and thank you.

>> Mayor Reed: All right. Are there any council questions? I have no cards from the public to speak on this. Motion is to approve both items. 8.1 and 9.2. All in favor? Opposed? One opposed, two opposed, constant opposed, Liccardo opposed. That passes on whatever the math is, 8-2 with Councilmember Campos absent. So that's approved on an 8-2 vote. I think that's the end of the agenda except for open forum. I have cards under open forum? No cards for open forum. Seems to be the end of the agenda. Election day. It's a good sign. We can have an early results tonight, don't have to stay up until 2:00 a.m. to find out what happened. We are adjourned.