

The following transcript is provided for your convenience, but does not represent the official record of this meeting. The transcript is provided by the firm that provides closed captioning services to the City. Because this service is created in real-time as the meeting progresses, it may contain errors and gaps, but is nevertheless very helpful in determining the gist of what occurred during this meeting.

>> Mayor Reed: Good afternoon. I'd like to call the San José city council meeting to order for March 9th, 2010. We will start the meeting with an invocation. Councilmember Liccardo will introduce the invocator.

>> Councilmember Liccardo: Thank you, mayor. We're honored to have monsignor Pat Brown with us. Monsignor Brown is the pastor at St. Joseph's Cathedral. He's been pastor there for 11 years. He's the first diocesan priest to hold this position. He's a local native, of Sunnyvale, attended Sacred Heart grammar school in San José and seminary of archdiocese of San Francisco. In his weekly homilies, he derives material from eclectic sources ranging from his golf game to Bruce Springsteen songs to his extensive reading in theology. He holds a master's in divinity from St. Patrick's Seminary, a master's in sacred theology from St. Mary's and University of Baltimore. He received his Ph.D. in sociology from Catholic University in Washington, D.C., and he's conducted postdoctoral research at Stanford, University of Chicago, and Princeton University, and we're very honored to have him downtown.

>> Gracious God, your revelation teaches us that the the distinction is not between those who believe and those who not believe but rather, between those who care and those who do not care. From the very beginning those who care have longed for the perfect community written longing and belonging come into a sublime balance. This would be a place of justice, equality, care, and creativity. A place where every person would have respect without having to earn it. Our world today faces so many cries east, ecologically, economically and spiritually. Isolated individuals can never overcome these problems. But you have shown us that there exists an incredible power in a community of people who are together because they care and they are motivated by ideals of compassion and creativity. You have taught us that such a community which develops and maintains its own vision despite the odds will not become a prisoner of mindless reaction nor will it deconstruct in introverted power games. Grant all of us the grace to create such belonging, backgrounded in a genuine longing for your divine will. May the work that takes place in this building truly be a service to all of the people of this city, particularly those most in need of care, of compassion, and of commitment on the part of the community. Amen.

>> Mayor Reed: Thank you. Please all now stand for the pledge of allegiance. We are going to be joined today with third graders from Payne elementary school. Thank you for joining us.

>> Mayor Reed: Thank you, Payne elementary school, third graders district 1, Councilmember Constant, thank you for bringing them in. First item of business are the orders of the day. We need to defer item 2.3 B, the Community and Economic Development committee report from February 22nd, needs to be deferred for one week. Are there other changes to the agenda from the printed agenda? Seeing -- we have a motion to approve the orders of the day. All in favor opposed none opposed, those are approved. Closed session report City Attorney.

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

>> Mayor Reed: Our next item is the consent calendar. Are there items councilmembers would like to pull off for discussion? Item 2.5 the trip report, 2.7 the rotary club children's guard Guadalupe park and gardens project. Any others, Councilmember Kalra? Any others besides 2.5 and 2.7? Motion is to approve the balance of the consent calendar. All in favor opposed none opposed, those are approved. Item 2.5, mayor and council trip reports. I want to give a brief report on my trip last week to Washington, D.C. and Los Angeles. I left here Tuesday night on a red-eye to go meet with the general services administration about our federal courthouse, Department of Energy about loan guarantee and other items, Environmental Protection Agency about a whole bunch of things that we're doing. Department of Health and human services and Department of Education about our children's zone project and our San José 2020 plan to close the achievement agap. Department of Transportation about many of our transportation projects in the U.S. Department of Justice. I also met with staff from senator Dianne Feinstein's office and Congresswoman Anna Eshew's office, as well as congressmembers Zoe Lofgren and Mike Honda, to talk about our appropriations requests as well as lots of projects that we're doing here that they have an interest in. On Friday I testified before the house committee on oversight and government reform. At the committee's request I was one of three mayors to talk about how the federal stimulus funds, the American recovery and relief - - reinvestment act funds, ARRA funds, how they have been used and what issues we might have with how they're being administered, and then I came home on Friday. I'm glad to be back. Hope I don't have to go for a very long time. But it was a very worthwhile trip. We did get the Department of Homeland Security to announce on Friday

the additional machinery that we're going to get here for passenger screening to go with the advanced baggage screening system here so we thank them for that as well. I think we had a use time identifying some funding sources on some of our programs which we're looking for federal assistance on which we'll have to follow up on. That's my report. Any other travel reports, Councilmember Kalra?

>> Councilmember Kalra: Thank you, mayor. Sounds like it was a very productive trip. I had a question just in regarding to the DOE loans. Any sense of when word might come out of gotten increase in a couple companies?

>> Mayor Reed: Well, the Department of Energy loan guarantees is very high on my list and has been there for over a year now. And things have changed a lot in the Department of Energy. Because a year ago when I was there the only high level appointee that was in place was secretary Chu. And even though they had been appropriated a lot of money from the previous appropriations and more money as part of the stimulus package they did not have a staff in place to do it. But this time when I went back I met with the executive director of the loan guarantee program who's been recently appointed and they're pretty much fully staffed. They're processing them so I'm expecting that those awards are going to come out rather quickly over the next several months. So that was a really good news because it is clear their director Jonathan silver really understands the importance of getting those out the door and creating private sector jobs. Of course we have ten companies in San José that have an interest in the loan guarantees would generate probably \$800 million of private sector investment as well as thousands of jobs. So that was very high on my lists. But I think the program and the staffing they've got now is so much better than where they were a year ago, that we'll see a much higher rate of announcements coming out of there.

>> Councilmember Kalra: That's really good to hear. Thank you, mayor.

>> Mayor Reed: Anybody else, other trip records? Okay no action necessary, those are just the reports. Item 2.7, the rotary club for children's Guadalupe river park and gardens program. I pulled that because I'm a member of the rotary club I need to disclose that I think there are a few other members that are a member of rotary club that need to state that for the record as well.

>> Councilmember Constant: I'm a member of the downtown rotary club.

>> Mayor Reed: Anybody else?

>> Councilmember Chu: I'm a member of Alviso rotary club.

>> Councilmember Kalra: Thank you, mayor. I'm a member of the downtown rotary club, and I'm very proud of the work they do. It's one more example of how they contribute to the community.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: I just wanted to give special thanks to the special folks who have been working so hard to make this happen. I see several folks who are here. Including Leslie Hamilton, the executive director of Guadalupe, soon to be Guadalupe park conservancy. I'm not sure if that's official yet, but it's coming down the pike. Certainly Dave Sindretto and Kathy Muller who have worked so hard to get this over the goal line. Obviously we've got a long way to go still with a lot of fundraising. But this is a really wonderful, exciting concept, bringing a really accessible -- well, it is a child play garden, but it will include play equipment for children with various disabilities. This will be a really unique treasure for our entire region, and I think it's something we're all going to be very, very proud of. I'm very grateful to the rotary for all they've done. In any event, with that I'll make a motion to approve.

>> Mayor Reed: Motion is to approve. All in favor opposed, none opposed. Thank you, rotary, thanks for all the other folks who are working to make this happen. It's a great project to celebrate a 100-year anniversary. Our next item -- that concludes the consent calendar. So we'll move on to item 3.1, report of the City Manager.

>> City Manager Figone: Mr. Mayor, I have no report today.

>> Mayor Reed: Item 3.2 is the the 2009-10 first quarter revenue collection strategic plan report. Scott Johnson will come down for that, in case we have questions. We have a motion to approve. Do we have questions for staff?

>> City Manager Figone: I think staff just wanted to make a few brief comments given the attention that has been given to this issue.

>> Mayor Reed: Okay.

>> Scott Johnson: Thank you, Mr. Mayor, members of the council. Scott Johnson, director of finance, and I'm also accompanied here with Wendy Sollazzi. Wendy is our interim revenue management division manager. And so we have a brief presentation that we would like to make. You have in your packet the first quarter revenue collection strategic plan and we have two actions that we're asking council to approve today. And this is a reference from the Public Safety, finance and strategic support committee. And one is to accept our first quarter report for the fiscal year, and in addition to that, is to approve a list of bad debt writeoffs that represent 126 accounts. And which totals about \$1.7 million you know for the city. In addition, there was some follow-up questions at the public safety finance and strategic support committee. And staff issued a supplemental memo to respond to the questions specifically related to how we're liening properties with the county related to our administrative remedy program for code enforcement. And then finally Ms. Salazi just handed out an info memo that was just issued today to provide more clarity in regards to our revenue collection strategic plan, the results, our delinquent, status of our delinquent accounts receivable with the history, and also, a little bit more information related to our recommendation on bad debt writeoffs. There we go. Okay. So this first slide shows that our total accounts receivable billings that have been assigned to our revenue management division since the implementation of our revenue collection strategic plan which was 2006-7 have totaled about \$228 million. And just want to explain something here. These are our accounts receivable billings. And this is showing over each fiscal year how much we have build and recorded in our accounts receivable system. And because the accounting principles require that we match, they call it the matching principle, that we match the revenues with our expenses for each applicable period, when we have a sale or we provide a service and we haven't collected the money up front in cash yet for that service, then we record accounts receivable and put those on the books, on the City's books as a debt that's owed to the city for those services or the taxes that are to be collected by the city. So this chart summarizes the accounts receivable billings that were assigned by the various departments throughout the city to our revenue management division since 2006-7 which was the implementation of our strategic plan related to more proactive efforts on revenue collection. On the next slide, this is a slide that is showing information that has been provided to the committee related to our delinquent accounts. Now, the revenue collection strategic plan we have significantly focused on reducing our delinquencies, and so what in chart shows is that from the implementation of our strategic plan on revenue collection through the second quarter, that is as of December 31st of 2009, we've had close to 42% reduction in our delinquent accounts receivable in the past two and a half years which equal about \$8.5 million that we brought into the city treasury by reducing those delinquencies. Now, I'd like to talk to you a little bit about the delinquent accounts and why we are also recommending that we write off our -- some bad debts. And let me just explain a few terms to you. In the financial accounting world, a bad debt, that's a portion of our accounts receivable that are considered uncollectible. From the auditor's perspective as we go through our audit process each year with our external auditor they review with the finance department all the City's accounts receivable and we do an analysis to determine which of those receivables could be considered uncollectible. And so when we do that, we also assign an allowance for those bad debts. In essence we are setting aside reserves every year for potential uncollectible accounts. So council has directed us three years ago, that on an annual basis, we should be analyzing our accounts receivable, analyzing our uncollectible accounts and bringing forward recommendations to the council for those accounts that are considered uncollectible. Although those accounts maybe considered uncollectible, we still proactively attempt to collect to the extent legally possible. The next slide shows our revenue collection strategic plan as I mentioned earlier, through these efforts, and reducing our delinquencies as well as our proactive compliance in regards to all the revenues that are due the city, we proactively generated over \$30 million since January of 2010, through our revenue collection strategic plan. And this shows each year, since January of 07 when we implemented the plan, through December of 2009, where what our budget target was, it was roughly \$2.7 million, and we've exceeded our target through these efforts each fiscal year since we've implemented this proactive plan in January of 2007. So further, this is a further breakdown of those collection efforts for that \$30 million that we've collected since the implementation of the plan. You can see here on this

chart our business tax delinquencies since January of 2007, we've collected approximately \$5.6 million. Council may recall that we had an amnesty program for our business tax system and we've also implemented a number of proactive collection outreach, and education to the business community, on the requirements in regards to paying the City's business tax. So through those proactive efforts, other than the normal billing that we do for those businesses that renew, we've collected approximately \$5.6 million in business tax over this period. In addition, I mentioned the delinquent accounts. This shows here that we've collected approximately \$17.4 million over this period, on our delinquent accounts, and then through our proactive monitoring efforts, for example, auditing our hotel motels for T.O.T. tax, looking at our sales tax, making sure that there's no leakage there and we're receiving the right amount of sales tax for businesses that are generating sales within the city and our franchises and so on we proactively collected approximately \$7 million. So therefore, in conclusion, and staff is available if you have any further question in regards to our collection strategic plan, as well as in regards to the bad debt writeoffs, we're asking the council pursuant to the public safety finance and strategic support committee's recommendation, accept this first quarter report and also approve the list of bad debts that are attached to the report that represent 126 accounts in the amount of \$1.7 million. And I do want to reiterate to the council that even though we're writing these off, we're recommending writeoff because we need to clean our books in accordance to accounting standards, to the extent legally possible, we will attempt to proactively collect on these accounts if we can legally do so. So with that, you know that concludes our presentation and we're available for any questions you may have.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I had a question in reference to the bad debts and RLs. And one of the reasons you had that problem was because some of the properties that were sold didn't have a lien against the property, but rather, the property owner.

>> Scott Johnson: That's correct. We identified in the report, you know we worked with the county, and the administrative citations go to the appeals hearing board. The appeals hearing board then sets a judgment, and they charge the director of finance to put a lien on the property with the county. So we've been working with the county on this and we recently came to our attention that there were some properties that were sold or transferred in which we did not get the funds from the lien. So we're working with the city attorney's office on this issue and with the county to try to resolve it. We are also in the process of re-licensing all of those properties that remain that we're not recommending for writeoff. There are some that have exceeded the statute of limitations that we are recommending for writeoff but we will still try to pursue collections until we're told otherwise by the attorney's office.

>> Councilmember Pyle: So if an individual is one of the ones that is -- has not paid their fair share, moves on, you can still put a lien on the property? Even if there's a new other than?

>> Scott Johnson: No, once there's a transfer the lien is removed.

>> Councilmember Pyle: I see, right.

>> Scott Johnson: So it is our understanding the county put a judgment on the individual, it is our understanding that there is a judgment on the individual for ten years. We use skip tracing and to the extent there is any assets we will try to recover that lien we will pursue that.

>> Councilmember Pyle: So I don't know if it ever happens that the lien against the person does ever work out, would that not prohibit him or her from entering into any other agreements, in other words, who red flags it or how does it get red flags?

>> Scott Johnson: It gets red flagged through the credit reporting agencies. So the credit reporting agencies go to the county, and for any liens or judgments that are placed against the property or individual, they then put it on the individual's credit report. So once someone, you know, applies for credit, you know a new transaction, to the extent that they're pulling that credit report they'll be aware of that situation.

>> Councilmember Pyle: That doesn't necessarily mean that that person will pay anything back but it will prohibit him or her from entering into another contract that they can't honor.

>> Scott Johnson: Potentially, that's correct.

>> Councilmember Pyle: Okay, thank you.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you mayor. I want to thank you and your team for the work that's been done over the years. There's been tremendous progress made and it's amounted to millions of dollars. And just an additional follow-up to the writeoffs. And a number of them indicate statute of limitations. And you stated that you're going to to whatever extent legal will continue to attempt to collect on all of the writeoffs so it doesn't preclude us from doing that. So on the statute of limitations though, are those -- how do they get to the point that these are so many and just very roughly looking at it close to \$700,000 of it are a variety of different claims that list statute of limitations as a writeoff.

>> Scott Johnson: Councilmember Kalra you bring up a good point. There are a number of different reasons and criteria that we're recommending for the writeoff. Let me review those with you. First of all if a debtor has no assets or out of business or no indication of any future assets. Another is they've deceased or there's no estate or the debtor is incarcerated for an extended or unknown period of time, they have filed bankruptcy, no legal recourse there, the debtor may have skipped, moved, or sold property and there's no forwarding information, or as you mentioned, there is -- the statute of limitations has expired. In that situation we will continue to pursue collection when the statute of limitations has expired. Generally the statute, it depends on the situation, it's generally three years, sometimes four years. So we are proactively attempting to collect on these debts that are due the city. But after the statute has expired, then we have an accounting obligation to write them off but it doesn't mean that we need to stop pursuing collections. Now, if the debtor tells us that well the statute has run out, then at that point we cannot legally attempt to continue to collect on that account.

>> Councilmember Kalra: So at some point prior to getting to the place where the statute of limitations is going to run, is there -- would you consider a value in maybe finding other agencies, for example if we can't find someone, can't locate someone, obviously there are credit agencies that will buy up these kind of debt and maybe at a fraction of the cost but it's better than just writing it off. Is that something that we do or you would consider doing or for some reason not consider doing? Can.

>> Scott Johnson: We have looked at in the past we have looked at basically selling our accounts receivable. We think that you know, the challenge is that we're only talking here about our delinquent accounts. And obviously we're a multibillion dollar organization and the receivables that we have for the city and what we collect and the revenues are much greater.

>> Councilmember Kalra: I'm not suggesting the entire accounts receivable. I know that once you get delinquent accounts I know there are agencies that buy delinquent accounts. Do you think that would be a value for whatever reason wouldn't be worth it? You can go ahead and definitely explain your thoughts on that.

>> Scott Johnson: Councilmember, we can definitely pursue that and review that option. I do also want to mention that we have two collection agencies that we assign these accounts. So to the extent that we've run out of our tools in our tool box you know for collection then we also assign to collection agencies. But as far as selling the delinquent receivables we can review that and maybe report back to the council through an info memo.

>> Councilmember Kalra: Yeah, I think it might be helpful and if it's not worth it, that's okay too. But if we're already working with collections agencies in trying to get some of these accounts squared up and it sounds like we already had that relationship built in but at some point if you noticed a certain type of delinquency that we're just not having success with maybe those might be worth looking into, relinquishing for some percentage at least getting something back. Thank you.

>> Scott Johnson: Okay, sure.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks, mayor. Scott, I can see from the report on page 3 describes how your team has been engaged in an awful lot of projects lately, migrating software I think on your databases, implementing measures J and K, and involved in an audit compliance with landfills, I think that also involves the auditing staff as well. I think you guys have done an extraordinary job in bringing revenue to the city that otherwise would be lost. So thank you to you and your team. But obviously the numbers have dropped off. And my question is, is that a factor of staff resources being too tightly constrained because of all these other obligations or are we hitting a point in which there's simply declining marginal returns on the amount of effort we exert on trying to get the blood out of the turnip so to speak?

>> Scott Johnson: Councilmember, I think it's a sign of both. I think it's a sign of the times that people are losing their jobs and companies are going out of business and we're finding it more difficult to actually get those collections. In regards to the staffing we actually through this plan a couple of years ago council did authorize some additional investigative collectors that we could actually focus. As you can see from the results here we've done significant focus on reducing our delinquencies and I think that as time goes on, using your term, it's becoming more and more difficult to collect on those seriously delinquent accounts.

>> Councilmember Liccardo: Right. As long as the ROI exceeds 1 theoretically it makes sense for us to continue to invest dollars to elect dollars. I guess as we look towards budget season, I'm wondering is this something we should be looking seriously about?

>> Scott Johnson: Um and --

>> Councilmember Liccardo: I know you're not authorized to speak for the City Manager but I'm interested in your point of view.

>> Scott Johnson: Believe me so I've been finance director here for nine years and for about nine years we've been focusing on our delinquencies. To your point you know in all the work we've done we've implemented many proactive revenue collection programs. And so as finance director I've made recommendations through the budget process and the City Manager has been very willing to look at those. Usually we put them on a pilot program to make sure that they work. For example the most recent one we implemented through last budget signing is a field enforcement program where we have two investigator-collectors that actually go out into the community and look at our revenue opportunities and we're making progress there. So we'll continue to look at those opportunities moving forward.

>> Councilmember Liccardo: Okay, great. Last question I had related to the business license information program. It's on the bottom page 3 and the top of page 4. I understand that you check different databases to be able to determine who is properly paying the fee and who's not. I assume there are other fees that are related to that that get collected once you know that somebody is on the radar so to speak. I know Kurt Pringle down in Anaheim launched a program to essentially give away busy licenses for a limited period of time to stimulate business formation as well as to get these folks on the radar so they wouldn't be spending so much time trying to find ghost businesses out there that they're trying to collect taxes from. I'm wondering has there been I know we've engaged in amnesty program in the past but in this area in your experience have we seen efforts where we've simply allowed people to get onto the radar by getting the license at a reduced cost and actually been able to generate long term revenue in a dynamic way that way?

>> Scott Johnson: Well, councilmember I haven't seen that experience in San José where we've reduced the cost but to your point we have implemented twice, in as far as I know, as far as the history of San José, city has implemented an amnesty program for business tax. We also implemented a general accounts receivable amnesty a couple of years ago. So we have made a lot of progress. We also made some changes to our business tax ordinance in the past where it is more -- more small business friendly. We've increased the threshold for hardships and those types of things. In addition we provide some flexibility where we waive penalties and fees that the finance director has that authority based on case -- individual case-by-case situations. So we've done some

changes to our business tax code you know to try to you know be more business friendly and provide that opportunity to businesses.

>> Councilmember Liccardo: Thanks Scott.

>> Mayor Reed: Scott I had a couple of questions about the terminology and what it means and the reason for writeoff category. For example, dispute over invoice. We have one here with Santa Clara County library. And we're writing off, the reasons of the dispute, invoice, I suppose that's a pretty good dispute from their point of view and not so good from our point of view and we're not going to pursue it.

>> Scott Johnson: That's correct. At some point sometimes there are disputes on invoices and you can't come to an agreement so the differential, then we just recommend to write it off and move on.

>> Mayor Reed: Okay. In the category of statute of limitations we have a few in there. The Mayfair community gardens and the San José water purchasing. And I'm guessing that we got to the statute of limitations point, because there was some other kind of dispute that really makes it not worth pursuing, because it shouldn't be too hard to find San José water before the statute of limitations runs out. But if there's a disputed invoice that we don't think we can collect on eventually we got to give up on it when the statute runs.

>> Scott Johnson: That's correct. We -- I just want to reiterate that we do everything we can as we proactively bill, continue to bill, try work with the vendors, the companies and so on. And sometimes we can't come to an agreement or they're not willing to make the payment for various reasons and then we have the statute that we run into.

>> Mayor Reed: And finally I just want to compliment you and your staff on the work that's been done over the last nine years because clearly you've made a big gain in lowering the delinquencies and collecting more money and that's good for the General Fund. And I just noticed on this supplemental memo that you put out, you're way in excess of what we had budgeted. So that's helpful to have some excess of budget on the receivable side. So we're collecting a lot more money than we had hoped for so that's good. Good work and it's good to see the progress. Any other questions or comments on this? There's none, there was a motion to approve on the floor. All in favor? Opposed? None opposed that's approved. Our next item is 3.4. A return to the discussion we started last week regarding submitting a resolution to the electors for the June 8th election. Proposed ballot measure regarding the City's card rooms. City Manager is going to start this presentation.

>> City Manager Figone: Thank you, Mr. Mayor members of the council I'd like to begin while the staff is queuing up to present this item to you. Before you today are three ballot measure alternatives that the city attorney's and the City Manager's office staff have developed to address the broad range of issues which surfaced on the council's discussion last week on the issues of card rooms and whether or not to proceed to the ballot. First option presented directly addresses the city council motion to increase the total number of card room tables by 18 resulting in an increase from 80 to 98 tables. The second is to eliminate the betting limit as set forth in title 16, gaming control ordinance and permit the betting limit authorized by state law. Third to eliminate the permissible games limit set again in title 16 and permit any card game authorized under state law consistent with city regulations. Fourth, is to increase the card room tax from 13% to 15% on gross revenue and finally, fifth, is to conduct necessary audits and oversight. We presented to you two alternatives to allow for some continued local control with respect to betting limits and/or the amount of permissible games. And staff will review those with you in the presentation in a moment. However, before they begin, I want to frame this issue a bit more broadly than the ballot measure itself by recapping the path that the city has been on regarding addressing the City's card rooms concerns. In November of 2009, staff presented information that summarized the cart rooms, Sacramento legislative activity to relocate out of the city and take the allocated card room tables with them. If this would have occurred, the city would have lost the current \$13.7 million in revenue that is generated by the 13% card room tax. Another legislative effort concurrently underway at that time was to address issues of local regulation, particularly legislation that would have directly impacted our gaming administrator's ability to remain employed with the city. While these legislative measures did not pass, it has become clearer that Sacramento legislators are watching the activities within San José very closely to address the two card rooms' concerns with business growth and regulation. Additionally, it is also very clear that other surrounding cities are eager to welcome the City's card rooms and related revenue. Within that context, you can see that your policy considerations are broader than the

proposed ballot measure. It is about addressing the business concerns of two San José card rooms within state law, while ensuring that there's the necessary oversight in place to address the city's concerns for oversight and regulation. With any of the proposed ballot measures presented today, city staff has worked to address what we, as your professional staff, have viewed as our regulatory concerns to ensure that the City's oversight needs are addressed locally. That said, politically, Sacramento legislators so far, due the efforts of the mayor, have given San José officials the opportunity to address our card room issues locally. As noted in the staff report, the card rooms are either in support or neutral with respect to the added regulatory requirements that the city is recommending be approved hand in hand with any of the ballot measures. These regulatory requirements address the police department's concerns, and the chief is here today to speak to those, as you desire, with respect to providing the necessary law enforcement and oversight to ensure that there are no adverse impacts to other title provisions and to ensure that the city maintains its fiscal reporting requirements to ensure that the correct amount of revenue comes back to the city. So I hope today that you do see that your considerations of the ballot measure are broader than the anticipated \$5 million in additional revenue. It may also have implications on the approximately \$14 million in current revenue that the city receives. For this reason the staff has done what I feel is a great job in laying out in the memo what the city's bottom line is with respect to the approval of any of these ballot measures and that the council should feel comfortable that the administration has addressed our enforcement and regulatory concerns. That said we do respect, as always, that ultimately the final policy direction is that of the city council's. And with that I'll turn it over to staff.

>> Thank you, Debra. Deanna Santana, deputy City Manager. As Debra noted at the March 2nd city council meeting staff was directed to develop proposed ballot measure language with the following features as reflected on this slide. Staff has prepared the draft ballot measure language, met with the card rooms and identified regulatory concerns as well as proposed regulatory requirements that address those concerns. We also suggest that with approval of any Bluetooth measure that the regulatory requirements be approved as part of today's action. Just as a recap this is alternative 1 on the staff report, and as referenced in both the attorney's memo as well as in staff's memo as alternative 1 throughout this discussion. The administration has three concerns but is also developed proposed regulatory requirements to address these concerns. The concerns rest in three areas, and I'll go over them briefly. The first is the ability to attract gaming activity as it relates to informing other regulatory functions. We want to ensure that this action does not weaken or impact other regulatory provisions of title 16. The second is the ability to track or estimate the card room tax revenue due back to the city. Simply said we want to make sure that there are the provisions in place to ensure proper statistical tracking and fiscal tracking to ensure the city gets its fair share of the card room tax. Or all of the card room tax that it's due. We also have concerns about opportune known impacts and a voter approval requirement to undue the thresholds of unlimited betting. We have shared with the card rooms the proposed regulatory requirements that we believe would sufficiently address our concerns. If the city council selects any of these proposes ballot measures staff recommends that these regulatory requirements be included in the motion to address the administrations concerns which are to allow for the administrator to review and make findings to authorized state-approved permissible games based on objectively criteria. There are six criteria that are listed on page 4 of the staff report. I can go over them or just by reference they're inherent already in the draft resolution. The item B is to maintain fiscal reporting requirements as outlined in title 16, and statistical results of each type of game being used. And the third is to conduct necessary audits and oversight. I should note that we did review these regulatory requirements with bay 101. They do support the addition of these regulatory requirements with any council action today and Garden City has indicated that it is neutral. To address the broad discussion that took place last Tuesday we have identified two additional alternatives that the council could consider. The first is on -- referenced on page 5 of the staff report and largely it has the same features as alternative 1 with the exception that the betting limit would be set by municipal code or by city council action. This would remove the voter requirement to adjust the betting limits and allow staff to more fully understand the impacts of no betting limits. It also addresses the concern of unintended consequences and the difficulty of seeking voter approval to adjust the threshold. Alternative 3's proposed ballot measure language is on page 6 of the staff report and accomplishes essentially the same as alternative 1 with the exception that the betting limit is set by municipal code and would increase the number of permissible games to an amount yet to be determined. Under this scenario staff would maintain the current administrative remedy whereby one game tight and its many variations is counted as one game towards the cap. On March 5th we met with the two card rooms and on this slide here is a quick summary of the input that they provided. In short Garden City maintained a neutral position on any of the alternatives proposed today as well as the regulatory requirements. It did express its continued support with regulations stating that it was fine with regulation, but that it hoped to one day have the city mirror state regulatory

requirements. Bay 101 expressed support for alternative 1 as well as the regulatory requirements that we put forward, opposed alternatives 2 and 3 and strongly suggested that it supports regulation and law enforcement's role in gaming. I do just want to provide a clarification or correction. Last week we may have suggested that there was no universal list of state approved games. While there is not one list of approved games, the state does maintain multiple lists of approved games. Essentially it maintains a list per card room. So I do want to clarify that in case there was any confusion as to how staff may have spoke to a universal list. And also we did put out a supplemental today to clarify what unlimited betting or table stakes and Carl and Richard are here to respond to any questions regarding unlimited betting. With that just a reminder of the schedule we're under. Council would need to act today so staff could prepare the necessary documents for registrar of voters. I'll defer to Rick.

>> City Attorney Doyle: I do want to clarify that adoption of any three of the alternatives would not, and it's not intended, to limit the authority of the city council to amend or repeal the provisions of title 16 at any time. And I think that's an important thing to remember, that ultimately the goal is to give the -- or maintain at least in the city council that ability to amend or repeal the provisions of title 16 in the future. You're not binding future city councils.

>> Mayor Reed: Thank you. Before we get into this I need to disclose in preparation of this meeting my staff and I have talked at various times with the representatives of bay 101 including Ed McGovern Ron warner, Cindy Chavez from the South Bay labor council and Garden City representatives Earl Furtado, Eric Swallow, Randy Terry, George Beatty from the POA, and I have a meeting set for Friday with Senator Corbett to talk about card rooms in San José. Councilmember Constant.

>> Councilmember Constant: Thank you. I want to disclose that since the last meeting where I made my last disclosures I've had discussions with Ron warner from bay 101, Eric Swallow, Scott Hayden and Harold Furtado from Garden City casino. I had a question on the regulatory --

>> Mayor Reed: I'm sorry, councilmember Constant, I may suggest we take public testimony first before we get into this. I only have three cards. Might as well take that and therefore the council can benefit from that as we go through the discussion again. Michelle Lew, Ross Signorino and George Beatty.

>> Good afternoon. My name is Michelle Lew I'm president and CEO of Asian Americans for community involvement, AACI. I wanted to update you and let you know that we do have signed contracts with both cardrooms and are pleased to be launching the first of its kind problem gambling project in San José. So over the next three years we are going to be doing six things. Number 1, we're going to be researching the extent of problem gambling in greater San José. Second, we're going to increase the number of local certified problem gambling counselors. Third, we're going to hold training. Fourth, we're going to increase awareness of problem gambling and services available. Fifth we're going to provide treatment for problem gamblers and their family members or other concerned significant others. And sixth, we'll refer clients to additional support services as needed. We have already held the first problem gambling summit in San José in January. We have trained 13 licenses AACI counselors to be certified problem gambling counselors, and we are holding an upcoming problem gambling forum through our hopefully first Thursdays program in April. We're looking forward to working with the card rooms to address problem gambling, and we look forward to providing you updates as we move forward. Thank you.

>> Mayor Reed: Ross Signorino, George Beatty.

>> Ross Signorino: Thank you, Mr. Mayor members of the council. I'm a little surprised the public testimony is coming before the meeting before we get a chance to hear what you're going to say. But I don't doubt that for one moment, come June, when you put -- I think it's June that you're going to put this on the ballot that it will be approved, because the finance is involved. But talking about the finances involved, one would have to ask this question. You're talking about \$13.7 million in revenue that we get from the card rooms to San José. In a bad economy, when it's really needed. But what's the cost of us running or letting these card rooms run here in the City of San José to the different departments that we have not to mention the police department, but I'm sure there's other departments involved, too. Now, we're talking about maybe prostitution, loan sharking, and even I don't know about human trafficking, that might even be involved in there to some extent. Are we getting \$13.7 million clear money, is that it or is it much less or how much is it that we're making after all the -- our expenses are

taken out of there? Now one time Councilmember Chu I asked him to elaborate a little bit more. He said that it's costing us more in police work out there than we're taking in. Now I asked him I think a couple more times after he made that statement to elaborate a little bit more on that. Now I'm asking him now to elaborate on that particular statement that this is costing us a lot more than we're taking in. Please, Councilmember Chu elaborate on your statement. I ask you now. Thank you.

>> Mayor Reed: Next speaker is George Beatty. And that's the last card I have. If anybody wants to speak on this item please get a card in.

>> , members of the council, George Beatty, president of the San José Police Officers Association. San José Police Officers Association has serious concerns about the possibility of expanding the card rooms in San José. Unfortunately, we received little to no information on this matter prior to last week's vote, and no one from the city has contacted us to discuss the ballot measure before you today. Many of our board of directors and police officers believe that expanding card rooms has the potential to increase crime in our city at a time when an already understaffed police force may be even reduced further. A move such as this could jeopardize the safety of our streets, neighborhoods and our offices. My board has yet to take a formal position but we want to be clear with the mayor and the council that our first responsibility is to public safety and we will evaluate any measure with this concern in mind. Thank you.

>> Mayor Reed: That concludes the public testimony. So let's come back for some council discussion. I had a couple of comments to add to the manager's and the staff's report. First in the staff presentation they indicated that bay 101 would support alternative 1 but would be opposed to 2 and 3 and that Garden City would be neutral in all three. I believe Garden City would be also opposed to 2 and 3 based on what I've heard. Perhaps that depends on what happens between now and election day but I certainly think that we're not going to have bay 101's support. We'll have their opposition and most likely would have opposition from Garden City for alternatives 2 and 3. I think that leaves really alternative 1 on the table for us to consider. And I want to go back to October of last year, when the council approved recommendations that I brought forward on how to handle some of the problems that were being seen with our card rooms, being seen at the state level, and why we had two senators and others in Sacramento concerned about what we're doing in San José. First, the -- our regulation of the card rooms is substantially more expensive to comply with than the state regulations that govern the other 90 card rooms throughout the state. Our annual table fees which we're not talking about today, which pay for the cost of regulations, are eight times higher than the table fees charged by the state. Our combined table fees and tax on revenues which we are talking about today, the combination is almost \$200,000 per table per year. And are the highest in the state. Nearly twice that of the next highest city and several times more than most other cities. In October of that time we had a substantial backlog of licenses and applications more than 40 and people have been working on temporary licenses for years. Its was that combination that got the substantiation of members of the state legislature and bills were introduced two bills which were carried last year which we managed to stall action on those to allow us to have time to move forward on the things that we were doing, and there were ten recommendations that were approved and many of those have been underway and there's an audit from the City Auditor that will be coming out in a couple of weeks that deals with some of the issues. But while we are definitely making some progress, we are certainly not finished with the work that needs to be done to deal with the competitiveness issues and the concerns that got the attention of members of the state legislature. That's one thing. The other thing is, I just wanted to make clear that what's in front of us is a change in a couple of areas in title 16. I think the impression was given last week that we were throwing out the regulatory scheme. So I went back and pulled title 16. It's 50 pages long, double-columned, single print or single lines, and 25 chapters over 100 sections with probably a total thousand provisions and we're talking about making modifications in a couple of areas. We're definitely not throwing out the regulatory scheme. There are many, many, many areas that would remain controlled under title 16 including the ones that we are talking about today with the regulatory changes that the City Attorney has recommended if we move forward. So that there's I think it's pretty clear that the staff is prepared, whichever way the council goes, to continue to regulate the card rooms, to make sure that they're safe and honest and that they're paying us our share of the revenues. So I'm not concerned about that. I think we have ample power to take care of any issues or problems on the regulatory side. On the other side, there has been of course concern about impacts of gambling in our community and Michelle Lew who testified earlier talked about the contracts being signed. The card rooms are putting a million dollars a year into this effort to have some way of dealing with some of the problems associated with gambling. That's something that they've agreed to do. That's on top of the tax which is about \$13 million a year. That's on top of the regulatory fees which are another couple

of million dollars a year and is a substantial effort that AACI is going to lead to deal with that. Which is, I don't know that there's another card room in the state that's doing that but we're certainly trying to be aggressive at dealing with the problems that meet be associated with gambling that have raised community concerns. So with that I think we're faced with trying to come to grips with alternative 1, as a means of increasing our revenues. We're talking not huge amounts of revenues, on top of the revenues we're already getting but \$3 million to \$5 million a year is significant in this budget cycle. And finally I just wanted to point out that if you compare the revenues coming out of the two card rooms, \$13 million a year plus or minus depending on the economy that's more than all of our auto dealers combined. It is a significant revenue source. And \$13 million a year is a lot of jobs if we were to lose those revenues. So I'm very interested in maintaining the revenues and if we can with the consent of the card rooms get a ballot measure approved by the people that would increase the revenues all for the General Fund. Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. I had a question on page 4 of the nome under section A which is kind of the regulatory requirements. Specifically subsection 6 that the playing of the proposed permissible game is available to all card room permittees. And in speaking with one of the card clubs I understand one of the card clubs has a patent on a particular card game. And I want to know why, if the State were to approve that game to be played, why we would force them to make their patented product available to their direct competitor, and why we would do that?

>> I'm going to defer to Carl to provide a response.

>> We did it because there were a host of disputes arising between the two card rooms over this. We believe -- and we'd always had a situation in which, until very recently, in which all the games were equally available to both card rooms, we believe that was the fairest way to do it, to make an even playing field. Even the rule we have doesn't prevent the holder of the license from requiring the card room to pay for it, for the license. But we thought that it was a better regulatory practice to keep it a level playing field between the two card rooms.

>> Councilmember Constant: So I guess my question goes to that particular question. Specifically, why would that be better? I don't necessarily see the difference. I mean when I go to Starbucks for a cup of coffee and I get a black cherry mocha, I don't go to Peet's and expect them to have the exactly same thing.

>> Richard tang, gaming administrator. Councilmember Constant, at that time when that one particular game was being proposed by both card rooms, both card rooms' representatives were present at the time of negotiating whether or not those game rules would work in San José. At the end of the day, we found out that after we approved it, then one card room obtained the exclusivity for that one particular game for that card room. Understand at that time, there is 21 permissible games available to both card rooms. If that were the case -  
-

>> Councilmember Constant: Let me interrupt. I understand that, that's looking backwards. I'm saying looking forward. Why would we, looking forward, say we want to make sure if tomorrow, Joe citizen creates a game that has a patent on it and goes to one of the two card clubs and makes a deal, where is it our -- why would we be involved in interfering in that patent, if they now want to play it at one casino or the other going forward? Where is our city interest in that?

>> If the 21 permissible game list were to be removed, then you are correct. We would not have a regulatory concern. At that time, when there were only 21 games being offered for play, in the City of San José, that would mean that one of the card rooms would only have 20 games to offer for play.

>> Councilmember Constant: Okay.

>> That would not be fair.

>> Councilmember Constant: I get that. But in the presentation and correct me if I'm wrong, we were asked that if we were to approve either one of these, to also approve this list of recommendations and regulations. So my -- that's why I'm asking that so what I'm hearing is it's no longer necessary and we could strike item A-6.

>> Essentially you're correct.

>> Councilmember Constant: Okay. I think that's important. I just don't think we should be inserting ourselves into the business practices that are outside of the regulatory practices of the city. I wanted to make some comments on just some of the things that came up just in the short time we've heard public testimony. We heard about crime rate and as you know District 1 has a card club in it, and has had it in there since I got in this city 33 years ago. And I just wanted to point out that District 1 has the lowest crime rate of all ten council districts. So it's really hard to make that leap that a card room equals higher crime when that doesn't exist in practice. And I think it's easy to look at the statistics, council district by council district which I've done every year since I've been here. And I don't think it's fair to really make a supposition that this happens, we heard perhaps loan sharking, perhaps prostitution, perhaps this. But the record is: I have the council district with the lowest crime rate. I have a card club that's been operating there for I don't know how many years, but the 33 years that I've been around. And I get absolutely zero -- I've gotten one constituent call on the card club in my district in the three -- almost three and a half years that I've been here. So I just wanted to make sure that that was on the record. The mayor alluded to one of the points that -- we keep talking about the \$13 million. And one of the speakers spoke of the cost of us regulating and enforcing. But I wanted to make sure, what are the total fees that we collect annually from the two card clubs in the last fiscal year?

>> Are you referring to the table fees of the 13%?

>> Councilmember Constant: Any fees that the card clubs pay between the two card clubs.

>> The 13% equates to somewhere around -- sorry, \$25,000 per table approximately.

>> It's approximately \$2 million.

>> Councilmember Constant: \$2 million, okay. So any supposition that we would be spending far more than what's received in taxes and fees, I don't think is a valid supposition either. Because we have the regulation which is cost recovery, \$2 million a year or thereabouts. We know that \$13 million plus that comes in taxes, if you convert that to city employees, I believe the number we've been told is 8 FTEs per million. So that would make about 100 employees that this revenue pays for, so to speak. And I think I can say pretty confidently we don't have 100 employees working solely on the card clubs on an annual basis. So I just want to make sure that when we're talking here we're talking about what's really happening. I do have a lot of concerns about the issues that are going to be aired during the audit which we'll talk more about later. But I really think bottom line is, before any of us got here, the city made the determination that card clubs are legal in the City of San José. And when you have a legal enterprise I believe our job is to do with any legal enterprise what we do with our other businesses, and that is, to help them do business and succeed in the City of San José. In the last three years I've watched this council ask our staff to jump through hoops for one company coming to the City of San José, to work at the speed of business, to have all the different departments work collaboratively, to get one company through our process that maybe produces one percent or two percent of the revenue we garner from these established businesses that, again, are legal. That's a decision that's already been made. We know we've done polling in the past that the electorate supports a potential ballot measure like this. I don't see why we, instead of helping these businesses succeed, we seem to put hurdles and hoops in front of them to succeed in our city. So I just have a concern with how we treat one of my constituent businesses, and people who provide a significant number of employment jobs in our city, and significant amount of revenue to our city. So with that, I want to hear some more of my colleagues, I guess, before we get to a motion. But I really think that this is something that we should be doing.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. Historically you've heard me on this council speak in favor of taxing the card clubs for several different reasons. One if it's popular with the constituents because it's typically one of those things where they tax someone else and not themselves. Two, we have these two legal card clubs in San José that are legal by state law you know if there are things that we can both garner value from then why not. But over this past week I can tell you I'm going back and forth on my vote. I'm having levels of frustration because this card room vote is coming before the City Auditor's report is coming before us and I really think that should have been dealt at the same time. When I last spoke on Tuesday I believe that report was coming out last

Friday but it's not so I'm here asked now to make a judgment before the City Auditor report comes out and I believe there are some significant things to talk about when that City Auditor report comes out. In addition, there is the question of whether or not card clubs have the ability to move within San José. At this point in time we determine that, and that's a council vote that determines that but I also think that's a discussion because holding these card clubs, you know, hostage essentially by a landlord that knows they can't move doesn't benefit us in the end because we're making a gross receipts tax on this thing. That is a question because one of the card clubs would like to move and/or the other one would like to have the ability to at least negotiate, and we don't allow that. I don't know of anything else we do that in the city like that. so again I have concerns.

>> Mayor Reed: City Attorney had a comment on that.

>> City Attorney Doyle: Two issues, the first is, I mentioned it early on. We know the City Auditor is busily working on her audit. That is one of the things that I noted at the beginning that nothing -- notwithstanding what the voters do, if the voters pass this measure it will not preclude the ability of the city council to amend or repeal title 16. So you can deal with those issues at a later date if you want to. The second issue and I think it's important to note that prior to the settlement of the litigation, card rooms could not leave except under threat of eminent domain. And we've eased that up considerably. The council, it went forward after the settlement with adoption of a zoning ordinance that allows the card clubs to move and it is subject ultimately to the council approval. But they do have that ability to move and they're not totally captive to a landlord.

>> Councilmember Oliverio: I get that, Rick, but it requires a council vote. And historically we have not seen council votes that would allow that to happen. That's my uneasiness. Here we're saying we want this from you, but there's these other things that might happen in the future and I can't guarantee it's going to work for you, so I kind of feel a little bit uneasy. It's not like it's a fair transaction. So that's why I'm uneasy. I feel because the council could choose to do something on any given day. We've mentioned the money here before it's half our library budget. If anyone wants to kick them out of town then be ready to shut the doors for X A days at the libraries. The additional revenue is all code enforcement and graffiti combined. So for any of us that take calls from our constituents we typically get code enforcement calls and graffiti removal calls. Part of my uneasiness also is I'm not seeing any alternatives. I'm not seeing alternatives to someone else that says, hey, I'm not really a big fan of this, and I get it, I understand. But I'm not seeing any alternatives that say where else \$5 million is going to come from. So it's sort of like you go vote for it you take the arrows but at the end it is a drop in the bucket when it compares to \$116.9 million. So I guess that's my uneasiness. I'm speaking openly here and then I think the City Manager makes an excellent point. We risk having Sacramento legislators carry legislation to allow them to move. And if that happens, good-bye \$13 million. And if we're too restrictive they can go. And we know Sacramento moves faster, and even though our mayor has a case several times, he won't be able to do it all sometimes. I think the mayor brings up other good points on just the revenues and that matter. So again like Councilmember Constant's I'm curious to hear feedback from my colleagues today, prior to voting.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. And I do agree with the sentiment mayor that you tarted, that alternative 1 is probably the only one that will garner enough support to actually pass. And I think that you know, there's a legitimate chance it could pass. A couple of comments regarding the clubs. And you know, I have been to both the clubs and have never seen some of the criminal activity that was alluded to, at least on the surface that occurs. I think the clubs have very intricate safety and security systems with the police department assist in that regard. So I'm not as concerned with criminal activity as Councilmember Constant alluded to from the physical presence of the clubs. Certainly an issue that arises is, in terms of policing of the games themselves. Make sure they're fair to people and make sure they're regulated and the State has rules to that effect in terminates of regulation in terms of limits and what have you. And as I've stated previously you know, as has been stated here, the games, you know, the rooms have been able to exist. They're in our city and certainly there's been a big change in the last several years or so, in terms of gaming, now I believe at one of the card rooms there's a major tournament happening this week which will probably get more television viewers than almost anything we do in this city if not anything that we do in this city during the course of the year. And so a couple of the concerns and I'm very glad to see Michelle Lew here from AACI, that was a concern I had raised previously and continue to raise even in the times I had been to both those clubs, there's certainly a high percentage of Asian Americans that are at the clubs that are gambling and that you know take part in the number

of different games that are offered. So I'm glad to hear that there's been some very significant and formal movement in terms of making sure that those services are offered to those that need it and that we have a reputable organization that is taking the lead on that along with the card clubs. And in terms of some of the issues raised regarding safety, and security, I know that there is a representative from the Police Officers Association with legitimate concerns. If this -- if there is a motion that passes, that this be put on the ballot, the two areas of concern that I continue to have are the one that was raised by the representative of the Police Officers Association in that sometimes it's difficult to track the impact and so you know whatever suggestions or recommendations that they may have and how they can do that would be helpful. And I had the similar concern of making sure that we get resources, appropriate resources that are culturally competent to those that use the card clubs in excess especially with the limits being removed and such. Thank you.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor I would like to at this time put out alternative 1 as a proposal.

>> Mayor Reed: I have a second from Councilmember Herrera. So we have a motion on the floor to approve alternative 1.

>> Councilmember Pyle: And then I'd like to speak to it.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: I'd just like to remind many of us that we have made a couple of shall we say mistakes over the years in reference to our decisions. One of those decisions had to do with big boxes. And we as a city said no big boxes in San José. So what we did is let all of our neighboring cities build the big boxes, and then our San José residents went to other cities very often to buy the goods that were in the big boxes. That was not a sound decision. That did not bring money into our city. Another had to do with hotel development. We said we should have hotel development only downtown. That meant that anyone who builds hotels once again on the outside of the cities or near other cities got more business than we did. So I would hope at this time that we can look ah a little past those decisions, learn from them, and realize that this is not the time to disturb two casinos that have been here for -- I'm not sure how many years. I tried to google Garden City, and they don't go into the history of it. So I think it is past, as Pete said, it's probably got to be 75 years old. Would that be somewhat close to the truth? Nobody knows. At least -- since World War II. Especially when we're trying to close budget deficits, I really don't think that this is the time to, pardon pardon the pun, gamble on something that would bring some benefit to our city. Thank you.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. And I've -- am going to express pretty much similar things that I expressed last time that I talked about this. I support the motion. The card rooms are legal. They've been legal for a very long time. They're businesses that bring in incredible amounts of revenue to our city and you know, 13.7 million but contemplating this additional \$5 million over \$18 million. I don't see another source of that revenue right now and we really need to ask ourselves if they did move where would we come up with that level of revenue. If we do not work with businesses, we stand the chance of them moving. And just because they move wouldn't mean that the social problems associated with gambling would move. We would still be dealing with those and, in fact I'm keenly aware of that, that we have issues with illegal gambling and I think a lot of the concerns that we talk with prostitution and other activities occur very frequently with illegal gambling because then you don't have the regulated environment and you don't have our police department working with the business there to -- in an acceptable fashion. So actually the illegal side of it concerns me a lot. And the fact that we do have very good regulation and it sounds like we've got a very good -- we've got good security systems and we're working very hard to minimize the issues we have with the card rooms that exist in San José, gives me some comfort. I also have a lot of confidence in our police department. And the fact that we have 50 pages, I think the mayor talked about, in terms of title 16, only a couple of sections of which we're talking about modifying, that we will be able to continue to regulate the card rooms. Am I excited that that's our biggest revenue source? No, I don't gamble, and I don't think gambling is the greatest thing ever. We have accepted it as legal. It is not rampant in our city. It is in two of our card rooms and they are contributing a lot in terms of revenue. So I think we really

need to support this. I hope the council will vote in support of this because it's something we need to get out to the voters. And ultimately the voters will then decide. It's up to us to put out something that we think is responsible to the ballot, but in the end, it's going to be our voters that will make this decision. And if we can look at the polls that have been done, I think it was 64% of those polled were in support of it. So I don't think we should take this opportunity away from the voters to make a decision on this important measure. Thank you.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. It's really nice to hear that AACI has finally signed a contract with the two card rooms. And does that mean that my 500 contribution can get a refund, now you've got millions of dollars now to take care of this problem? And thank you, Ross, for exposing my position on gambling. And I didn't recall quoting you on a number, you know, for the social cost but I do believe there is a social cost associated with it. I don't know if the chief will be able to put a dollar sign to the social cost of gambling and I really don't expect you to be able to give me that dollar amount but go ahead.

>> Rob Davis: You're right, councilman, it's difficult to put a dollar amount on that and part of the reason is because the social cost and the crime we see as a result of the card clubs doesn't necessarily happen at the card clubs. Councilmember Constant is right, if you were to track the actual crime rates at those two locations you're not necessarily going to see it there but that's not where domestic violence and foreclosures on homes and child issues, childcare issues. These things occur at the homes. Even when we track for instance a robbery or a crime that occurs as a result of loan sharking or something, we don't track that back to the club. We don't always know that, people aren't always offering that up. So it's very, very difficult to put a dollar amount on the social cost or to say exactly where that's happening. We don't know -- we do know it's not necessarily happening at the clubs it's happening throughout the community. We also know that the people attending these two clubs come from all throughout the city, not just one given district and they come all throughout the South Bay. So it is difficult, and in fact it would be difficult to track what kind of impact this increase would have. I don't know if I could come back a year from now and say we've seen this rate of increase on crime as a result of what's happened here but we all know that that happens. So again our concern is just trying to do what we can to regulate as best we can.

>> Councilmember Chu: Thank you chief. I hope that answered your question Ross. You know, being witness, a broken family because of this gambling addiction, it's very difficult for me to support any expansion of the gambling in town. I have a question before I make my -- the friendly amendment. Is the table fee so high, it's ten times higher than anyone else, why is it at, I thought we had a very efficient police department, how can our table fee is ten times higher than other card rooms?

>> Councilmember Chu, Richard tang gaming administrator. To answer your question sir, to the best of my knowledge, and I truly believe in San José we're the only jurisdiction within this state that has a separate division of gaming control. With a full time staff of seven people. Whereas, elsewhere, other jurisdictions outside San José you may have one per in the vice unit with a collateral duty of gaming inspector. To quantify how much we're charging the card rooms, we write about 1.9% of the total gaming revenue, which is in line with most jurisdiction is outside the City of San José. Outside the state of California.

>> Councilmember Chu: Okay, good, thank you very much. I hope this -- it will probably further address in the IPA report, so we'll probably talk about the table fee when we have the chance to receive the IPA report. All right. And I would like to make the friendly amendment to take the alternative 3, so you know, I can be compromised at least we give them the number of table they want, and we increase the number of games. But then we still reserve the right to set the higher betting limit. Without betting limit saying the sky is the limit, it really bothers me. So I would like to make a friendly amendment to support alternative 3. And I also wanted to make the statement and that even if I don't support alternative 1, that I will not be opposing it.

>> Mayor Reed: Councilmember Pyle, you have the motion, request for friendly amendment.

>> Councilmember Pyle: I'm sorry, I cannot request the request for amendment. You'll have to do a sandwich motion or something like that. But I'm not willing to do that.

>> Councilmember Chu: A substitute motion?

>> Councilmember Pyle: I'm sorry --

>> Mayor Reed: You would have to make a substitute motion.

>> Councilmember Chu: I'll so move for substitute motion, to accept alternative 3.

>> Councilmember Pyle: Which means that alternative 3 will have to be voted on first.

>> Councilmember Chu: Right.

>> Mayor Reed: If there's a second.

>> Councilmember Chu: If there's a second.

>> Mayor Reed: There's a second from Councilmember Liccardo for alternative 3. So that is the motion on the floor. Councilmember Chu were you finished with your remarks? Okay, Councilmember Nguyen.

>> Councilmember Nguyen: Thank you, mayor Reed. I really appreciate all my colleagues comments so far and I really appreciate Michelle Lew for being here. Thank you for all the work that AACI is doing to provide solutions, possible solutions to individuals who have gambling problems in our city. And I look forward to the city having a partnership with your organization. I fully recognize the significant revenue that the card rooms contributed to the General Fund over the years. And this is definitely a difficult issue for me, given that I agree with a lot of things that my colleagues have expressed thus far. But the constituency in the residents that I represent in my council district are mostly consisted of blue collar workers, people who work two, three jobs to make sure their family is intact, making sure the kids have a roof over their head and food on the table. And contribution of gambling in the Asian American communities, lends my opposition to the card room measure. Although I understand that we're gaining financially a lot from the card rooms I thank them for that but given the social impact and the financial impacts that these families are going to encounter is not something I can support. I know the city is looking for ways to bridge the budget deficit but I just don't think it should be at the expense of breaking families apart and that's why I can't support this. Thank you.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor. I appreciate all the additional thought and work that's been put into addressing the regulatory concerns that I expressed last week. And I know several others did as well. And so I think my concerns in that respect are largely put to rest. It seems as though there's a regulatory scheme that enables us to keep the lid on things so to speak, even under state law. But I'm a little bit hung up over the betting limit issue. And as I see the question of betting limits and their implications, having an unlimited betting limit, well, it's a bad way of putting it. Removing a betting limit it seems to me has potentially two consequences for anybody who's placing a large bet. Either the patron loses, and then we've got somebody who's going to have a hard time paying rent or their mortgage that month, or the patron wins, and by my reckoning the city doesn't get much revenue when the card clubs lose. So I'm not sure there's really a real win out of all that. And so I'm very concerned about how high those numbers go. I'm digesting the memo that was just released and I appreciate very much Deanna's memo that was released today to help me understand some of the natural constraints around the betting limits but I was hoping I could ask a couple of questions just so I could fully understand what the implications are. One I understand that Title 16 prohibits card rooms and funding sources from extending credit and providing loans to patrons. The question I had for Carl or Rick was, is there any risk that that rule or any other related rules in title 16 for instance around prohibiting any person from seeking providing or offering loans for credit? Were there any of those rules could be preempted by state law given the fact that you've got a pretty extensive state law in this space?

>> City Attorney Doyle: Under current law, no. The state law allows locals to enact stricter regulations which we've done so you know what the state does 50 years from now I don't know. But under current law no.

>> Councilmember Liccardo: Okay, so there's no risk that we're going to be -- actually you were about to say something Carl I'm sorry.

>> No, not currently, and in fact the rule that you're speaking of with respect to not being able to either offer or accept loans on the premises is designed to deter loan sharking and assist the police and the card clubs in dealing with that activity that occurs on or around the premises.

>> Councilmember Liccardo: Right.

>> And it's also a state penal code provision about loan shark. It's also a violation of state law as well.

>> Councilmember Liccardo: Sure, though I imagine it's still relatively prevalent, I would imagine where you have a significant amount of gambling activity. Chief do you have any opinion about that?

>> Rob Davis: In terms of the loan sharking piece?

>> Councilmember Liccardo: Yes.

>> Rob Davis: Well, clearly we know it happens. It's just a given, if there's gambling, you're going to have that at some point. So exactly where it's occurring in the city is very difficult. People don't come forward to say that they're engaged in that activity. We just see the consequences in the either crime and/or social cost that we're seeing, but it's hard to tie it to loan sharking.

>> Councilmember Liccardo: Okay, thank you chief. Oh, I'm sorry, Carly you were --

>> Not strictly a legal comment but remember, you are going to have an issue with loan sharking even with illegal gambling that occurs in the city at least with the card clubs being regulated you have an opportunity which we've taken advantage of to try and regulate the loan sharking as much as we can.

>> Councilmember Liccardo: That's a fair point.

>> I'd also just like to clarify Councilmember Liccardo, you had made a comment earlier about our ability to control losing the mortgage or the rent. The betting limit is the amount that can be played per bet. A person -- we cannot stop a person from betting away mortgage or rent. I mean they can play as many bets as the \$200 limit per play would allow them to bet that amount. So they could essentially go in and play \$5,000 over the course of their time at the card room. And that's not anything right now that we can control.

>> Councilmember Liccardo: And a limit on a table stakes game is the amount of the stakes or the amount of the --

>> \$200 per bet.

>> Councilmember Liccardo: That's under the current code. If we were to go with option 1 then the only limit would be the stakes or buy-in limit of that particular card room isn't that correct for the stakes game?

>> That's correct.

>> Councilmember Liccardo: So really that's at the discretion of the card room and we would have no control of that under option 1.

>> That is at the discretion of the card room, and part of their business model, the two card rooms, their revenue is generated by the amount of bets that are placed. So they also have an interest in ensuring that people -- their business model is supported, and revenue is increased as people stay longer and bet longer, which means there's no gain in having a person come in and bet \$10,000 or \$15,000, when a person would play -- and pay one time the \$1 per bet limit. When over a course of time they could make more bets and the card room could generate more revenue. My point is to clarify that the betting limit is per game, per bet, not necessarily a limit of

how much an individual can gamble over time. So it doesn't -- it doesn't get to the mortgage or the rent concern that was expressed.

>> Councilmember Liccardo: I appreciate that. A pen could make repeated trims. I guess what we're concerned about with problem gambling, though, is that people who are prone to compulsive behavior will make unwise decisions in a rash moment, and that's probably I'm assuming what the driving force is, the policy behind having betting limits. So you know as I look at California or Asian table games for instance my understanding is the house is actually involved then directly is that right Deanna?

>> Councilmember Liccardo, in laugh it's against the law for the house to bank the games.

>> Councilmember Liccardo: But they're banking style games I'm sorry if I'm conflating things.

>> The banking style games are those games that are offered in traditional casinos and travel casinos. Those are the games that we refer to as banking games whereby every player's betting against one person as opposed to one against one another with the traditional American poker games. In other words like blackjack is a banking style game. No limit Texas hold 'em is a poker style game. So when we refer to a banking style game that is the person who is acting as the banker he has to take on all winners and all losers for the entire stable.

>> Councilmember Liccardo: And that cannot be the house?

>> Cannot be the house.

>> Councilmember Liccardo: Thank you for correcting my understanding. I'm looking at page 2 of the memo that was released today and trying to understand the different kind of games.

>> If I could explain one more thing.

>> Councilmember Liccardo: Sure.

>> The house-

>> Mayor Reed: Carl you need to get a little closer to the microphone.

>> I'm sorry. The house makes their money off the fees that they require. On the California Asian style games which have a player, be your dealer position, it's per bet. There's like a dollar fee and it's graduated. And on the poker side, it's a more traditional rental or per hand fee. That's how the -- the card rooms are not involved directly in the play of the games at all. It's not like Las Vegas.

>> Councilmember Liccardo: Right, and help me understand, Carl, although I do gamble I have not been gambling at these card clubs so I don't understand how they work very well. With a graduated bet wouldn't the card room have an incentive to see a larger bet? To garner a larger fee?

>> Not necessarily. I mean, they're interested in the long term player. I mean it's not necessarily true that they're interested in the higher bets. Most of the bets are around --

>> \$50. \$50 is the average bet.

>> Okay, currently the card rooms charge, both card rooms charge \$1 per wager. So at a certain point, certain games they would charge up to \$2. That's what Carl meant by progressive.

>> Councilmember Liccardo: Okay so there's no percentage.

>> No, no. That's another prohibition under state law. There's no percentage.

>> Councilmember Liccardo: Okay, that's helpful.

>> When I said graduate, it's \$1, \$2, you're talking about a very slight difference.

>> I had the opportunity to explain to a chief of staff earlier today the issue of wager progression. It was sort of an ah-ha moment. I would be happy to explain and walk through the example.

>> Councilmember Liccardo: That would be helpful.

>> This is on the \$200 betting limit. If an individual would bet \$100 and lose the game, they would be down \$100. If they would bet another \$100 they would be down \$200. The individual would be down twice. If they play another 100 they are now down 300, assuming they lost. If they want to win the money they've lost they're restricted because they can only bet \$200. So even if they were to be the maximum \$200 betting limit and win, they would still be down the \$100 that they lost. So under the scenario of the betting limits this is something that we started to better understand in terms of the complexities of wager progression and statistical probability.

Under this scenario the \$200 betting limit does not advantage the player at the table in fact it works against the player and it works in favor of the funding source which is something that Richard explained to us very early on. That being said, and I know it sounds interesting that, you know, the removal of the betting limit would in fact address the player's bet we don't understand fully all of the considerations and the complexities related to wager progression and statistical probability. But that is one example of how the betting limits disadvantage the player.

>> Councilmember Liccardo: I'm wondering why we had it to begin with if we had it all along.

>> Rob Davis: Part of the reason is that although you're in the game and you're trying to win that money back if you keep losing and losing and losing and losing at some point you're losing and so there was this thought that maybe there was a point to have people step back and realize what they're losing and take a breath.

>> Well, we sort of address that in the amount limit on the amount of time we allow people to stay in the card rooms. We -- as part of the settlement of the litigation --

>> Councilmember Liccardo: That is 20 hours, Carl.

>> 20 hours. And it's very rare that someone's going to stay that long.

>> Councilmember Liccardo: Yeah, I hope not.

>> Trying address the problem of the pathological player, that's one way of dealing with. The other way is assistance which the council has done as well.

>> Councilmember Liccardo: Okay, I guess you can see my concern about this, and I'm sensing that there are certain environmental constraints potentially on bets that may be helpful here. I'm not sure we completely anticipate all the consequences of removing this betting limit. That is another underlying concern of mine. I guess that raises another question which is how much should we care if the betting -- I'm sorry if the card rooms are not supportive of a particular option? That is, if we go forward, with a measure that would keep the betting limit in place, have we done any polling to test negative messages that card rooms might be putting out there against this measure, to understand how much that would really affect the percent approval of this measure?

>> Mayor Reed: We haven't done any polling, I'm not aware of any polling on the negative messages. But I think it's really clear that you can't win a tax measure without some kind of support. And I don't see anybody running a campaign in favor other than possibly the card rooms. So if you have a negative campaign against which I think we well with alternative 3 I think the chances of winning are zero. But I don't think there's been any polling on that.

>> Councilmember Liccardo: I mean I certainly appreciate the general principle mayor and I agree with you in 99% of the cases but this is one of these situations where voters are faced with a tax that's not on them.

>> Mayor Reed: Those are the best kinds to get passed most likely to win.

>> Councilmember Liccardo: I guess there are. I'm going to continue to keep an open mind as this conversation progresses to understand, I really want to understand well what the implications are of removing this betting limit because it's still a little bit unclear to me.

>> Mayor Reed: Thank you. Well I think that was the first pass through the council. We'll do it again. Let me just say I'm not going to support the substitute motion to go with alternative 3. I think it is a loser at the ballot because we will have opposition and I don't believe we can win with organized opposition. Councilmember Constant.

>> Councilmember Constant: Thanks. I also don't support the substitute motion. I originally put my light on for a friendly amendment. When we get back to the first motion, I want to add a friendly amendment. But in the meantime we keep hearing the sky's the limit but in actuality the sky's not the limit on betting. But when you read the supplemental memo and you keep in mind the practicality of running a card club and the practicality of someone coming in and being the bank for these card clubs the odds are enormous that there will be limits. Because it is in the card club's best interest to keep some sort of reasonable limit so that they can have people continue to play. If someone goes in and bets the mortgage on the first bet the card club makes almost nothing, one buck. Well, actually after the tax they make 87 cents. They make 87 cents if that person goes in bets the house and leaves. So again, getting to the business practices, that's where the experts on how to do that aren't sitting here and really not sitting on that side. They're out in the market running those card clubs. They know what they need to do to run their business in a way that is sustainable. And when you look at the memo it's pretty clear that there are going to be limits. It's just not going to be limits that are set necessarily by us. You know, I just -- I really don't like the chicken little mentality of you know, instead of the sky is falling, the sky's the limit, the sky's the limit because I don't believe it is. You know, we heard similar last week when we said every single -- everything would be on the table as far as what games would be played. And that wasn't accurate as well because there is a penal code section, I looked it up, it's section 330 of the penal code that clearly prohibits quite a number of games. And as Carl mentioned there are many regulations at the state level that place limits on what card clubs can do and how they can operate. So I just want to caution, when we're listening, we have to listen to all of everything and not the hype. Because I tell you, I really feel that a lot of things that we have heard here were really I guess you'd say more inflammatory towards the card clubs, especially last week. Even the things about saying there was no list. When I called the division of gaming instruction they told me, of course there is a list and they pointed me to the portion of the Website from the list was. I think we have to keep that in perspective. Sam you made a comment about the city won't get any revenue when the card clubs lose. The card clubs don't lose because win or lose the card rooms get their per bet or per hand transaction fee. Whether a person wins a million dollars or \$1 the net revenue to the city is the same. And that's really the basis of why it's in everyone's best interest and their business interest to effectively manage their business operations through it. So I'm not going to support the substitute motion. And when we come back to the original motion I have a friendly amendment at that time.

>> Mayor Reed: Vice Mayor Chirco.

>> Councilmember Chirco: Thank you. I'm not going to be supporting the first motion. I will be supporting the second one, for all the right reasons I'm hearing concern voiced by my fellow councilmembers. But I think what we're talking about is addictive behavior and that's not something we have any control over. And this is where what the staff's report out was, where there's a fee per hand, I think you know, so it's in -- as I've heard said it's in the card club's best interest that the players continue and stay longer, not bet everything in one hand, and walk out. If somebody stays for 20 hours, they are to be ejected. That is part of the card club settlement. And that is also arising the settlements from the card clubs created the funds that AACI is now administering and that is the strategy I feel that we have to rely on to direct addictive type behaviors to, because it is not whether or not they stay in the card clubs, it says whether or not they will overcome their addictive behavior, it's intervention. Whether it's smoking or it's alcohol or it's drugs, or it's gambling, it days intervention. And they have a strategy where if we have a referral where we can direct people who are struggling with this, this is a business model. These are business people. Is it the most desirable business? I'll leave that for somebody else to evaluate. But I don't think selling cigarettes or selling alcohol is the most desirable business either. But our -- it is legal, it is something that our community wants available. So I will be supporting the first motion. Thank you.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: You just wanted to refer to one last thing. When you talked about, how did you put it? Behavior that -- you used a term that, I thought that's a little different. The problematic gamblers, do you not know who the people are that are usually going to winds up in some kind of trouble and monitor them? It seems to me I heard that in some past get-together that we've had.

>> The card rooms are where who these people are. As far as the regulatory, and we don't know who they are. We couldn't know who they are. We have not kept track of who these people at the card rooms. But they have the responsibility now, as we speak, to keep track of who's been in the club for so many hours in the day and within a certain period of time beyond the 20 hour cutoff they have to eject these people off the premises.

>> Councilmember Pyle: Thank you.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you. I won't be supporting the substitute motion. I think one of the things that I think is good has been pointed out is basically the card rooms are renting table. It's sort of a kind of a real estate situation actually where they're renting the table actually. They're not involved in making profit on bets as they increase or profiting specifically off the game as it increases in monetary value. And again I think that's an important point. Because there is some incentive for them to have volume and have people continuing to be there and have them actually not have really large single bets. So I think that's really an important part of this. I was a little bit confused on the substitute motion, because when I heard Councilmember Chu mention what he wanted to have voted on, it sounded different than what Val put up there. I think you said, Councilmember Chu, that you wanted to change the betting limit but I didn't hear you talk about the table games so I thought you were going to say alternative 2. I was just checking to make sure that's what you intended.

>> Councilmember Chu: I'm okay with increasing the permissible game limits but I'm really concerned about the betting limits. Like I say, I can compromise.

>> Councilmember Herrera: I'm not suggesting, I just think you have a different one up there than what you intended.

>> Councilmember Chu: No, this is the one.

>> Councilmember Herrera: Okay, all right.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor and I think Councilmember Constant cleared it up that these aren't Vegas style games but I did have a question. That as to why they would want to have no limit. I don't think it was mentioned last week but my understanding is and correct me if I'm wrong, is that there's a small number of players that they may be losing out on that do want to play at those higher limits and they want to be able to offer games and not lose out on those players, is that -- I remember hearing that at some point. It may not have been last week but as opposed to having higher limits so everybody bets more.

>> You are correct Councilmember Kalra. The card rooms have characterized to us that currently surrounding card rooms and certainly Indian gaming brings in buses and pays for people to play outside so they can play at the limits they would like to play at .

>> Councilmember Kalra: My recollection is it was still a relatively small number of players. In other words, because of the business model we're talking about here it's not Vegas where the higher the bet the more they stand to gain, there's only a very incremental increase that they get, that there's still more of an interest to have a higher volume of games rather than a bunch of high-limit games.

>> That's correct too and when we talked more with the card rooms of the volume and how --

>> Mayor Reed: Dee Ann 'ah you're cutting out a little.

>> There was generally agreement that the limit was \$50 per play there was openness in looking at different structures in how no change in the betting limit would be put into place. But you are correct that there is a small volume of folks that would want to play higher limits.

>> Mayor Reed: One more thing, City Manager.

>> City Manager Figone: Deanna isn't another issue the game Texas hold 'em is that another linkage to the betting limit issue?

>> The issue and I would let Carl or Richard explain the details. But you are -- that's true that the Texas hold 'em is really what's at play and it is often referred to as unlimited betting, Texas hold 'em but in fact as we started to review this more closely it's become clear that it's really not unlimited betting Texas hold 'em in the sense that can you bet the farm away. It's basically what you've brought into the game that you can lose. I'll ask Richard to add on if I haven't captured all the details.

>> Councilmember Kalra: So it's unlimited bets as far as no limit on what can you bet once you've bought into the game. Not that I've played hold 'em but I think I've got the idea.

>> That is one of the most popular games here and one of the games that is at issue for the card rooms to play.

>> Councilmember I'd like to almighty Deanna's statements, in that there are two issues that the card rooms have. One is that because the limits are so low, those that would like to play higher limits would have to go outside the city, that's the issue. The second issue, with respect to no limit Texas hold 'em in the city, they are not loud to play that in the city and that's probably one of the most popular games in the country now, table stakes Texas hold 'em you are only going to lose up to how much you buy in. Usually they're around the biggest one we have is \$10,000 buy-in. I hope that clarifies some --

>> Councilmember Kalra: It does thank you. And then just a last comment to follow up on the concern I raised earlier in terms of the demographics of those that play in the card rooms that by increasing the number of games, particularly those that require a bank and what have you, it's my guess that it could also exacerbate that problem in terms of demographics and that's why I think it's that much more important that some of the problems being set up with AACI are being put in place now, so if there is an increase in the number of games that both the clubs as well as the AACI can get up to speed on how to approach any increase in excess gambling. And the one positive about having physical, although I'm extremely concerned about the increase particularly in the Asian American community about the increase, being attractive new sans, it is one place you can identify people who can be problem gamblers, I have stated the problem that could be a problem with people gambling at home and so on at least you can observe them and keep an eye and so that's one positive that does come out of having a physical presence where you have these kind of games being played. Thank you.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. I just wanted to clarify that option 3 does allow the council to establish a higher banking limit, higher than \$200. Maybe to 400 or even higher. So it's not that we're limited to \$200, is that correct? Right, so this pretty much gives the council the ability to set the limit.

>> Option number 3 would allow for betting limits to be set by municipal code. In order for the council to be able to approve betting limits it would need to be approved, the ballot measure would need to be approved. And so to add context this is one measure that one of the card rooms particularly opposed.

>> Councilmember Chu: Okay. So if we changed the wording to just decided on the limit today, then we put it through on the ballot then we don't have to worry about changing the limit until next time?

>> Rob Davis: If the measure were to pass then you'd have the ability to set the limit.

>> Councilmember Chu: All right. We are talking about, I know the banking, the card rooms cannot be the bank. But without a limit or with a much higher limit is it possible to have organized crime or maybe organized players put their money all together and go in and play as a bank? Is that a possibility there? Or could it be possible like the other casino or card room excuse me that go to the other -- other card rooms and play the bank?

>> Councilmember Chu, as we speak right now anybody can go into the card room and bank the game. Anybody.

>> Councilmember Chu: Okay, so this is what I try to point out, that without the limit, we are inviting those people that may want to pool their resources together and go in and play the bank. Whereas if we have a lower limit there would probably be no incentive for those people to do that, and that's my point. And also, I wanted to, using Deanna's example, of betting \$100, another \$100 loss, another \$100 loss, he would like to bet the \$300 and see if he can win it back, what if he lose the \$300. That's the scenario, people lost their home, lost everything they have. Because even if, say, we have a \$100 limit, per the \$300, you win, is this guy going to stop there? Probably not. And he's going to probably throw another \$200. So this really, your example is really my biggest concern. The gamblers, you know, if you don't have a limit to say, hey, wake up, you have a series of bad hands. Go home, come back tomorrow. This is how they lose their shirts. You know, because they always want it back, the next hand is the one that I'm going to hit and that I'm going to hit a jackpot or whatever. So I also wanted to raise that point. And certainly, it's about the opposition. I think if we have the higher limit, we probably would be able to limit the opposition to the minimum. You know, I haven't been running any campaign without a strong opposition. So I guess I'm not really that much concerned about an opposition. Especially one of the card room, is okay with option 3, so.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks. I just wanted to follow up on a question that Ash asked which I think was really a terribly important question based on what we've heard. And I still don't have a really clear sense of the answer. Which is, if card clubs really only make revenues off of the frequency of betting, and not on the amount, why would they have such a strong incentive to push against betting limits? Why are they saying they're going to oppose a campaign if it means that we keep betting limits in place? Why would they be willing to bankroll an opposition to it? Is there something else we don't know? I don't pretend to know what that is. Do they get a percentage of the buy-in or stake that a person makes at the table? The only thing that's been offered so far is they might be able to get a few more of the customers that go to the other clubs that don't have limits. But then you have to ask yourselves, is this a typical 20-80 problem where we know for instance with drug behavior that problem drug users or alcohol users are problem that consume 80% of the drugs, is it the fact that they're going to be attracting the wealthiest betters, or the ones that are most compulsive? I think we have to ask ourselves why is it that these card clubs care so much about removing these limits? Why wouldn't they simply say hey, city council why don't we talk to you about what the limits ought to be? Why don't we index them for inflation, why do they want so badly to remove them if they really don't get any significant financial benefit? I don't get it.

>> Mayor Reed: I think I can answer that based on what I've been told. First is Texas hold 'em most popular game in the country you can't effectively play in our card rooms because the way our betting on it works so that's one reason. The second reason is we have now spent approximately seven hours debating this particular item. They don't want to have to come back here for seven hours of debate every time the betting limits need to be adjusted or something. They just don't want to do that. And you know, they're focused on trying to make it easier for them to do business and they see that alternative 2 and 3 is making it more of the same or more complicated. Now that's their view right or wrong. You know, that's the way I understand it.

>> Councilmember Liccardo: But if it's based on Texas hold 'em and they're still constrained by whatever the buy in or the stake is for the Texas hold 'em game, it seems to me that there's not any real impact on them.

>> Mayor Reed: That may be your perception. They have a different perception is all I can say.

>> Councilmember Liccardo: It would be helpful if they were here to tell us.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. And I have tried to keep an open mind on this issue and have tried to be supportive of the mayor's proposal to put this on the ballot. But in continuing to listen to the pros and cons I'm going to have to stay with what my gut feeling tells me, and I just cannot support this. And I thought I'd just get that out early. Thank you.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. Can we make a Texas hold 'em a exception so we do allow them to play Texas hold 'em with a certain limit but that then every other game we want to make a proposal of betting limit of, say, \$500?

>> Mayor Reed: I think all of that might be possible if we were -- had more than a couple hours to figure it out. Because we got to -- this is either going on the ballot in June or it's not and that decision has to be made today. That concludes the debate and discussion on this. We have a motion on the floor by Councilmember Chu for alternative 3 which was the substitute motion. If that fails then we'll take up the other motion by Councilmember Pyle. So on the substitute motion, all in favor? Opposed? In opposition Kalra, Oliverio, Constant, Campos, Reed, Chirco, Pyle, Nguyen, and Herrera, so that substitute motion fails, I think a 2-9 vote. Back to the motion originally on the floor by Councilmember Pyle. Which was for alternative 1. Councilmember Constant, you wanted to request a friendly amendment.

>> Councilmember Constant: I just wanted to make sure they are motion contemplated the removal of that one specific section item number 6 which made sure that games must be able to be played at both casinos, so it is part of it.

>> Mayor Reed: She confirms that is part of the motion. The seconder of the motion is saying yes that is part of the motion on the floor.

>> Councilmember Constant: Just one editorial comment very short. On the demographics, I think if this gets to the ballot and passes and we see Texas hold 'em come, first of all there's no way betting limits will work in the mechanics of the game. I played the game. I even have it on my iPhone here, I have not been playing it during discussions. So -- but I think with the popularity of Texas hold 'em and the way it's hit the country in the popularity of Texas hold 'em I think you will see an evolution of the demographics of who comes to our card clubs and the type play that happens at our card clubs.

>> Mayor Reed: Thank you. The motion on the floor is for alternative 1 with a slight modification mentioned by Councilmember Constant. All in favor? Opposed in opposition Kalra Chu Campos Nguyen and Liccardo. That's five opposed, six in favor, that passes on a 6-5 vote. Okay. That's it. We're going to quit. Well, we've got a few more items to do.

>> City Attorney Doyle: Same item, Mr. Mayor that's the first item. There are a couple of housekeeping things you need to take up. The first is, when we -- and this is B, to adopt the resolution call for and giving notice of special municipal election to be held on June 8th. Putting this measure on. And then, there are number 1, the council, did ballot book can contain rebuttal arguments if you want. You know when you get the ballot you get the ballot measure, the city attorney's's impartial analysis, you get ballot arguments pro and con. The city council has not always required that rebuttal arguments to those pro and con arguments also be included. That's your call. We would like your direction as to whether or not you would like the City Clerk to have those included. Then the ordinance, the actual draft of the ordinance is on file with the City Clerk. It doesn't have to be in the text in the ballot book. We can just note in the impartial analysis that if you're interested you can see it online or in the offices of the City Clerk. So those two items we'd ask direction.

>> Mayor Reed: All right, let's take them one at a time. You go back and tell us what the first one is you need an answer on.

>> City Attorney Doyle: The first one I think is number B really to call the -- to call the election and put the ballot measure on the election. I think that's you know implicit in deciding in the alternative you're telling us to do that, but I'd like a formal motion. Whether or not you would want rebuttal arguments to be printed in the ballot book.

>> Mayor Reed: At home, for those who are watching with their popcorn and their soda, 3.4 A, and 3.4 B, if we approve the card room ballot measure we just did,.

>> City Attorney Doyle: And you can include C with that too.

>> Mayor Reed: We can do B and C together except we need a motion one way or the other on the rebuttal issue.

>> Councilmember Constant: Mr. Mayor wasn't C part of the motion because I made the amendment to take out item 6 from that regulatory structure.

>> City Attorney Doyle: We will get that in the ordinance yes, you're right.

>> Mayor Reed: Okay, we just need to vote on 3.4 B which is call the election but we need a decision on the rebuttal or not as part of that motion. Two things, one is we just got to -- we're not calling the election, it's already there built we need this resolution. So on the resolution about holding the election does anybody care one way or the other about rebuttals? Councilmember Pyle.

>> Councilmember Pyle: I think it might be helpful to explain some of the terms. There may be -- would that be a possibility?

>> City Attorney Doyle: Well, when you have the ballot measure there are -- you afford people the opportunity to write arguments in favor and arguments against.

>> Councilmember Pyle: I understand that but --

>> City Attorney Doyle: And then you entitle people to write if you want rebuttals to arguments in favor and arguments against but we don't always do it that way. I think in the last election we didn't have rebuttal arguments. We just wanted clarification from the clerk to decide whether or not you also want to include rebuttal arguments.

>> Councilmember Pyle: Okay, in that case ...

>> Lee Price: Mr. Mayor, if I could. Rick, I hate to contradict you but actually in the 2008 election those ballot measures, the council did give us direction to allow for rebuttal arguments.

>> Mayor Reed: But in 2006 we didn't. Councilmember Oliverio.

>> Councilmember Oliverio: I would like for us to be consistent one way or another. If we're not putting rebuttal arguments to save money on everything I could live with it maybe but if we did rebuttal arguments last time then I'd be inclined to allow them this time and going forward it's almost fair, it would be a different issue for council to talk about what our policy is or something so all right I would hear discussion but on fairness I would make a motion to do what the City Attorney has stated to allow rebuttals.

>> Mayor Reed: That would be a motion to approve 3.4 B with rebuttals. There's a second by Councilmember Constant. Councilmember Kalra.

>> Councilmember Kalra: Sorry, just a little bit, still a little confused. Now that the previous motion went through it's been adopted so what's being asked of us is the formal motion to put it on the ballot and, to allow for rebuttal? Okay, thank you.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Forgive me I'm not really clear about what the fiscal impact is here. Is there any?

>> Lee Price: Mr. Mayor, Lee Price City Clerk. Actually the registrar of voters' estimate that we have previously provide you, \$500,000, \$477,600, that does include the text of the initiative, the impartial analysis of the City Attorney, the arguments in favor and against, and the rebuttal arguments. So our estimate already covers all of this. So the fiscal impact is not any different than what we've previously told you.

>> Mayor Reed: But would it be less if we didn't have rebuttals?

>> Lee Price: It would be less. It would be less, difficult to calculate what we'd save in a page. But you know when it goes out to all registered voters in San José, there would be a savings, if we did not allow rebuttal arguments and also if we did not print the full text of the initiative in the sample ballot.

>> Councilmember Liccardo: Well, I usually doze off by the time I've gotten through the pro and the con anyway. So I'm not sure what value added is rebuttal. If we'd save a few bucks for the taxpayers I'd rather go without frankly.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: I'm fine with that but then we're going without continuing through November election through June 2012, I mean I'm okay I just don't want to make exceptions it should be consistent. I just want to remember the conversation. I'm happy to withdraw my motion and allow someone to make I guess I could alter mine and say go for it as we talked about in my motion but amend it to not have rebuttals. If it's okay with the seconder.

>> Mayor Reed: It's okay with the seconder. So the motion is to receive without rebuttals.

>> Councilmember Oliverio: We do the same in November.

>> Mayor Reed: That can't be be part of the motion.

>> Councilmember Oliverio: I'm reminding everyone if it's different.

>> Mayor Reed: Councilmember Oliverio is prereminding us. Called preminers.

>> Councilmember Oliverio: And as my fine Councilmember Constant mentioned maybe staff could bring back a policy so it's just consistent one way or the other and not impartial on one ballot measure or other, based on whether we like one or not.

>> City Attorney Doyle: We could, it would be by default but council can always change it.

>> Councilmember Oliverio: Of course.

>> Mayor Reed: Policy is only good until Tuesday. All right we have a motion to move this forward with whatever resolution the City Attorney thinks we would need, which includes no rebuttals and we would not print the text of the ordinance in the materials, they'd be available to the public otherwise, on that, all in favor, opposed. Opposed Kalra, Campos, Chirco and Nguyen, so that passes on a 6-5 vote. Okay that's done on a 6-5 vote. That does conclude item 3.4. Taking us to 3.5, the ethics update. One of our periodic update from the City Attorney of things we should be worried about from around the state of California so that we don't have to make some of the same mistakes other people have made.

>> City Attorney Doyle: Mr. Mayor, Lisa Herrick is going to be giving the presence and I'll give the brief intro and let her start up. What we want to talk about today is government code section 1090 which is something that comes up from time to time. It really is a law that dates back to the progressive era here in California. It's a very simple statement that you cannot be financially interested in a contract, the bottom line, though, is there's no

definition of what financial interest is and it's evolved through cases and attorney general's opinions. We frequently seek guidance from the attorney general's office, there is a lot of confusion raised from time to time and there's a very recent case out of San Diego which was involved with the San Diego retirement system and the application of it. So I want Lisa to give that presentation and take it from there.

>> Lisa Herrick: Thank you, good afternoon, Lisa Herrick from the city attorney's office and I'll just start with the text of government code section 1090 which essentially states that city officers shall not be financially interested in any contract made by them in their official capacity. This is a way at getting at the serving to masters problem. Public officials shouldn't have to choose between serving the public entity that they are obligated to serve and then their own financial interest on the other hand. If we break down the language there are really just three basic elements. There's got to be a contract involved. The contract is interpreted broadly and it doesn't have to be in writing. A financial interest has to be involved but that also is interpreted broadly and it can be a direct or an indirect interest. And then finally a decision's got to be made about the contract. The attorney general, California attorney general materials do tell us though that councilmembers are conclusively presumed to be making decisions on all the contracts that come before this city. Or to the extent it involves the city, within the City's jurisdiction. The consequences are very harsh. The contract can be void and unenforceable. There can be some civil penalties and then the criminal liability is serious, prison time, disbarment of any financial interest that has been received, and then, the inability to hold office in the state of California for the rest of one's life. There are exceptions, though, because the rule is so harsh. And there are a number of specific -- a number of specific exceptions, I'm going to focus on a couple that are more general and that we tend to deal with here. Remote and noninterest. A remote interest is an example would be where a councilmember is all -- is, for example, also on a nonprofit that is not affiliated with this city. So let's, for example, if a councilmember is on the American Red Cross, sits on the American Red Cross and the Red Cross comes before the city to get some funding, the councilmember could be -- the council could actually enter into that contract but the councilmember would have to disclose the interest, not participate in making the decision and actually recuse themselves, not to vote on that particular contract.

>> Mayor Reed: So just to interrupt there the one we voted on earlier today, the rotary thing which some of us are members of rotary.

>> Lisa Herrick: Exactly.

>> Mayor Reed: Is that a remote interest or a noninterest?

>> Lisa Herrick: It's a noninterest. I was going to bring that up. I was happy to hear about all the disclosures because you are following 1090. Noninterest is where some members may -- some councilmembers may also be members of nonprofit entities. We're distinguishing being a member a general member and then sitting on a board of a particular nonprofit. Although there are some variations to that as well, and that's why we really do like to analyze these on a case-by-case basis. I'm throwing out some examples to give you some flavor but we do always encourage you to call our office if you have any questions about that.

>> City Attorney Doyle: Let you know, one is a disqualification, one is a disclosure. The noninterest. What's important even if you are an uncompensated member of the board of directors of a nonprofit you're deemed have a financial interest and the Attorney General has been very strict in providing that advice. That's why we have to be careful. You're just doing it to be a good citizen and the consequences can be you can't participate.

>> Lisa Herrick: That's right. The financial interest is considered remote but that does disqualify you from participating in that decision and voting on the matter.

>> Mayor Reed: Well I'm really curious about this. Because these things are beyond remote. And I don't understand the Attorney General's analysis or opinion that if somebody is sitting on a nonprofit board not getting any money, not having an investment or any financial interest in the organization, how does that then become a financial interest subject to 1090?

>> City Attorney Doyle: It's not a traditional financial interest in terms of money but the AG views this as you have some interest in the financial success of the organization and therefore as a director you're essentially have

that interest of the organization and that's the financial interest. It's a stretch under the other conflict of interest laws you don't generally have those problems but 1090 is strictly construed and so that's why any time there's a contract with a nonprofit you have to be concerned if you have some kind of role with that nonprofit.

>> Mayor Reed: To say it's a stretchy have to certainly agree with that. The difficulty is it's the attorney general who is doing the stretching and we all have to worry about what the attorney general's opinion is and if it's their opinion that's just the way it is in California.

>> Lisa Herrick: This is going to bring us to the Lexin case. Because there are other types of noninterest that I'm going to talk about which is essentially what the California Supreme Court got to in doing its analysis on the case. I will give context on the fact. I was counseled to be very brief but to give some context, it helps to know a little bit about what happened in San Diego. There were six city employees who were members of the 13 member retirement board. There may have been other city employees who were members of the board, but six were indicted for criminal violation of section 1090. The contract issue arose essentially because the retirement board had agreed to allow the city to make a lower contributions to fund the retirement below the actual actuarially determined rate. And also, then the city had agreed to make a balloon payment if the retirement system's funds fell below a particular percentage, that was referred to as the trigger. Of course, with the dot-com crash in 2001, along with other things, the retirement systems ended up being less funded and the city was worried that it was going to meet that trigger, would have to make a balloon payment. At the same time apparently because of some pressure that the county of San Diego had imposed on the city by increasing the multiplier on the retirement benefit payout, or the multiply that's used to determine the fund, how the pension payments will be made, the city began negotiating with all of its employee organizations to increase the multiplier from 2.25% to 2.5%. The city in approaching its employee organizations said we can increase the multiplier but it's going to depend on whether or not the retirement board ultimately does something to give us some relief on the contribution, on the contributions that we're making and this trigger for the balloon payment. So after many months and many proposals, the city and the bargaining units eventually entered into MOUs, one of the terms was to increase the multiplier. For another term in just one of the MOUs provided that one of the retirement board members would get to add his salary as a union president to his salary as a city employee to essentially enhance his retirement benefit, his ultimate retirement benefit. Of course about a month after the city finalized all of its MOUs with its bargaining units then the retirement board voted to give the city a little bit of relief on its contributions that trigger and then ultimately that balloon payment didn't become due. Now this precipitated a whole lot of litigation and a whole lot of venues and this ultimately changed the way the City of San Diego does their retirement. This is not the way the city does business down there today but it's important because of the ways the types of decisions that the retirement board members were making and whether or not it had financial analysis. The board determined that the government exception applied to the extent that the MOUs related to any of the employees' salaries. So there is a government salary exception that session you are not -- you have a noninterest. It is not interest if it's dealing with your government salary. That couldn't be applied though, to that enhanced multiplier, that increased multiplier from 2.25% to 2.5%. But the Supreme Court ultimately determined that, to the extent that the members were getting that enhanced multiplier or that increased multiplier, so was every other member of the retirement system and that was the public services exception it was generally provided to others beyond just those five people -- six people really who voted on that benefit and so it, too, was a noninterest and ultimately didn't rise to the level of a criminal 1090 violation. Now, for the lone guy who had that unique benefit of having his union president's salary combined with his city salary, that was not generally provided. It was unique to him alone and he will be, I assume, standing trial. Getting onto what the sorts of duties that retirement boards have, at the very end of the opinion in the Lexin decision, the Supreme Court noted that retirement board members can be sued for breach of fiduciary duty. Generally the constitution provides or requires that retirement board trustees do everything they can to preserve the long term solvency of the retirement system as well as to have a duty to the participants in the retirement system and their beneficiaries overall letters. What the court ended up saying is, we don't have an opinion about whether or not in this case under these circumstances the retirement board members breached that fiduciary duty, but it's a different standard, it's a higher standard as to whether or not you're going to breach a fiduciary duty and whether or not you have a conflict of interest under government code 1090. Now unfortunately this doesn't provide very much clarity because there are other cases at least a couple of other published decisions that tend to allow considerable discretion for retirement board trustees in making those sorts of decisions so we don't really end up with a bright line in terms of what would be a breach -- what sort of action or inaction would result in a breach of fiduciary duty. We have a greater line in terms of what sorts of decisions trustees can make

that will not result in a 1090 violation. So that's the only, that's the end of our presentation. We can try and answer any questions about the attorney general's thinking about remote interests or otherwise.

>> Mayor Reed: Well, the Lexin case, the bottom line is the Supreme Court says you can't be prosecuted under 1090 but that doesn't stop the Securities & Exchange Commission, it doesn't stop the U.S. attorney, it doesn't stop civil actions for violation of fiduciary duties, have a nice day.

>> Lisa Herrick: That's correct. Especially for that one other trustee who did not have a benefit that was generally provided to everyone else he's going to stand trial for a criminal violation of section 1090.

>> City Attorney Doyle: Right and all those things you mentioned happened the U.S. attorney and the SEC have stepped in and going as high as the former City Manager in their prosecutions.

>> Mayor Reed: And this all arises out of a deal between the city and the retirement boards, in order to avoid as much money going into the retirement boards as the city should have been putting in.

>> Lisa Herrick: Actuarially determined to be -- that would have funded the way the actuary thought it was appropriate, to keep it about 92% funded.

>> City Attorney Doyle: It turned up enhanced benefits for delaying payments. It was like a double whammy from a financial standpoint. It's a good guide that you really got to be careful in what you do and there's -- and the conflict issue was one where you had a self-interest in the outcome.

>> Mayor Reed: Okay, any other questions or comments on this? I think not. Thank you very much for the update. That will take us to our next item, 4.1, report on regarding city's policy exempting affordable housing from payment of park land dedication and park impact fees. Also known as the PDO/PIO ordinance.

>> Lee Price: Mr. Mayor, before staff starts this one and with my apologies in advance, could we go back and confirm the vote on the adoption of the resolution placing the ballot measure on the ballot? The reason is it's unclear to the staff here exactly who was voting for and who was voting against that particular resolution and of course now I've lost some councilmembers. But I've had an opportunity briefly to speak with Councilmember Liccardo and I do think there was some confusion about the yes and no side of that vote so I'd appreciate for the record if we could clarify.

>> Mayor Reed: The second vote?

>> Lee Price: The second vote.

>> Mayor Reed: The one with the resolution.

>> Lee Price: Without rebuttals and printing of the text.

>> Councilmember Liccardo: Your Honor, if I could press explain, I certainly was confused and Lee I think probably sense my confusion that's why she approached me. When you look at the -- I know there are three memoranduma here. I believe we were voting separately on A and B I understand that in fact what we are voting on was what was the amended council agenda. I actually have the former council agenda. I'm not sure how recently it was amended. But there's nothing on -- fair to say if one were tracking by either the original council agenda or the memoranda you'd be voting on something different than we were voting on, which is exactly what I was doing. And I'm looking now at the memorandum dated March 5th, 2010. That's right, Rich is showing me now an amended agenda.

>> City Attorney Doyle: Came out Friday.

>> Councilmember Liccardo: Right. What we routinely have looked at when looking at staff recommendation, is what's in the staff memo.

>> City Attorney Doyle: The -- the guiding -- the amended agenda which is published Friday, comes out of the Clerk's office is what we use official.

>> Councilmember Liccardo: Understand.

>> City Attorney Doyle: To the extent we need clarity we should probably get that clarity. We're looking at 3.4 B which is moving forward to put it on the ballot and then with the issue of the ordinance draft text and the rebuttals text whether it would be in the ballot book or not.

>> Mayor Reed: I don't understand the confusion so I'm confused about the confusion.

>> Councilmember Liccardo: Sure. Typically when we look at for a staff recommendation and people vote on A and B.

>> Mayor Reed: The motion was to approve alternative A or alternative 1.

>> Councilmember Liccardo: That's right and I think we are all very clear about that and if you were following along ton staff memo then --

>> Mayor Reed: Let's all get to the same staff memo because I've got several.

>> Councilmember Liccardo: Right so let's look at the March 5th memo which was the primary issued for this one which was March 3. You would see A which relates to the measure and B which relates to approving regulatory requirements. As discussed in the staff report and incorporated in draft resolution. I believe that we were voting on A and B, appears that based on the amended agenda in fact that language and verbiage has been changed.

>> City Attorney Doyle: You were voting on A and C under the agenda. Item B is the technical requirement that you tell the clerk to put it on the ballot, and then the issue of including the text of the rebuttals and the ordinance was part of that discussion.

>> Councilmember Liccardo: Okay.

>> City Attorney Doyle: So B is an independent but we were working from the amended agenda for purposes of the motions and I think to the extent we need clarity on that, everybody's here so we can --

>> Councilmember Liccardo: Certainly. If it would be appropriate to make a motion to reconsider I'd be happy to do that.

>> Mayor Reed: You may recall councilmember comments on the amendment whether or not it excluded regulatory things excluding item number 6 on the regulatory, so that is as I understand it the first motion included A and B from the staff memorandum dated March 5th.

>> Councilmember Liccardo: But then if the second vote only related to C --

>> Mayor Reed: The second vote I believe only related to B on the agenda.

>> Councilmember Liccardo: Okay. So which was the former B on the original memorandum.

>> Mayor Reed: The first vote was, alternative A. And the regulatory scheme excluding item number 6. And then the second vote was whatever we had to do to get it on the ballot with the right number of pages.

>> Councilmember Liccardo: That's correct.

>> Mayor Reed: So which one do you want to move to reconsider?

>> Councilmember Liccardo: I understand that I move to reconsider the second vote.

>> Mayor Reed: So the second vote which was to get it on the ballot with the no rebuttals, and do not print the text of the ordinance as part of that but make it available. That was the second vote. All right? So there's a motion to reconsider that. Is there a second? There's a second to reconsider that. So first question is, were you on the prevailing side on that?

>> Councilmember Liccardo: I was. Apparently. (laughing) remarkably.

>> Mayor Reed: Okay. All right. So we're going to -- we believe that's -- is that right, City Clerk? Okay, motion to reconsider that. So we have a motion that's been seconded to reconsider so now we're going to reconsider it is that right City Attorney? Okay. On the motion to reconsider, we need to vote on whether or not to reconsider it and then we have a debate about the item.

>> Councilmember Liccardo: Point of order. I'm simply seeking a motion to reconsider because I understand that's the only means for us to actually vote on what we all understand this item to be. If there's another procedure I'm happy to follow that.

>> Mayor Reed: That's what I'm trying to find out.

>> Councilmember Liccardo: Okay.

>> Mayor Reed: First we want to decide whether we want to reconsider. First to reconsider, not the substance, motion by Councilmember Liccardo, all in favor, opposed, one opposed to the motion to reconsider, Councilmember Pyle. Okay so the motion to reconsider passes. Now we can consider that matter on the merits. Councilmember Liccardo, you want to speak to that or did you just want to revote?

>> Councilmember Liccardo: No, I'm happy to revote, I think --

>> Mayor Reed: Okay.

>> Councilmember Liccardo: Yes.

>> Mayor Reed: We don't need another motion because we have the underlying motion which was, get it on the ballot, without rebuttals, without printing the ordinance. All right. On that one, all in favor? All right let's count the ayes, Oliverio, Chu, constant, Reed, Pyle and Herrera. One, two, three, four, five. I get six? One, two, three, four, five, six, forgot to count myself. So six in favor. Opposed, 1, 2, Kalra, Campos, Chirco, Nguyen and Liccardo. 6-5, it passes. Again, 6-5.

>> Councilmember Liccardo: Fair enough, thank you for the clarification.

>> Mayor Reed: 6 plus 5 is 11 so I got everybody's counted. Back then to where we were. That's item 4.1. The affordable housing fee park land dedication matter. Councilmember Oliverio. Or did you want to --

>> Councilmember Oliverio: Would like to speak after staff presentation if there's any.

>> Mayor Reed: All right, let's do our staff presentation. Leslye Krutko.

>> Leslye Krutko: Thank you mayor, Leslye Krutko, housing director and I have with me Matt cano parks development. We're recommending today that the council approve our recommendation to direct the City Attorney to draft an ordinance that would amend the park impact ordinance under the park dedication ordinance to eliminate the exemption of affordable housing from payment of these fees and secondly to direct staff to come back to the council to amend the schedule of fees to establish a new rate for lower income affordable units at 50% of the applicable fees for each residential unit type. This action comes as a follow-up to last year's discussion of inclusionary housing. At that time, we had a lively discussion about affordable housing and there were quite a number of different policy items that came out of that, in actions that needed further review. Just as history, the

affordable housing has been exempt from this fee for 20 years. It was first approved as an exemption by the mayor's task force on housing when the department was created in 1988. Since that time, it has been exempt. There was a period of seven years redevelopment agency had more money to pay park fees but those days are behind us and now affordable housing is exempt. Because of our development patterns where we are at a point where really all of the projects we're doing are infill projects, there's more and more demand with each project, that park land be provided and that open space be left for residents. So there has been more attention to this effort, in the fact that affordable housing is exempt. We went off and looked at all the various alternatives that there were, recognizing that while affordable housing is important, and an important policy consideration, so are parks. So they're both competing policy objectives. We looked at ways that we could try to help provide as much park funds as we could, while not impacting as many affordable housing units. So we were trying to look for a win win situation. We did work with a consultant to look at how much of the park fees could be paid by outside sources. We brought together the housing committee and the parks committee who met jointly to discuss this issue. Recognizing the importance of both of these priorities our recommendation is that we do eliminate this exemption but that we require that the fees be at a lower rate so that we accomplish both of our policy goals. We are here today to answer any questions you might have. We did go through and in the report it includes a series of recommendations that we considered. And looked out, some of them were not feasible and others are not programmatically feasible. We feel this one is the best option .

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor Reed. This journey started December 13th, 2008 with the memo I brought to the Rules committee entitled require park land or require 100% of park fees or park land for affordable housing developments so that all residents regardless of income can benefit from open space. So 18 months later, here we are. I must say that if it takes 18 months to come to a conclusion that could have been reached in an hour, then maybe we need to put these types of questions on the ballot and let the voters of San José decide. I want to acknowledge the amount of staff time and consult time that went into 18 months of research. But feel a compromise of 50% falls short. We are building a city in San José. A city that will grow in both population and density. We need to ensure we do not repeat the mistakes of the past and that we built livable communities and not just housing. In every district in this city we see those mistakes where we put lots of housing and no parks. These areas in San José with no parks then became problematic neighborhoods where the city spent more money on police and other moneys to fix issues. Parks go hand in hand with housing. Parks should not be considered extra or a burden. They should be just as common as a bathroom in a home. Would you build a house without a bathroom? No. Likewise, any type of housing developments should not be built without a park or the developer paying 100% of the required park fees. Parks rank high on the barometer of a good quality of life in all cities, and San José should be no different. Parks and housing are mutually exclusive. We can be proud that we have been the leader in affordable housing. However it has come at a cost, with the loss of approximately \$90 million in park fees alone that were not collected from developers. In the past we've directed millions of dollars from our RDA to make up the difference but that was money that was taken away from its core use, economic development. Economic development which means jobs and a tax base to pay for city service. The idea of a 50% compromise strikes me as unamerican. We know the exemption was wrong and the open space opportunities lost, but we now have an opportunity to get rid of the exemption, and let park fees be equal for all developers and thus all residents citywide. Where else in San José do we say, you're only worth half? This 50% compromise reminds me of the 3/5 compromise of 1787. This is where it was decided that slaves were 3/5 of a better than when it decided state compensation 1868, in our case we don't need to have a civil war to resolve this gross inequity. Instead the council request vote to this afternoon. If we as a city really mean what we say, that San José should have three and a half acres per 1,000 residents, but then the council's willing to make a sizable exemption do we really mean what we say? Is the City of San José really in good faith supporting the State of California's Quimby act that allows the city to collect park fees from developers to provide parks when it exempts certainly developers? My guess is that a market rate developer might say why should I pay fees when others do not? An exemption from park fees would seem to leave a door open for a lawsuit, based on equal treatment in our constitution. Perhaps the City Attorney will comment on this prior to the council casting a final vote this afternoon. The question of equity in providing parks for all people in our city resonates with San José. It is just not parks for new residents. It is parks for existing residents. We're not putting affordable housing developments in Coyote valley or the Almaden reserve. We are putting them in existing neighborhoods that in many cases already lack parks and have little open space. As we develop our city and build higher density in-fill housing one of the carrots we hold out for existing residents is the opportunity for open space. We also know that even with market

rate housing, paying park fees, it is difficult to put a new park or add to existing parks within the nexus of the housing development. So if this compromise of 50% of park fees, it will do very little to bring a park to an underserved park neighborhood of San José. Let me show this another way. Hello, neighbors. There's an empty parcel in your neighborhood and I'm going to build a high infill development but you know what? I'm going to give you a park. There's your park. Hello, other neighborhood in San José. You have another lot that's open but you know what? I'm going to give you -- half a park. Where else in this city do we say half? I don't understand that we say, you know, certain residents get an eight minute response time from public safety and the others get a 16-minute. And that is really the discrepancy we're dealing with. Half. I would ask my colleagues to support eliminating this gross inequity in the exemption for affordable housing and let developers pay their fair share. Thus treating all residents equal, when it comes to open space in San José.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: . thank you. I want to talk about economics. The rule we are talking about changing is 20 years old. That was established in 1990. Because we weren't getting what we needed to get from the developers. We don't have thatful developers who are willing to stand up and say, sure, I'll work with the very low income. I'll work with those that are 80% or less of the median income in the area. That is extremely unusual. Let's talk also in economics about the profitability factor. It's much easier for someone who builds affordable housing to make a profit than it is for someone who's doing low income properties to make that same profit. So when we're talking about now taking away from the land available for the buildings, are we not decreasing the number of units that can be done? Or I think you've established it in here somewhere, Leslye, that moneys could be put toward a neighboring park that was part of your solution. Am I reading that correctly?

>> Leslye Krutko: Yes, absolutely. The funds that go from the development don't necessarily go for a park that's right adjacent to the development. They go into a fund. And that fund can be used for a park purchase or for park improvements of parks within a radius of that site. And it can be one mile for a neighborhood park and I believe Matt, it's three miles for a regional park is that correct?

>> Matt cano, division manager, parks, recreation, and neighborhood services. Three-quarters of a mile for neighborhood parks and three miles for community serving parks.

>> Councilmember Pyle: Okay. It's good to know we don't have fewer housing units as a result. But the bottom line is that was in effect for a reason. And that was most likely the fact that we didn't have that many people who are willing to make that sacrifice. So I think it's a fair, more than fair on the part of the city. I would like to hear from at least one or two developers in reference to this subject before we have our vote. So I would -- I'm not opposed to having the public speak.

>> Mayor Reed: Okay, we do have some requests from the public to speak. Councilmember Liccardo.

>> Councilmember Liccardo: I'd be happy to put a motion on the table. I'd like to move the staff recommendation.

>> Councilmember Herrera: Second.

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

>> Councilmember Liccardo: One question, Leslye this 50% requirement doesn't preclude us from being able or the developer going after prop 84 money or prop 1C money or grant sources for parks that supplement that 50% contribution is that right?

>> Leslye Krutko: We will be encouraging developers for any funds that are available to access those funds as well.

>> Councilmember Liccardo: And isn't it true that for the most part most of that formulaic funding close to affordable housing ?

>> Leslye Krutko: Yes that is true. I would like to make one statement though. There was a statement made earlier that we don't have affordable housing in some areas of the city like Almaden. Actually we have several projects that are right across the street from the Almaden regional park. So we have developments throughout the city. The majority of them are near park land so I just wanted to make that correction.

>> Councilmember Liccardo: Thank you. And I appreciate the efforts of Matt cano and others, for instance I know we're going after prop 84 money right now for Spartan Keyes and Tamien and others neighborhoods that we know are very much park deprived. But we are building affordable housing where we know we've got a real obligation to that community to be building parks and securing land for the future so I expect we're going to continue to work on that. My concern about this is, you know Councilmember Oliverio's points are well made. But we are dealing with very complex stratified financing schemes to be able to build affordable housing in this day and age. It's simply not feasible to expect financing to magically happen at the full fee. And, you know, shutting down affordable housing in the city is something that certainly hurts all of us in many different ways. And certainly isn't something that is supported I think by the community generally although I know there are strong feelings on both sides about affordable housing. And the last thing I'd say that as a general rule comparisons to the 3/5 compromise in article 1 or Nazi Germany or any other comparisons like that are generally overwrought. I don't believe this is a moral issue of that consequence. This is a realistic effort to try to do everything we can to secure resources for communities that need those resources. Oftentimes through multiple venues and we have to deal with the economic reality that we have. And putting up barriers to the construction of any affordable housing inevitably we would be doing so if we required the whole loaf is really counterproductive in the long run.

>> Mayor Reed: We know from our work around the inclusionary housing that if we do the pipeline properly, we can impose a requirement on developers that will not result in not building housing but will result in the change in land prices that over time, the people who are putting projects together take into fact all of the fees they have to pay and they adjust the land price accordingly. So I'm interested in the pipeline analysis that the staff has done. Because I would support going to 100% fee if the pipeline was appropriate. Because there are some projects that have already been put together, and financed, and I know how difficult that is. That could be affected, that would stop the project, but those that are being contemplated today, in which land is not yet been purchased, could certainly adjust to the fee and I would be in support of going to 100% if we had the appropriate pipeline that would do it like not the same pipeline as we did for inclusionary housing but we spent a lot of time trying to figure out that pipeline, how not to shut down housing development and we don't want to shut down affordable housing development either. But I do think land owners can adjust, will adjust as they do to everything else that happens and we'll still get affordable housing if the pipeline is structured accordingly. Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I think this is a very good proposal put together by staff and I want to thank Matt cano and Leslye for coming forward with this. One thing we don't want to do is pit housing and parks against one another. I think they're both areas of the motion would support at least having staff look into the pipeline issue to see what future projects look like just in terms of giving council some feedback on that issue.

>> Councilmember Liccardo: I think I'll invite response.

>> Leslye Krutko: Certainly with the pipeline we need to consider that an ordinance. As far as that being anything that would change the property values, the difference that you have between this and inclusionary housing is that the market rate developers already pay the park fee and they're willing to pay the price. So affordable housing developers have a tougher time trying to negotiate prices down to make the property pencil out and be workable as an affordable deal. It's not exactly the same going forward, the impact on the land value.

>> Councilmember Herrera: Because I know from previous discussions about affordable housing that certainly the projects that are currently going to try to add more fees would be very detrimental and could stop them in their tracks and a lot of that has to do with the land acquisition. So I guess I would question whether there may be more room in projects that have not yet been put together. I would be interested in knowing that information.

>> Councilmember Liccardo: I'm happy to incorporate in the motion that we would ask staff to analyze the pipeline issue and the feasibility of that issue. I should add I think the reality is that given where we are with housing

funds in this city, we're not going to see much affordable housing get built in the next four or five years anyway but I'm happy to have that analysis included.

>> Mayor Reed: I don't know who had the second, Councilmember Herrera so it's obviously okay with the seconder. Councilmember Nguyen.

>> Councilmember Nguyen: Thank you I'm going to support the motion. I think this is a really good compromise and really good work on staff's part. I understand the importance of park and recognize that they are vital for any community's prosperity and quality of life. But at the end of the day affordable housing is a primary basic need and to me, parks serve as a recreation need for many families here and not to say that's not important but when you have so many parks that are in the pipeline that can't be built because we don't have the operations and the maintenance cost to cover these parks and to go out and promise the community more parks which we're probably not going to see for the next three to five years that's not something that I'm willing to do. I'd rather spend the time and the money and making sure that the promises that we made to our residents get carried and moved on rather than making more promises when we know that we don't have the resources to provide them. So that's just my personal feelings, thanks.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: I just wanted to address the pipeline issue because I know we've had this discussion many times, and I know or I thought we were going towards a standard or as close to a standard definition of pipeline as possible. So my question is, have you explored with planning that definition that we've established over the last couple of times and how that fits in? I don't know if that's what rose was asking but that's kind of where my concern is.

>> Leslye Krutko: Yes, it's a good question, I do think we need to come back with it. It may be a little different pipeline definition for this because I think the issue is whether or not the financing is put together. And if there's financing that's been put together then I think it's very difficult for the numbers to change mid stream.

>> Councilmember Constant: I agree. I just think as we do these things we need to have as much consistency on pipeline and where we're drawing that line in the sand knowing and we had this discussion last time each one's going to be a little bit different. But I would just like to see a bright line when we finally take an action that it's clear and this is the rationale why and here's the pipeline easily defined so that anybody can pick it up and determine whether they're in or out of the pipeline.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor I'm concerned about the timing and the pipeline so the pipeline issue has been addressed. I just wanted to say that, you know, I can support a 50% to 100% maybe in different economic times right now you know in my district we have the funding to build a park on Mayberry and Jackson but because we don't have General Fund to maintain it, I would think that we would not to put a 50% up, and we can encourage more low income housing it probably would be better for this community, at this moment of time.

>> Mayor Reed: Vice Mayor Chirco.

>> Councilmember Chirco: I will be supporting the motion and I thank you Leslye and you Matt, I know this hasn't been meaty conversation. I know that San José as all of our developers have, they have really worked hard to produce quality, sustainable homes. And that parks and open space are definitely part of the equation. And since RDA is no longer able to backfill the park land dedication or the park land in lieu funds, I think this begins to address some of that shortfall. It's not a perfect world, but this helps, and it's probably not a bad time to do it because there's so little housing being built and there aren't a lot of projects that are in the pipeline. So our builders can anticipate this so thank you for all your hard work.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: You know I think when you look at some of the great parks we built in this city and other cities they come through the ability of land bank. Every city has its challenges and we certainly have ours but to give up by the sheer fact that we have this point in time where we can't maintain land, lost opportunities we've had in this city just lost opportunities and as we grow and densify we're going to lose the ability to have the open space. I think as we're building for the future not us but for two to three councils after us I sure hope I they would my colleagues would look at that. Even in the report we have here Matt cano we have 1,125 acres short where we plan to be in ten years that we plan to make up, no magic, no parcel at a time i don't think we're really following the Quimby act. Rick Doyle I hope before we're over you'll comment on treating people equally. I know there's this sail vacation that prop 84 is going to help us but in reality we're lucky to get 1/36 of that money and we'd be lucky to get \$5 million out of it and it will probably be much less because we don't meet the criteria of that and we have to reach the abject criteria of poverty in San José and we don't have that so we don't have the praying the state will give you money versus a known variable about I'm building housing give me a park they're mutually exclusive. It's not pitting one against the other others are pitting housing against parks in reality it's parks. It's in our city charter. It's what gives us quality of life. Housing has typically been something that gets done and without any of us doing anything and we have looked at that time pipeline. We know today that if we go 100% of park fees all we're giving up is 76 units out of 1600. That's less than 5% of the units would give us 100% park fees. 76 units out of 1600. Very minor tradeoff but in reality, that's what -- you know and mayor I don't want to talk all day. I just you know there's some members of the public or even the developer community at least give them their opportunity to speak.

>> Mayor Reed: All right let's do that now. Please come on down so you're close to the microphone. Carey Hamilton, Helen Chaplin, Richard Zepelli.

>> Good afternoon Mayor Reed and members of the city council, Carey Hamilton, speaking for siege. We support the staff recommendation for the 50% fee. We know what a difficult position you all are in, when important priorities are pitted against one another because there isn't adequate funding and you shouldn't have to be criticized when, as Councilmember Liccardo was for taking a short delay, and you shouldn't have to scramble to come up with money to get a park in your area and provide amenities for affordable housing or make the difficult choice. As Vice Mayor Chirco said we do live in an imperfect world and sometimes we have to make compromises that we don't necessarily want to make. Most of the affordable housing is, in higher density format, so we should be able to get important amenities into the city and I think it's important that we don't get stuck in numbers games. Our affordable housing if it's well distributed throughout the city should be able to service all of our residents. It's not that this park is for the affordable residents, and this park is for the market rate residents of our city. Councilmember Oliverio had mentioned the maximum 5% reduction in units and I also noted that but there are also the financial dynamics of getting the project in in the first place and the competition between market rate and affordable. We believe in the old saying that the whole is greater than the sum of its parts and it's the only way that we'll ever achieve synergy in this city. We need to create a complete balanced and fiscally sound city and good planning and implementation are very important elements of that. So our hope is that those who advocate for a particular element like housing or parks will look at the big picture and begin to advocate for complete balanced community and that includes protecting our employment lands.

>> Mayor Reed: Your time is up.

>> Thank you very much.

>> Mayor Reed: Helen Chaplin Richard Zepelli. Helen had to go back to the Regulation of her life. Richard Zepelli, Bob Sipel, Dixie boss.

>> Good afternoon mayor and city council. I recently attended a presentation by Don Weden, a senior planner for the county now retired called winds of change. In this presentation, he talked about our increase in population coming in San José, 500,000 more people but he also said 70% of that's going to come mainly from our citizens who are here right now as they age. There's going to be a greater need for parks and trails, areas for exercise for them as well. Based on that, looking at the economics of building we believe that there's going to be an increase in class some place that should go where the demand is at. The demand is going to be for affordable housing for these people as they move out of their residences go into high density developments. We'd like to recommend that you -- I'd like you to go to 100% but 50% is allowable. The winds of of change are here as far as what's going

to happen to our aging population but the winds of change are also here for ending this exemption for affordable housing. Thank you.

>> Mayor Reed: Bob Siple, Dixie boss, David Neil.

>> Bob Siple, 40 year I want to say customer of San José and president of the rose garden preservation association. We're very much for what our council Pierluigi Oliverio has presented to you. In having been a commissioner, human rights commissioner for the city for eight years I'm glad to see that we're moving in some direction on this because the message we were sending by accident because I know everybody here at this body never felt there was a difference but the old policy we were basically kind of sending a message to the population that hey low income housing people didn't deserve open space. That being said I moved to this area over 40 years ago and looked over the open space and that's what attracted me here. My wife and I paid over \$8,000 in permit fees to build our home here in this city. Half of that went to schools. My wife and I don't have any kids. So we never griped about that because the children of today are also the future. But I'm looking at a double standard here. 50%, half the developers that I know that build these homes even though they are for low income live in dwellings that I can't even afford. I would say this is a good idea but it might be a little bit like a garage sale. If you say 50% you're going to bargain down. Let's say 100% and under extenuating circumstances for the need go less than that but for no other reason. Thank you.

>> Mayor Reed: Dixie boss David Neil Terry bellandra.

>> Hi, thank you very much, thank you mayor and members of the council. My name is Dixie boss and I'm a affordable housing developer in the City of San José predominantly. Most of my job is around finance. So I'd like to talk about a couple of different things because I did remember hearing during the discussion two topics that I'd like to speak to and that is pipeline. And what is pipeline appropriate. I don't know that the same definition of pipeline that was established during the inclusionary housing entirely applies to this division if you will of fees and that's because more oftentimes than not we are coming before you asking for assistance in acquisition well before we even bring our projects before planning and PD zoning. Just a thought there. We've already looked at the financing and put a road map at that point. The second thing I'd like to talk to is whether or not 50% versus 100% fees are appropriate. And it is an answer that I can say across the board is the same. And that is because if we're looking at 9% credits it's a little bit different as to how much money we can raise from equity raised investments any dependency on state funds or any federal funds. This is straight up private equity in what we can raise. So those are the two points I would like to bring. With that core does support the staff's recommendation for the 50% fees. Thank you.

>> Mayor Reed: David Neil, Terry bellandra, Bonnie Mace.

>> Mayor members of the council good afternoon, I'd just like to say a short thing in terms of affordable housing development as a developer. I'd like you to think of affordable housing as a hybrid. It's not something you can compare market rate housing over here with affordable housing over there. One developer making are money the other developer making money in the same business. It doesn't work that way. We are more of a service providing developer. We use the same maim but it's a different product completely. And so we can stand before you, we can add all sorts of fees to affordable housing development but it's only a question of the market economy is driven by the rental income that the tenants can pay. We cannot add a rental income addition to the rent to pay for additional cost. Because the rents are legislated by federal government. So our job is to take the maximum that we can borrow based on the rents that people can pay, the funding sources that are available including tax credits and debt, and the remaining funding is generated by the city. And we're very fortunate enough to have a city that's been able to support a very large comprehensive affordable housing program. Yes, I'd love to be able to say that affordable housing is an income generator. I can't because it isn't at the moment in the way you describe economic generators. However it is an important service to the city. I certainly agree that the parks is an important addition to the city. I was here developing when the redevelopment agency did pay the fees. And I was also here facing neighborhoods when the promise was made, but the fees were never paid. And the parks never got built and it's not easy to stand in front of a neighborhood to say you're not going to get a park. So I sympathize certainly with that. In terms we do -- we do provide additional services which why where we can because we have opportunities that have communities that have different needs in the market rate, we do provide additional facilities our product I think which are not Neville found in a market rate development.

>> Mayor Reed: Sorry your time is up. Sorry David. Time.

>> Okay, thank you.

>> Mayor Reed: Terry bellandra Bonnie Mace Aurelia Sanchez.

>> Helen Chapman was very disappointed she had to go back to work. She never thought this day would come. I too believe affordable housing should pay 100% of park fees. That said, I applaud the housing and park directors forming a compromise and proposing a 50% park fee on all affordable housing developers at this time. At this time, many of our areas of our city are park deficient due to lack of funds parks and open public spaces are the heart and soul of the city. Let's protect our employment lands. At this time I'd like you to accept the proposal. At this time 50%, with the hopes of increasing it to 100% as the economy gets better, so we could provide parks for everyone. Thank you .

>> Mayor Reed: Bonnie Mace, Aurelia Sanchez, David Dearborn.

>> Thank you, I'm representing the housing commission. The housing commission -- excuse me my voice I'm a little rough today. For the first time in a long time parks commission and housing commission got together and worked on this proposition, this in itself is phenomenal, that we can have consensus is the of bidding principles in which parks and housing affordable housing are both priorities. And I want to thank councilman Oliverio because it was his impetus that started this whole discussion going. Despite of the outcome he's the baguette. What we're looking at really, personally I would like 100%, that would be in an ideal world that would be wonderful but what we have now is zero so in my view if I have half a baguette it's a reasonable compromise as Terry said at this point. David and Dixie pointed to this. Affordable housing developers do not live in the same world that market rate developers live in they also give a whole host of wrap around services that are not incorporated and that are not really understood and we tried looking at some of these services and how to incorporate it into credits and stuff and it just didn't work. But you have to understand that they provide a whole host of other things in this kind of situation. And the fourth is we did look at a variety of options and this did look, as Sam said this is a renal Solomon like compromise. It is not perfect but a 50% fee is what we can I believe parks commission were here also they would support it as well so thank you.

>> Mayor Reed: Aurelia Sanchez, David Dearborne, Kelly Schneider.

>> Hello, my name and I'm here, I am supportive of affordable housing. We have three large affordable housing buildings, developments in my neighborhood and we're going to have a fourth one. And I do support it and I really want to thank the core development. They really been an asset and if anybody ever wants to talk about affordable housing in their neighborhood come to us. You know, they're not as bad as I thought they originally were going to be but that's not what I'm here to talk about. I'm here to talk about the fees for the parks. I really feel you have it wrong. I really feel that you need to tax affordable housing. You know they're exempt for 55 years. If we tax affordable housing we get the money for schools and sewers and a lot of the other services they need. Also my neighborhood was lied to by the City of San José, parks department and RDA. We have affordable housing but come look at my neighborhood it's still blighted. We have weeds on our trees that are as high as the trees. Another thing I want to bring out is one of the things I think we can do is get rid of RDA. RDA takes away tax money that the neighborhoods and the city badly needs. They go around they say they tell my neighborhood we don't have the money but they're buying land for the stadium which I think is ridiculous and I think there are two books everybody here needs to read, one is the great America job scam and the other is what's the matter with Kansas. I read them about six years ago. Let me give you a little title before I leave. Corporate tax dodging too much leeway to businesses. There are some councilmembers here that just really probusiness which is fine but we've got to get out of business of helping businesses. They have their own advocates, we need to start getting taxing them and giving back the tax money tot people to the public. What you're doing is taxing the public.

>> Mayor Reed: Sorry your time is up. David dearborn, Kelly Schneider, Katherine Mathison.

>> Mayor council thank you for letting me speak. There but for the grace of God go I. I'm not now in need of a half a loaf or a full loaf but I have grandchildren, they will have children, they will have children. What you're doing is

for them. And I appreciate that. Thank you. And thank you, staff. 18 months is a long time but that's a lot of work and the challenges can't be easy. Thank you. And thank you for such an impassioned plea. I hope to hear it again. And if the city is truly inclusionary, about inclusionary housing then I think if it has a full complement of parks and it makes up the deficit of a thousand that it needs that at some point, that integrated with parks, community will have a higher value for market value property as well as for all other property. And it will help everybody in that regard. Thank you.

>> Mayor Reed: Kelly Schneider, Katherine Matthewson.

>> Hi, I'm Kelly. I am a resident in the Shasta Hanchett park neighborhood. If I look or sound familiar it's because I'm here frequently advocating for housing of all stripes, high density, market rate, affordable, et cetera. I'm here to advocate for the 100% not the 50% compromise. I agree with Councilmember Liccardo that some metaphors can be overwrought. The pairable as I learned it the compromise was ripping the baby in half which doesn't seem like a good long term solution and if also you're right in your projections and I have worked in real estate deformity and I agree with you that there is not going to be a lot of affordable housing coming to the market in the next 3 5 8 years. This is the time to think big and to right the wrongs and to make it more equitable. And I would just briefly like to close by saying that the false dichotomy that pits housing against parks is one that you can actually switch that around, because I don't agree with Councilmember Herrera that parks and housing are equally important to most existing community members in this city. Parks always win. Particularly in the high density infill brownfields transit adjacent projects that are more controversial and difficult to get approved and get built. This is the time to offer them their full benefit, you know, all of the parks that everyone deserves, not to say that there's a 3/5 or 50% thing but simply to say that look, community that's been in your house for 50 years versus community that might live here for five years from now when this gets built, everyone gets the same amount of space and we're in compliance with the law and we have all the parks that we need to become a 21st century city, I encourage you to eliminate the exemption altogether. Thank you.

>> Mayor Reed: Katherine Matthewson is our last speaker on this item.

>> I was fortunate to work for HUD in industrialized housing in environmentally low income housing. And I think this is the time to be considering ways to reduce our housing cost. I've visited the low income units, many low income units in San José and I find them the same as the middle -- the market rate housing units. In fact I think they're built very similarly without detail. It's--we need to reduce the costs, of low income housing and I think the way to do it is with industrialized housing. Supported by the green industry it's a wonderful way to create more money for parks and make more money for the developers. But we have to do it differently than we've been doing. I support 100% park fee for these very reasons. We need to be building more green industry, we need to be changing the way we built housing to keep the cost down for housing. Thank you.

>> Mayor Reed: That concludes the public testimony on this item. Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor I really want to thank the staff and -- for all the work that was done on this as well as the housing, community development advisory and the parks and rec commissions. Unfortunately it took you 18 months to come to a different conclusion than Councilmember Oliverio had in an hour. But I do appreciate the work and I think that the compromise is an appropriate one at this time. As mentioned during comments earlier, that the -- one of the reasons -- we don't have the same degree of abject poverty that other municipalities have in the other part of the state, there's a reason for it. It doesn't happen by accident. We try to provide a balance of services and address the needs of our entire community. If we didn't build any more affordable housing would we have more abject poverty my estimate would be yes. Does it have an impact on all of us whether we'd be living here for generations or whether we've just moved into town? Of course it does, it all adds up on each other and that's why I really appreciate the analysis done by the housing and parks and rec commission. The statement in the staff report just in case the public hasn't had a chance to read it First the joint commission thought that healthy and vibrant communities need both parks and affordable housing. The conclusion was that the affordable housing secondly they thought it was a disservice to the community to pit these two important attributes of the community against each other. Was -- both of those are wise statements by the citizens that we look to? To give us good recommendations and their volunteer time to come up with solutions or at least recommendations on policy. And so I appreciate the fact that the housing department took that to heart and came up with a response that at least addresses both of these important issues. It really isn't an either-or

proposition for the quality of life of all of us no matter where we live and we certainly when it comes to what we'd rather have next to us, I think everyone would rather have a park as opposed to any kind of development. We had single family homes adding another 40 homes on 10,000 square foot lots and the neighbors didn't want it so it's not a question of would you rather have a park? Well we'd rather have a lot of amenities other than any kind of development whether it's a store or a home or what have you. And so it's a matter of trying our best to balance, to balance the needs of all of our residents and understand where we're going, as some of the folks from the public commented very wisely as where we're going in the many years to come including the number of residents that we continue -- that continue to come to San José and the Silicon Valley and how we prepare for that. I do think that using the 3/5 rule is I think insulting and it's a dramatic understatement, the example of pitting two examples together. Put pulling out bread and cutting it is fine, I would have brought cheese I understand there's passion and emotion but I do think that the housing department did their best to try to balance these issues and I do appreciate both of the commissions that work jointly to offer their suggestions as well, and I think that we'll go forward and see how this works and especially as the market turns around we'll see away the results are and it may take some time to see that but I'm hopeful that we'll have some results that are tangible within the next three to five years that we can look back and say okay maybe we should tweak it another way or leave it the way it is. Thank you.

>> Mayor Reed: City Attorney did you want to comment on Councilmember Oliverio's request for some comments?

>> City Attorney Doyle: I did. Excuse me, Mr. Mayor. The -- we have addressed this issue in the past, in the context of park land fees, whether the exemptions, whether reduced fees for downtown high rises for example, or other context where park land fees may not be equalized throughout the city. There are issues that have been raised, we can reissue the memo, Quimby act is something we all strive to follow, and while there may be some issues, I think it's something that is best handled offline with the memo. And we will reissue that memo.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Rick, I appreciate that comment. I'm just trying to understand, how do we, you know, how does the equal treatment work? Or treating developers differently am I -- you're the attorney and I look up to you for that guidance but how is its that we legally can discriminate?

>> City Attorney Doyle: I think the argument is that in order to establish any economic regulation under the constitution needs to have a rational basis and the rational basis is that you in an effort to incent or provide incentives to affordable housing developers, you treat them in a different situation than you do the market rate development developers. And so that's really the constitutional test, is, is there a rational basis.

>> Councilmember Oliverio: Okay so on any given day I could have a rational basis that I wanted to build three story town homes and my rational basis is that that's what we want in this city is three story town homes?

>> City Attorney Doyle: There has to be some -- courts don't necessarily second guess evidence in fact and be supportable. The downtown high rise is the example when you talk about different types of units where in an effort to we didn't have any downtown housing, high rise housing, in an effort to allow developers to come into downtown there were certain incentives provided and one of those were park land fees. And again it's probably best if I reissued the memo.

>> Councilmember Oliverio: But isn't the rational basis work contrary to the Quimby act?

>> City Attorney Doyle: I don't know what you mean by that question. Quimby act requires that you have fees that are established in order to pay for parks. We have this requirement I think it's three acres per thousand.

>> Councilmember Oliverio: Three and a half acres per thousand.

>> City Attorney Doyle: Three and a half acres per thousand. The real issue is, I'm looking at Matt just -- the real issue with the Quimby act fees is that you don't have market rate development or other developers subsidizing what -- when the city gives any kind of production or exemption, you're not having others subsidize that project or those projects. And that isn't the case, I believe. You know we set a fee and it's based on the whole, the fact that

you then later exempt others doesn't necessarily make it run afoul. But again it's not to say there aren't issues but you know those are issues that are more fully discussed in memos and we'll reissue those.

>> Councilmember Oliverio: That sounds like there are issues and that we're not really trying to live up to what we're saying the three and a half acres because we're making the exemption so I think it's a cognizant decision by the council. I just wanted to point that out because I don't want to be in foul of being able to collect park fees from market rate developers in the future if I'm not following the Quimby act.

>> City Attorney Doyle: No and again this is a policy issue, it goes back to 1988 in the era where the redevelopment agency had the money to provide the vouchers and pay the fees. It was an easy fix. But it is a policy issue and there are some challenges with it.

>> Councilmember Oliverio: Fair enough. And then I will not be offering a substitute motion. I can sort of read the cards based on my colleagues' comments. I think you know where I stand. I think it's 100%. I think the community supports that on any given council district if the question got asked about the park and everyone paying their fair share with this massive deficient and the 1100 acres, it's going to make infill development more difficult because we have less to give and more to provide to everyone. So I appreciate the time. I do appreciate that finally, we've got to hear the issue. I know sometimes in city government, we think we can make changes right away, and I think all of us know on whatever item we're working on in our district sometimes it takes multiple years to do that. So with that said at least we're stepping in the right direction. I don't think it's enough. I'll be not supporting this motion but with that said that's what it is.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: I just wanted to thank Councilmember Oliverio for bringing this issue to us. As was mentioned before, I don't think this had gotten any traction if you hadn't pushed and I think where you're going is not going to make anyone happy. No one pretends to know whether 50% is the right amount. I think we're all to some extent estimating or guessing based on what we think is the best balance between two very important objectives but I think it's also important to recognize that you've accomplished something by bringing this issue forward and getting half a loaf is certainly an accomplishment when you had nothing before.

>> Mayor Reed: Can I have the other half of the loaf because I'm getting kind of hungry. I'm going to support the motion, because we do leave open the question of possibly going to 100% after we do the pipeline analysis and I think that's important. I would support 100% if the Palestine were appropriately defined. I think that concludes the council discussion so we have a motion on the floor by Councilmember Liccardo. All in favor? Opposed one opposed Oliverio. That is approved, on a -- looks like a 9-1 vote including item 4.1. Taking us to item 4.2, Santa Clara Valley habitation conservation plan. Report.

>> Joe Horwedel: Thank you many, many. This is the staff's report of the habitat conserves plan. Looking at the hour we'll blast through. There is one issue that I do want to spend some time with with the council. And have the council's thoughts on and that is related to an impact fee known as area zone D, which you see here on the map is we've broken up the south county including the City of San José into four zones based on the type of habitat. Zone D is the only fee that is not related to actual development on the ground in impacting habitat. So it's more of an air quality type fee. The fee is proposed at about \$6 a trip. It's recognizing that it is trying to mitigate an air quality impact to the bay checker spot butterfly and serpentine grass land. What that means to individual types of development such as residential, \$60, \$43 and in for commercial residential based on or retail and square footage basis a pretty nominal amount. But it is a policy decision that we've been working through. One of the big issues that's come out of this is the concern that is perceived that this would be an impediment to infill development. Much of the discussion goes on with park fees and how that affects the type of development going on in the city. This has one more piece to that larger puzzle of the cost to development. When we came to the council previously we did talk through options Mr. How to deal with this fee, looking at putting it on nontransit oriented development. I would use the example of a three car garage out in the suburbs nowhere related to riding the bus. Construction some other subsidies that has its own challenges. We could go and look at direct impacts to serpentine grasslands which would not generate a lot in the way of fees or link it directly to greenhouse gases which is one of the things we'll be looking at for the environmental impact report for the general plan as we're working forward. A good reminder, a question came up the last week when we met with the home building

industry is, kind of a check-in well why are we doing the habitat conservation plan? We are doing this we agreed to do this at the time we were working on the Coyote valley industrial projects, the 101 widening project the county the Valley Transportation Agency, Santa Clara valley Water District that we would participate and create a habitat conservation plan. It was serpentine grass lands. Since then we have work for about five years in putting together that plan. We have a draft plan put together so we are in the home stretch. The city still reserves the ability to not participate in the plan so we are not committing ourselves at thus far to signing on to the plan but there are-ks as we move forward of how we think about these types of issues in the future. I will note that this issue is something we will have to deal with through the general plan EIR whether we do it through the ahabitat conservation plan or through EIR separately this issue does not go away because serpentine soils are in San José and the last home for the bay checker spot butterfly in the Bay Area is in the City of San José. So that really is kind of a challenge that a number of cities around us do not have that species in our community so that's why we're having to deal with it. Certainly we could go ahead and not choose to participate in the bay habitat conservation plan but when we need a federal approval whether it's the state water project signing on whether it's getting additional recycled water funds through federal government, additional sources for federal highway moneys that this issue will continue to come back up as it has in the past. So really the conversation that we're asking the council to do is to accept the status report. Overall where we talk about some of the other issues about the structure of the habitat conservation plan organization, there's no questions about pulling parts of the species out, which agrees with what the Water District has decided to do so we would concur with that. I don't think there's much controversy there. Really is the council still in the same mindset previously that the zone D fee has some concerns, and if there's specific things you would like staff to be off negotiating related to that. Available for questions.

>> Mayor Reed: All right. Councilmember Kalra.

>> Councilmember Kalra: Thank you mayor and thank you Joe for the report. And I think it is important to go forward with this plan. And with the joint powers authority. As Joe as you stated you know these -- it's not like by not going forward, that we're somehow reducing future liability or future work or future obligations. And that includes obligations from the development community. By doing this we can also mitigate that. So it's really -- it's forward thinking to do what we're doing here and to continue to work with the other jurisdictions. Additionally I know on the BAAQMD board, the air quality district board, in the midst of talking about greenhouse gas emissions it comes to development as well and this certainly can play right into that. And so well in advance of having any policy recommendations from BAAQMD, we'll have this we're already moving forward at least in this region of the city and the city Planning Department is also working very closely with BAAQMD for the rest of the city. So I think this goes hand in hand with San José being forward thinking and really being a leader in the Bay Area in terms of really thinking, thinking about the long term impacts. In terms of the zone D impacts, right now you want input, what is the time line on deciding exactly when it will be assessed or the amount of the assessment will be?

>> Joe Horwedel: They -- the consultants are working on the cost allocation of how to spread the large cost of the HCP as we speak. The leadership liaison group for habitat conservation plan, so that's each of the cities and the agencies, I think has on their next agenda discussion around where -- how we should deal with this fee. I don't think they're looking for a final answer at that but it's more of how should we be position this fee and I think it's in the next six months we need to come to some conclusions.

>> Councilmember Kalra: I think that looking at the options here it seems like the links to the serpentine habitat, there's a link between that and the greenhouse gas emissions and even a link with that in the nontransit oriented development. Basically the more car trips is going to have an impact on the nitrogen deposits, it's going to have an impact on the serpentine development. There are car trips, it could be simply does greenhouse gas emissions, I think rather than being so narrow and looking so specifically on the impact on serpentine habitat I think we can be more broad in our thinking and also make it easier. It's tough sometimes to determine what's the impact on that specific habitat. If we know that car trips are going to be a major function of that or if we know that in general greenhouse gas emissions inclusive of car trips would be a function of that that may be an easier way rather than being so narrow in the scope as we look at each of the developments.

>> Joe Horwedel: Well it's really a function of how much nitrogen is coming out of the exhaust both from vehicles as well as stationary sources, whether it's refineries or whatever, we have done an extensive amount of modeling to figure out how much of the nitrogen that's falling on the soil today is actually coming from -- it's coming today

from existing development so we've then done projections of how that changes in the future as both San José the rest of the county builds out and the region so that making sure that development in San José is not paying for impacts caused by development in other cities or other counties.

>> Councilmember Kalra: And so by look more specifically on the impact on the serpentine habitat we're keeping a narrow focus on the specific development looking at I think we certainly need to explore the general greenhouse gas east missions in total only because that's the direction the state can see it comes, if there's a general greenhouse gas emissions look or analysis with underlying that a look of the direct impacts on the serpentine habitat just so we don't overburden the developers I think that you know that's at least my thoughts on how we should approach it.

>> Joe Horwedel: And the one thing I should note for the council I just realized we didn't put up there is we're also looking at are there other sources of funds at the national and state level for grants for habitat acquisition to the extent that we don't call this mitigation then those sources of funds do open up and we are looking at EPA grants around transit oriented development essentially the A development impact is small there might actually be a better solution that way so we're looking at a number of different ways to do that.

>> Councilmember Kalra: Thank you. I'd like to make a motion to accept staff recommendation and removal of fish as discussed with the Water District pursuing the different alternatives for zone D with whatever comments the council may add to whatever I've already said as well as a preference for a joint powers authority as implementation good morning body.

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

>> Councilmember Chu: Thank you. I just want to thank the staff for kind of bringing me up to speed on this issue. I serve as the member of the liaison group and we had many heated discussions on when the joint power, JPA or to JPA and whether we should include the fish in the south county and north county. So I'm really glad that we reach to this point, knowing that they started in 2001, I just wanted to thank the staff for your work over the years. Thank you.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Just a follow-up on Ash's line of questioning, Joe. I know when we've discussed this and we've discussed this many times in general plan and committee and so forth, I've expressed concern about the fact that certainly emission sources outside the plant area aren't going to get taxed even though they might be contributing as much or more than urban sources and as we look to the future with the implementation of AB 32 and SB 375, is there a means or mechanism of wrapping this into a larger, more comprehensive approach to mitigation of impacts from trip generation so that we don't end up creating layers of regulatory agencies all doing the same thing really even though obviously we want the money used in different ways in some cases to protect species in some cases you know perhaps to promote antiglobal warming efforts.

>> Joe Horwedel: And that's partially the second bullet we've ineloquently called the city subsidy, that there are things we are already going to be doing may be the way to solve this, and a similar conversation that we had with the home builders is dealing with wetlands. Where we have other agencies that are not participating in the habitat conservation plan like the regional water quality control board that they traditionally have not participated in habitat conservation plans which creates a second layer of permits and our goal is to have one layer of permits. And so we're working with East Contra Costa county who's doing a similar HCP right now and they are working with the army corps of engineers and the regional water quality control board so bolt that all together so you don't have three bites of the apple. That's the same thing we're trying to look at for this air quality fee. If there are other things that are going to have to happen out there how do we make sure we deal with it once and we don't have kind of competing goals coming on and we don't have different pots of money and always have our hand out? That is one of our underlying goals we would like to do. We don't want to make ourselves uncompetitive with the other surrounding communities so that is one of the foundational views that staff has taken through HCP process that recognizing the north county cities aren't in the HCP yet, at some point they will be. But they did not have an event that triggered the fish and wildlife service he essentially getting their hooks into them. At some point it will so we're kind of the first ones through that. So that's the --

>> Councilmember Liccardo: Can we drop the dime on them?

>> Joe Horwedel: As part of commenting on things like the EIR for the next four cities, projects going on those are the kinds of things that we have now started to layer into our comments or having discussions with those communities in that they do need to be dealing with air quality impacts to habitat and species down wind.

>> Councilmember Liccardo: I appreciate that. BAAQMD or carb or any of the air quality management regulatory authorities?

>> Joe Horwedel: The liaison group is not. City staff we have an ongoing series of meetings that we've got initiated with those regional agencies because of the importance that they play in how we're going to build in the future. And so that's part of the conversation that staff is bringing in with those agencies. As well as the conversation we had last week with the home buildings association because of their experience in working with HCPs across the state, what they see what things work well, we're trying to bring into the Bay Area. And so that was the conversation was going on with East Contra Costa and have the army corps of engineers to operate the same way so I think it's good to happen more from the management team, the staff that's working on it, with the regional agencies.

>> Councilmember Liccardo: Great and now that we have a representative from San José on the air quality management district board Councilmember Kalra I think that will help facilitate this conversation.

>> Joe Horwedel: So there's overlap on that piece of that there.

>> Councilmember Liccardo: Thanks.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. Joe I understand for one of the reasons to do the habitat plan is that would allow us to obtain federal funds for different things we like to do in the city. Is there any notion of -- and this is one of those tough questions that you get asked, take time and all that. But is there any notion for the federal funds we would gain minus the cost of redevelopment for the industrial areas of Edenvale, et cetera? Is it worth it?

>> Councilmember Oliverio: Yeah, pain it's an anecdotal question for today.

>> Joe Horwedel: I don't think you go and do habitat conservation plan as a means to get federal funding. The reason to do the habitat conservation plan would be to provide certainly so as we go move forward say with wanting to expand the recycled water pipeline system every time we go and ask for federal funds that goes through the U.S. fish and wildlife service for a consultation and then we get comments back that previously before we committed to doing this about gross inducement and how that affected the butterflies 20 miles away so we would spend months argue about that. Every time we go and do a bridge project where we have to deal with the army corps of engineers we deal with the fish and wildlife service and they don't have standards for performance. They are a very busy organization and if they feel that the city or organization is moving in the right direction you go to the top of the pile. If you're not performing doing the things they don't like to see you move to the bottom of the pile. So most agencies that participate in the habitat conservation plan do it partly because the clause got put into them that there was something they really wanted that was essential at that time and they would like over the next 50 years to have certainty about things they would like to do in the future. The benefit from that is that then you do compete for federal funds like habitat conservation and fish and wildlife service has been very ready to go and start delivering millions of dollars to us to do it but you know this is a hundreds plus million dollar project over 50 years so it's certainly not -- they're not going to be paying us to do the plan but there is a cherry on the top for doing the plan is how I would say.

>> Councilmember Oliverio: When you look at your colleagues and other cities that have these conservation programs, it allows them to streamline and grow in less red tape fashion than cities who do not?

>> Joe Horwedel: I think most of the cities -- the answer would be yes but we are a very unique county in doing this habitat plan and especially San José that we do not have a lot of growth that is happening on top of habitat. Our policies are very much filling wetlands, we are not bulldozing oak wood lands that you habitat plans are essentially being used as mitigation to do sprawl. There is that kind of disconnect that we are pretty unique about that. That is really the challenge of how we do our plan because it's hard to fund it that way. East Contra Costa county if you're familiar is building a lot of development in open pasture land that is also habitat so that is why they are doing their habitat plan.

>> Councilmember Oliverio: Good to know somebody else is doing housing. Thank you.

>> Mayor Reed: Couple of other questions. The home builders association, I forget which association wants to have a financial feasibility plan, you what amount of work that would involve?

>> Joe Horwedel: No it is something that we said probably would make sense and it's -- they raised in our meeting when we met with them last week. We have shared with the home builders the cost development survey that city staff prepares where we benchmark ourselves against other cities and then do a detailed accounting of all the different fees and taxes that apply to different projects, as a basis that they could add this on top of, to see what that total load is. But beyond that, we haven't had any discussions about what that would look like or who would do that analysis.

>> Mayor Reed: Other than home builders association are there other organized development interest groups that have gotten engaged in the process?

>> Joe Horwedel: There is an ongoing stakeholder group that's been meeting for a couple of years that is involved or composed of property owners that have the farm bureau involved, the basic property owners types groups that exist in the region, environmental groups home builders association has been involved with that, groups like Naop. So it was part of the foundation or requirements of doing an HCP is public outreach engagement and I don't know who has been the most active out of that piece because I have not been a regular attendee at those meetings.

>> Mayor Reed: I've always been concerned that we'll do years and years of work and then people will get organized at the end as sometimes happens. They didn't hear about this until three days before the council meeting after six years worth of work and I'm hoping that we're somehow getting peoples attention long before that, so we can somehow engage, sound like we are. You mentioned the zone D fee talking about dollars per trip. You didn't say that's a one time fee. I know that was in the staff report. If somebody's watching from home you're talking about a one time fee every time you drive out of your house.

>> Joe Horwedel: That is a one time fee, endowment to maintain that land in perpetuity attitude.

>> Mayor Reed: And also the fees of course would be different depending on the type development because different types of development have different trip generations so it would be a function of what kind of trips are being generated so if we're building a high rise downtown and everybody is riding high speed rail and BART and transit and we have different trip generation which we would the fees would be different than a single family residence out in the suburbs somewhere.

>> Joe Horwedel: That's correct. As we have specifically created it so it actually allows the individual cities in calculating the fee to give credit for those projects that are doing things to reduce the traffic from the project. So the location of the project, the design of the project if there's things like parking reductions that are built into it, if there are things like ecopasses are built in all the things that we analyze today in doing a traffic report are also allowed to be used in setting what would be the total amount of the fee.

>> Mayor Reed: What about the engagement of the commercial developers other than home builders association, the way I do the calculation here 100,000 square foot big box would pay \$40,000. And ten cents a square foot for most uses. What are most uses? What's the other category? You've got the homes and you've got the retail use and then you have 10 cents for other uses.

>> Joe Horwedel: I think it's -- this is our best -- it is approximation, it goes back to the trip rates, so it will be literally what traffic report we do for the project. So whether it's a hospital or a gas station, we would look at the ADT, average daily trips.

>> Mayor Reed: The average estimate of what might be generated ?

>> Joe Horwedel: Correct.

>> Mayor Reed: Again the trip generation would vary with where they're located and whether they've got transit accessibility and things like that.

>> Joe Horwedel: Correct and as we do the general plan that is some of things task force is looking at some very aggressive trip reduction goals a vehicle must travel what it would take to reduce those. And so coming back with some policies that will start looking at how we treat parking, how we deal with location, and design of sites to really encourage alternatives to the car. And so we would give full credit for those.

>> Mayor Reed: I did see a letter from berg and berg in opposition to this suggesting that we let property owners opt out of the plan. And take their chances with the relevant agencies. Is this even possible with an HCP?

>> Joe Horwedel: With an HCP, why I say we've reserved the right to not sign up, because when you're in the HCP you're in the HCP that you don't have the ability if you're a project if for whatever reason doesn't have a direct impact to then say you don't play. That it really is looking at it's kind of like a comprehensive plan. And so we're dealing with cumulative impacts and that an individual project might not, you know, a 20-unit residential project or that 100,000 foot retail building by itself may not have an impact but they're putting storm water into the rivers, they're putting air quality emissions into the air, they're causing roadway improvements to get built whether they're freeway segments or other roadway projects that may have a direct impact. It's a way to go and spread those costs between all of the system that is creating those impacts.

>> Mayor Reed: But if a landowner says you negotiated a bad deal with fish and wildlife or whatever agency might be involved, I can do better, let me out, let me go negotiate my own deal, that's just not possible once we've adopted the HCP?

>> Joe Horwedel: Correct.

>> Mayor Reed: And what about the boundaries of the plan, are we still not final on the boundaries if we wanted to increase it or decrease it?

>> Joe Horwedel: We have --

>> Mayor Reed: Sort of thinking of increasing it to the rest of the county.

>> Joe Horwedel: That was something that we looked at very early on and the decision was made by the management team in the liaison group and each of the cities that signed on that the challenges of trying to bring along all those other cities individually, for the first run out of the gate, was going to be very difficult. And the obligations that we signed up with, with fish and wildlife service in doing the HCP, we thought were moving in kind of counter-directions that we weren't going to be able to deliver what we committed to, so that's why we called it phase 2. We do call this the county-wide HCP but this is phase 1 of it.

>> Mayor Reed: Okay, that is all the questions I have. Any other council questions? We have no cards from the public on this item. We do have a motion to approve the staff recommendation as outlined by Councilmember Kalra.

>> Lee Price: I don't have a second on that motion however.

>> Mayor Reed: Councilmember Chu got the second. Anything else, all in favor? Opposed none opposed, that passes by at least six votes. Our next item is item 7.1, the clean tech legislative agenda. This draft legislative

agenda was prepared after we had an annual meeting that we have organized the last three years with Silicon Valley companies, regulators, legislators and others to talk about the impediments and problems facing our clean tech industry sector and things that could be done at local state and national level to help the industry succeed, and of course to help us succeed on our own Green Vision which is the next item on the agenda. So this has been useful over the last couple of years and if you were to go back and look at the very first list, some state legislation has been passed, some things have happened at the federal level so it is useful in moving a legislative agenda. And of course it is identifying some things that we're working on, too, not just asking the state and federal government with that I would urge councilmembers to support it. And let's have a discussion. Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I did get a chance to read through it and I thought it was very well done. This is the final draft is that right?

>> Mayor Reed: Yes, this is it.

>> Councilmember Kalra: Okay, just a typo on the first page, it's your letter, the quote from President Obama, there's a C missing from his first name. I thought I'd just point that out before we go into --

>> Mayor Reed: This is not the final final final draft.

>> Councilmember Kalra: With that I'd be happy to make a motion to approve this agenda.

>> Mayor Reed: Motion is to approve the clean tech legislative agenda. Additional comments? All in favor? Opposed none opposed, one modification noted. That's approved. Taking us to the 7.2, ooh our 2009 Green Vision annual report and proposed 2010 work plan. I think we'll have a presentation from Ed Shikada.

>> Ed Shikada: Thank you, mayor members of the council. Given the hour we will be brief at the same time as we are so engrossed with in our work at the hand as well as the head, we would like to taking a moment to acknowledge the really remarkable achievements in the city's Green Vision over the past year. This being our third annual report although we haven't been at it for quite three years would like to take a moment to ask ashwini Kantak, who has led bringing items forward to the council and obviously with the council's strong support throughout the year so with that let me turn it over to ashwini.

>> Good afternoon mayor and council really excited to be here today to tell you about the work staff has been doing on the Green Vision. Economic growth, environmental stewardship and an enhanced quality of life for San José's residents and businesses remain the cornerstones of the Green Vision. Council's adoption of the clean tech legislative agenda today reinforces and supports our path forward on these goals. So 2009 was a great year for national and international recognition of the programs that are underway. The Green Vision received an award of excellence from the international economic development council, business week rated San José as the number one U.S. city to start and grow a clean tech commune and Roosevelt community center the city's first LEED gold community center was the American Public Works association project of the year. The city special event zero waste program received is the governor's award for its outstanding effort in waste reduction. Our green fleet gained international recognition with British broadcasting corporation broadcasts being in ten different languages across the world and our portion of our trail network received national trail designation from the Department of Interior, the only California designation in 2009. So how are we doing? The next two slides will show you where we are with our 2022 targets. On some of the goals you'll see we've been already making excellent progress while on some of the more challenging ones such as the per capita energy reduction, the street lights and the trees we're starting to lay the foundation for future access that will help us achieve these goals. And the recent approval of the long term agreement with the Water District, the planned master plan and the pipeline expansion program are great examples of foundational stones for future success on our recycled water goals. I'd now like to share with you some key accomplishments. Money is of course critical in moving forward our Green Vision. We're happy to report that we have over 4.1 billion in venture 1.3 of that in 2009 alone which is remarkable given the general state of the economy. For Green Vision remitted municipal projects we've received over \$50 million in grants. Through recovery act and other programs, for energy efficiency, solar, recycled water, LED street lights, trails. So the clean tech legislative agenda quotes President Obama as saying the nation that leads the clean energy economy will lead the global economy. Energy really touches all of the Green Vision goals. How we use it,

where we get it from, how much we pay for it, and how reliable is it, are all going to be key considerations as we advance the Green Vision. We already recognize the potential for long term savings through energy efficiency improvements and have implemented energy projects with a variety of grants and other funds. So estimated annual savings to date are almost \$1 million. The strategic energy plan was adopted by council last year and staff is working on a plan to get all of our municipal electricity from renewable sources. A great first step was an approval of an agreement that installed 1.3 megawatts of solar at central service site. In community 15 megawatts of solar installed citywide and with over 1500 installations it has one of the highest number of installations in Northern California. Council has also approved the city's participation in a voluntary assessment district which will allow businesses and residents to access low and energy efficiency and renewable energy installations. As I mentioned Roosevelt our newest LEED facilities include Roosevelt Community Center with LEED gold, Starbud youth center with LEED silver and Mayfair community center with LEED certified. On the private sector side Casa Feliz another adopted a private sector Green building policy 50 million square feet goal. A multifamily and civic waste diversion rate of over 80% is the highest in the nation garnering us a gold excellence award from the solid waste association of North America and staff also is looking at alternatives to convert waste to energy with an RFP for commercial organics in the all the stakeholders is really critical. Staff has been engaging the community in a variety of ways through task force meetings, community workshops and social Wik acres of the city is also forming strategic partnerships with the public and private sectors to strengthen infrastructure and supply chain for electric vehicles. The recent CPUC adoption of standards for LED lights will allow us to take advantage of the energy savings associated with these lights, and to start replacing our street lights with various grants we now have funding for over 2,000 LED street lights and as you've probably been aware of D.O.T. has been doing community outreach to kind of evaluate some of these lights. In partnership with our city forest and through grants the city has also gun the street tree inventory effort. This is a critical foundational step in advancing our goal of 100,000 new trees. Our city forest remains a critical partner with us on this goal. And then of course the award winning trail program staff has been great at getting grants and we are now at over 53 miles of trails and 161 miles of bike ways. So going to talk a little bit about focus areas for 2010. In this extremely challenging budget environment it's going to be natural to question whether we move forward with some of these Green Vision initiatives. And we'd like to make the case that this is precisely the time to be advancing the Green Vision. If we want to be positioned to take advantage of the next wave of innovation and to invest in initiatives that will offer short term as well as long term benefits. So for example as I shared with you before the municipal energy projects to date already estimated to save us a million dollars annually and directing these savings towards the city energy fund is a great way for us to invest in projects that will reduce the City's operating cost. Adoption of the clean tech legislative agenda again underscores the importance of advocating for funding opportunities policy development and legislation that will support and advance the Green Vision. Council role of course is critical in this effort not only in providing direction but in actual advocacy as well. And financing again very limited city funding for most of the Green Vision initiatives so most of the funding has been coming from grants and other sores so grants remain a top priority for us. And planning for adequate staffer resources and matching funds is very critical we will also need to look for other opportunities to finance initiatives either are through partnerships, modified free structures or improvement districts. So staff is currently working on financing strategies to replace our street lights with LED lights and will be bringing this forward to council as an example. So there is generally a ground swell of concerns related to climate change. And dwindling natural resources. As new technologies are emerging rapidly related forming strategic partnerships can be a great way to attract companies and to create jobs. With our demonstration partnership policy I think we're very well positioned to test out technologies in ways that are mutually beneficial. And although the existing policy is a great start, as we move ahead with more partnerships we hope to reevaluate this policy and bring it forward for council consideration with any proposed changes this year. We are at this time actively soliciting partnerships that specifically advance the Green Vision and we have a request for interest out on the street. And finally on communications and engagement community participation again is of course key to the success of the Green Vision. Limited resources have hindered our ability to do broad based outreach in the overall Green Vision. Do date why it is important and how can residents and businesses individually and collectively contribute to its success. And so this year we have begun developing looking to leverage kind of existing communication tactics, and avenues such as council ever communication to constituents to get this message out. We also like to make sure we are ambassadors in the community and to that end the city greenteam was launched in 2009. We now have staff from several departments engaged on taking on initiatives throughout the organization that will advance the Green Vision and result in operational savings as well. And at the national and international level our consultant Global Fluency continues to do a tremendous job promoting San José and its Green Vision. So that now concludes our staff presentation and we're happy to take any questions. Thank you.

>> Mayor Reed: Thank you. Great work staff, you've made a great progress on this, I like the executive summary with the dashboard because that's the easiest way to explain the progress that we've made. So in having that posted on the web makes it easy for our constituents to track it as well so that's very helpful. I had a couple of comments on the work plan. What we need to do this year knowing that the budget is worse than tight. Down right ugly. But there's still things that we can do but we do need to focus our efforts in two ways. One is, measurable advancement towards goals, that there are a lot of things that we could do that would be interesting but have no measurable impact on our goals. We need to avoid getting distracted and stay focused on the things that will move our goals forward and we need to look at the goals that which we're making no progress to try to figure out if not what we can do this year but what we need to do to move those in the year 2 or year 3. Because some these goals are proving to be harder than others. And looking ahead beyond this year's work plan to better times when maybe there's more funding or federal funding, or other opportunities to get funding. So while it's a one-year work plan, and focus areas, there are opportunities that we need to get started on now, in order to have resources or be able to do things in years 2 around 3. The second one is on the communications efforts. I think we have to be cautious not to duplicate communications that are done by our solar companies. They're on the radio every day. That's not something we need to do. They're out there and we have to figure out how to do it more cost effective than ever because there's less and lets money but we should focus our communications efforts on something specifically that we want people to do. Behavioral change or whatever it may be and not just a general communications message. Again, we want to try to drive some change that we can measure in behavior as we try to change our goals in a measurable way. With that, I think it's an excellent report. Lot of progress that's been made and a good work plan. I think others have some comments, as well. Councilmember Liccardo, I'm sorry. I thought you had one. Anybody else with comments on it? We have a motion? We do? We have a motion to approve by Councilmember Liccardo. All in favor opposed none opposed, that's approved. Concluding our agenda we have open forum as the last item. We'll take that at this time. Please come on down when I call your name, so that you're close to the microphone, Teresa wellman, Vince and Pier Maggiani. Given the lateness of the hour and in fact I may lose a council quorum here as we get later I'm going to limit the comments under open forum to one minute but we will read the signs the whole time you're here. So please come on down. Teresa wellman, Vince, pier mangiani. Don't be bashful.

>> My name is pier mangiani. I live at 5959 colorville court in San José. Tomorrow there's going to be a meeting on a community meeting for the purpose of discussing PG&E plan to cut 140 trees in the next two years and about 60 the first year. And they want to cut starting March 22nd. We do not believe that PG&E has a rationale to cut these trees. They claim a safety reason. We simply don't believe that. We've asked many times about PG&E and the city to give us documentation regarding federal and state laws that allows PG&E to do this. We have not received this. We've asked for documentation that they do not have to follow EIR procedures. They claim they can do anything. We have not received that information. We want to see the city lease agreement. We've asked that for many months. We have not received that. We believe that the purpose --

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

>> That the purpose --

>> Mayor Reed: Your time is up.

>> That fast can I say another word?

>> Mayor Reed: No, we are going to lose our quorum.

>> I live across the street on Oakland way right across the TGA Martin and Fontana park where PG&E is slated to chain saw 63 trees as a resident I was surprised and outraged at the February 11th community meeting that PG&E gave us a one week notice of our plan to cut down these trees. April they knew about it six months ago. Some of these oak trees have been there for over 100 years ago. Many trees are not in danger of touching the high voltage lines as one can visually see as you walk through the one mile stretch of the two parks. Clearly there's no immediate danger at this time as testified by he professional people that have viewed this site. Community has reached out to PG&E with alternative solutions to save these trees and to postpone a March

22nd deadline without success. After negotiation with PG&E only five trees out of 64 will be saved. Next year 76 trees will be eliminated --

>> Mayor Reed: Sorry your time is up.

>> Thank you.

>> Mayor Reed: Go ahead.

>> Ross Petrozelli, I'm the organizer of the Google group for the 72 neighbors in our neighborhood. We are opposed to PG&E's impending removal of the trees. We feel that the city ought to reprioritize budget moneys to allow for pruning of the trees and the city ought to push PG&E hard even though you may not have an easement legal authority to do it you do have influence over PG&E. The Public Utilities commission has not been adequately consulted and we want you to delay PG&E to give us more time before chainsaws hit the trees on March 22nd, ten days from now. Or 12 days from now. Delay them so we have time to find alternatives.

>> Mayor Reed: Amy Vasquez, Hilda Valencia, Ochito Passe. A lot of people had to leave so somebody come on down and just give us your names.

>> My name is Kayon Aliasia. I'm part of the committee that represents south San José councilmembers, mayor I ask of you to prevent PG&E from chopping down trees, the 60 trees designated for in year and 140 total in the parks right by our houses. And you see they claim that these trees pose a safety threat to the power lines around them however professional engineers who have worked for PG&E have told us that they do not pose an immediate threat to the power lines that lie above them. And in fact their guidelines are eight times as strict at the federal guidelines that are in place. PG&E is simply cutting these trees to cut costs. It is all profiteering in my eyes no matter what the reasons are the gift for it. And to avoid the cost of pruning trees they've decided to remove these trees entirely this beautiful park that we love and enjoy and have a detriment to the environment. So we've asked Councilmember Pyle to help us however she is only deferred authority to PG&E and if any of you care about the concerns of voters and the environment I ask of you to support us and --

>> Mayor Reed: Sorry your time is up.

>> Thank you.

>> Mayor Reed: Next speaker please. [applause]

>> My name is Ochel Pasayia, I, a from it is an organization that serve Latino people on mental health and yes we want to come to invite you guys because I try to get a response for you, for almost two months. And this event will be on March 19th, and we serve whole California but also our main office is here in San José. So all members I ask to be the mayor to be the city council there because they want to see like they have the support for you guys and would I like to know if you have interest to support the Latinos community on this mission like we are doing right now. That's why I come here to bring your invitation special invitation for everybody.

>> Mayor Reed: Okay, if you get the invitation the clerk will get those distributed.

>> Okay, thank you very much.

>> Mayor Reed: Thank you. Next speaker.

>> Mr. Mayor, members of the city council, my name is Andrew Abraham Diaz. My ancestors are members of the Yaki tribe, American Indian tribe, we always believed in preserving the trees, the wildlife, and I believe that I've got to support that issue regarding the trees. Only time we destroyed the tree is if it did not produce the fruit, it was rotten and was last speech I run for San José city councilman, a rule that I'm not going to argue or debate. If that's the rule it's the rule. But if you are going to disqualify a candidate you should explain to that candidate by mail or in person about the rules and the regulations that exist. The rules that disqualify me are not in the city charter. A

letter was never mailed to me not even an orientation to explain to me the new laws and the new rules. Violation of the constitution of the state, the constitution of the United States corrupt and dishonest.

>> Mayor Reed: Your time is up.

>> I come here to appeal.

>> Mayor Reed: Your time is up, sorry. Jeffrey mangers.

>> My name is Jeffrey mangers. I need to get a yes tot malpractice suit at the minimum. Please remember, more importantly you're a plaintiff. Can I get a majority to join me on this one? When can I have a decision? My telephone number is 408-978-86464. You will hear me welcoming your courageous honorable and public for all.com after the beep. Please please call me. Case numbers are H 03535 and H 03501 eight. Thanks .

>> Mayor Reed: Next speaker.

>> My name is Rosie bowering. I was hoping Nancy Pyle would still be here, unfortunately shement some easement known as T.J. Martin and Jeffrey Fontana park is because they're concerned about safety. It is blatantly obviously that aggressive cost cutting profit raising program these are word for word quotes from an article in transmission and distribution world which PG&E wouldn't normally expect ordinary folks to read. "PG&E reorganization the vegetation management leadership team determined a aggressive course by increasing removal rates for targeted tree classes PG&E could reduce the annual workload in total inventory incentive PG&E would take the savings from the reduced workload and split it with the tree trimming contractors and inspection companies. I would like to ask this do you still believe PG&E is pursuing this action for safety reasons.

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

>> Are you going to support the people who elected you to mitigate PG&E's actions.

>> Mayor Reed: Next please.

>> My name is Bob health I've been a resident of San José for 40 years I want to make one thing clear. After all our pleas PG&E did respond to us. They sent a crew out last week and drove six inch spikes into you're trees. That's their method of compromising. That's their method of listening to you people Who have been sitting up there for two our three hours telling me how interested you are in parks. Well, how about my park? I think there's something you might want to consider. After PG&E gets finished, that beautiful place set and slide that you put in the Jeffrey Fontana park will be useless. Without the shade the kids can't touch it. Without the soccer shade, the adults can't sit in the shade anymore. That dog park you paid for, who the hell is going to take the dog out in that straight sunlight, and you know what --

>> Mayor Reed: Your time is up. Hilda Valencia, did everybody speak that wanted to speak? That concludes the open forum. I have a question for the manager whether or not our staff has looked at the trees to find out whether or not there has been a violation of the city ordinance or would be a violation on the city ordinance because we do have an ordinance on cutting city trees, code conforms I guess.

>> City Attorney Doyle: Yes, there's a memo that Albert Balagso sent to the council I believe today giving background but I don't have an answer and that's certainly something we can get back to you.

>> Mayor Reed: I would like for the City Manager and the City Attorney can take up to see if anything the City Council can do under their own ordinance. Councilmember Kalra.

>> Councilmember Kalra: I think you've covered it mayor, we.

>> Mayor Reed: We can't take any action, this is open forum but we can refer it to staff which is what going to do.

>> City Manager Figone: And Mr. Mayor, we'll take the cards to follow up with the speakers.

>> Mayor Reed: That concludes the open forum, that concludes our meeting, we're adjourned.