

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.

>> Sean Kaldor: Understand our AV challenges have been overcome. We'll call to order the May 3rd, 2012 meeting of the San José Police and Fire retirement plan board of administration meeting. We have myself, Dick Santos the vice chair, trustee David Bacigalupi attending via teleconference. We have Sean Bill, Damon Krytzer, Drew Lanza, Elizabeth Rounds, Vince Sunzeri, and our last position is still vacant but we should get an update on that today. I'll remind everyone that when we have a trustee calling in on the phone, the Brown Act has certain requirements, so where Bacigalupi is calling in from is a place that is accessible to the public, is wheelchair accessible, we have noticed it before the meeting, we have posted notices of the meeting on his door and at his gate, and that all our votes today will be taken by roll call. And Baci I'll ask if there's anyone who is present wishes to make a public comment if you bring that to our knowledge.

>> David Bacigalupi: So far no one has shown up.

>> Sean Kaldor: Hope you have doughnuts for them. 4.1 the retirement date has changed item A to June 23rd, 2012. Second, we'll need to waive sunshine on a few items. These are items you've received since the meeting. And I'll ask whenever absolutely possible if we could get these items out with the main board pact. Having them come in over several e-mails, makes it difficult. If we are scheduling things on the agenda, it's tough to get the information out then let's move it to the following month if we have to but please getting five or six e-mails follow-up with agenda items makes it a little difficult for everyone. So I'll ask a motion to waive sunshine for items 2.2, 2.3, 2.6 and 3.3.

>> Richard Santos: So moved.

>> Sean Kaldor: I have a motion some do I have a second?

>> David Bacigalupi: Second.

>> Sean Kaldor: Motion and second. All those in favor say aye. By roll call. Myself aye. Santos yes, Bacigalupi, yes. Bill, aye, Krytzer, Lanza, Rounds, Sunzeri. All in the affirmative, none opposed, motion passes unanimously,

waive sunshine. I have one timing change and that will be item 2.4 the educational session from counsel we'll hear that immediately following the retirements. So retirements are at 10:30 or as soon as a break presents itself right thereafter and then as soon as we come back from retirements we'll resume with 2.4 and we'll come back to the remainder of the agenda wherever we stabbed. I'll remind people from the public if you are interested in speaking on the item, make yourself known to me. 1.1, update on investments from CIO.

>> Carmen Racy-Choy: Good morning. Currently there are two main projects that are ongoing for the plan. First is the asset liability study which NEPC is currently undertaking. NEPC came at the last investment committee and discussed capital market assumptions as well as gave a general framework for the asset liability study. We expect to receive we being the investment committee should set of a report from NEPC in June at the June meeting. The next main project that's occupying a lot of our time is currently the hedge fund allocation and setting up an absolutely return. Currently due diligence is ongoing and will continue for a few months. The investment committee should be receiving recommendations from managers from Alborne and staff at the August meeting. And probably for a handful of meetings thereafter. So that's kind of a brief overview of the main project. Any questions or discussion? I'll bring up one point. Specifically in the update in future months if we can get the latest flash report that's been made available and also just an update on our asset allocation however often we issue that just to see where we are along with our -- I think at a board level it's good to stay on top of those two top level items.

>> Carmen Racy-Choy: You mean the performance typically include the asset allocations, so it's really one report?

>> Sean Kaldor: That's fine. Seeing no other questions, thank you very much for that report. Move to item 2, new business, item 2.1, discussion and action on ordinance to suspend Supplemental Retirement Benefit Reserve, SRBR distribution for fiscal year 2012-2013. You have in your packets the previous information that's been collected on this. And a cover letter from our deputy City Manager. We were wondering what your thoughts were on this matter.

>> Harvey Leiderman: Thank you, Mr. Chair. I don't know what advice that you may have received in the past, but it appears from our review of the municipal code, that once a methodology for police and fire is in place, that the board shall make distributions out of the SRBR if there is money available and they otherwise meet the qualifications. However, it seems in the past couple of years, at least, that the city council has amended that portion of the municipal code to suspend those payments. So we're really not in a position, the board can if it wishes, it can make a recommendation to the city council. One way or the other. But it doesn't have to make any recommendation. As it's presently written the code says we shall distribute the money. If the hurdles are met for the availability of funds. However if the city council again passes a resolution suspending we have to follow that so it's up to the board whether you want to make a recommendation or simply follow the way it is presenting written, if and when it's changed and then you'll have to follow the change.

>> Sean Kaldor: Has this ordinance been adopted by city council already?

>> Harvey Leiderman: That I don't know. The schedule set forth in the memorandum appeared to indicate that there might be a first regent and a second regent sometime later in May. I'm not sure what the timing is on that.

>> Sean Kaldor: Did you want to address that Alex and then Damon and Vince.

>> Alex Gurza: Good morning, Alex Gurza, deputy City Manager. The city council did do the first reading of the ordinance, but there's definitely still time for any input from the board as Mr. Leiderman said. If there is input, clearly we communicate to the council prior to the second reading. If there isn't then the council would simply take action on the second reading of the ordinance.

>> Sean Kaldor: Damon.

>> Damon Krytzer: Harvey, the information we got last time was a little wishy-washy last time, because it said there wasn't a firm methodology. It says the board can do what the board wants to do as far as calculation is

concerned. I'm trying to recall this from last year but there was -- it was like it had been done inconsistently, sort of through history and no one ever set a firm methodology.

>> Sean Kaldor: My recollection and actually let's turn this over to staff.

>> Carmen Racy-Choy: There is a firm methodology that has been followed by the board's actuary for a long time since this came about which is eight to ten years ago I believe. The calculation methodology is very much set and it's clear. And there hasn't been issues around the calculation methodology. The issue is, the board can calculate under the preexisting conditions what the distribution if any ought to be. What was stopped through the city council ordinance is the actual distribution of the money. So currently, the money is being removed from the main plan. And for accounting purposes, there is an SRBR account. The money gets transferred to that account but currently what has been stopped is the distribution of the money.

>> Damon Krytzer: And we funded it last year and then the discussion over like the next six months was about paying it out, right?

>> Carmen Racy-Choy: This is correct, this is the issue.

>> Damon Krytzer: And what Russ is talking about I don't think I'm coming from total left field, maybe the distribution?

>> Carmen Racy-Choy: I think the discussion around changing the formula is around the distribution about how we distribute it because there was some comments that maybe the distribution formula wasn't heavily geared towards the poorer retirees and that it ought to be. So I think there was discussion around whether that would be a board action if the board wished to review that component.

>> Sean Kaldor: We can make a recommendation to city council for a different formula.

>> Damon Krytzer: That's not this issue. Vince, thank you.

>> Vincent Sunzeri: So my question, regarding this specific subject matter is that understanding the code being clear, but the fact that we have such a huge underfunded plan, should we as fiduciaries be making recommendations to distribute funds from this separate corpus?

>> Harvey Leiderman: There's really no obligation on behalf of the board to make any recommendation. I mean, right now you have a methodology for distribution in place. And the municipal code says you shall make those distributions in accordance with the methodology if the funds are available. And the funds are available and they become available because that's how they're split off into the SRBR in the first place, into that account. Beyond that there's no role really for the board to make a recommendation. It would be purely gratuitous on your part to suggest that you'd like to have the distributions made or not. I mean you're certainly welcome to it. It's just an expression of opinion collectively of this board. But there's no obligation, has nothing to do with your fiduciary responsibility whatsoever.

>> Damon Krytzer: What do we price this, a .33 drag on returns right, having whatever it was -- you know some kind of a drag on returns obviously. But doesn't sound like it's our call anyway.

>> Harvey Leiderman: There's a fundamental policy issue that is not this board's job to deal with, policy issues, what are they, if you are in a deficit on a balance sheet basis should you be spending what some people call excess earnings on an income statement basis. In other words you owe a lot of money on the mortgage on the house, you happen to get a Christmas bonus, should you go to Hawaii? Sorry Baci. But that's a philosophical decision, up to council to make that policy call.

>> Damon Krytzer: Is there a legal argument the other way? From your perspective could you make the counterargument that it should be suspended?

>> Harvey Leiderman: Only on a policy basis. Not a legal basis. Right now, the code says the board shall make the distributions. If the city council wishes to suspend the operative word shall, that's up to city council. They've done it in the past and I assume they plan to do it this year. That's not the board's call.

>> Vincent Sunzeri: I don't think I got my question directly answered. At what point does the board interject their thoughts with regard to prudence regarding SRBR?

>> Harvey Leiderman: SRBR is part of a plan design. It's up to the employer to design the plan. It's up to us to follow the plan. So it's not a matter of prudence for you to decide whether or not as a policy matter the plan should be designed differently.

>> Vincent Sunzeri: Well, okay.

>> Sean Kaldor: Dick.

>> Richard Santos: Thanks Harvey for helping cheer that up. It gets very confusing. I was retired when this came about, now I understand removing the whole thing, if people knew what they were doing they wanted to make sure that funding was for people who needed it the most, example people 85 and is on. So I guess when it became present-day members started getting it, this was the concern. I never got any of it. I see people getting \$1500 and such, people coming up here. Was that a meet and confer issue? I don't know. As I remember Russ Richeda said when I read his memos to us was that we did have the authority. And so I don't know. I heard what you said. And then I was wondering you know I understand the perception today if we're not making money how do you give any more money to anyone else? I understand it. For everybody here the fund is most important to keep it solvent, I totally agree. The city has the last word. What puzzles me, if we are going to be partners in this system why were we requested for our input and maybe we'll get a legal input from you, we might say fine blah blah blah. They may say we're going to stop it and you would have responded and said, we understand, maybe you should go this this this and make some suggestions, that's what they appointed us, why not use us? When you get e-mails and letters and phone calls from your constituents you could say, I went through this, and this is

what we did, send your letters to Pete Constant. My question to you is, why do you think we were not asked to take a look at this and make a recommendation or whatever your wishes may have been as a group?

>> Pete Constant: I think Harvey probably said it best, in counsel terms, the plan design, what the benefit is and what the benefit isn't, that's really not the role of this board. The process is that when municipal codes are enacted that are related to this board's function then you get an opportunity to review it and comment, and that's what's occurring now. We're following the standard practice. Otherwise if I'm hearing you correctly and perhaps I'm not, is every time we got into negotiations, that would suggest that we come and ask the board what they think of the benefits that are being negotiated.

>> Richard Santos: This comes from the plan, if that was the case, when you change something we still get the request. So when you change something as a group I was hoping you were going to use us as this partnership, that's all.

>> Pete Constant: I don't think we come here every time we change something. If we're in negotiations to change benefits we don't come to the retirement boards and ask what they think of it first. That's never been historically the practice. That's done in the meet-and-confer process and whatever is agreed to and enacted by the council then becomes the benefit that this board then administers.

>> Richard Santos: I understand that. Aren't you changing the meet-and-confer process or you just arbitrarily do something else?

>> Pete Constant: I would not say that's what the council did, no.

>> Richard Santos: That's what I was concerned if that was the case we should take a look at that.

>> Sean Kaldor: Alex did you want to talk to that point?

>> Alex Gurza: If I could briefly. The municipal code does have a provision that says whenever the council is considering amending the plan, it gives the board an opportunity to comment. Mr. Leiderman stated what you could do as a policy matter. If the city council could consider that, clearly we would bring it forward to the council to consider. Clearly it is your call as to whether you want to provide any input. I know in the past when we've been here on the issue of SRBR and its distribution methodology, I personally said we welcome any of your thoughts. In this case it is not the situation here, it's suspending it until the ultimate outcome of the SRBR is determined. For example if it is determined that the SRBR is going to continue we may welcome back and ask you on your thoughts on distribution. Right now, the issue is do you have any input to the city council on its suspension for another year.

>> Richard Santos: My question is, is that separate fund actually earning and making money?

>> Harvey Leiderman: Yes.

>> Richard Santos: If it is, the perception is we're losing over here. If it is, why wouldn't we distribute it to the people who really need it? That's all I was from the get-go. I understand if someone is making X amount of dollars and they're a present-day member. I understand that process and that doesn't sound real good. But when we have someone out there who is, again, 85 and not doing well, why wouldn't we help those people out the people who made the foundation of the system. We're also a watchdog of the plan so it's not about meet and confer every single day. I never ever suggested that but when there something may be wrong and not giving something to folks who need something we need to stick up or good clarification. That's why you're here and that's why the board should be looking at those kind of issues.

>> Sean Kaldor: Is there any other --

>> David Bacigalupi: Sean.

>> Sean Kaldor: Bacigalupi.

>> David Bacigalupi: There's two issues going on here one the philosophy behind SRBR and the intentions as Dick has laid out, are to be commended. I mean the people that put that together, you know, did it for the people that need it. And the big issue here is, well actually it's two more. One do we want to give the city council an opinion, as they have sort of made a little bit of time for us. But you know, the relevancy there I think is lacking. There's a majority of the council that has an opinion. This thing has moved forward, it's moved forward in the past, it's going to happen. My question for Harvey is I understood it from last year's counsel's advice is the municipal code says we shall distribute funds when they're available per our plan on how to distribute those funds. But that same municipal code by this ordinance, the city council is passing again, suspends that order. So it appears to me that this board has no authority and we're just backed into a corner that, as much as we may agree or at one time had the authority to distribute funds, I think this ordinance prevents us from distributing funds. Harvey, is that kind of a layman's synopsis?

>> Harvey Leiderman: That's perfectly fine. You know, there are a few things more sympathetic than the purchasing power of your older retirees. I mean there's no question about it and that's the reason why the SRBR was created and distributions were set up, was to help preserve the purchasing power of those people who have long retired at much lower salaries over time. So as a policy matter, and if the board wanted to, it could make a recommendation to the city council that we think, on behalf of our oldest retirees, that we would like to see these funds distributed for the purpose that they were put aside for. But again, that's a -- it's not mandatory that you make a recommendation. You may make that recommendation if you wish to do that. Or not. You're invited to do so. By the city council and so you can decide whether you want to make that statement or not, or some other statement.

>> Richard Santos: Mr. Chair if it's appropriate do we have to agendize that then for that discussion? We can do it now?

>> Sean Kaldor: It is agendized.

>> Richard Santos: My motion would be that we look into that. I'm sure everybody here is very sensitive. If it wasn't making money, that would be a whole different story. The people out there 85, 90 whatever in the need I'm all for it, if it's making money help those folks out. I've seen some cases come before me things that I'm aware of that bothers me a great deal. Anybody who is out of work or has a problem I want to help out. That's what it was designed for. I would like to make a motion that we make that recommendation to city council.

>> Sean Kaldor: And for clarification what is the recommendation?

>> Richard Santos: Since that fund is making money the people in need financially that that's supposed to be an assistance for them. Let's pursue that. Continue with that.

>> David Bacigalupi: I'll second the motion for discussion.

>> Sean Kaldor: So we have a motion and second. Is there discussion on the motion and second?

>> What is the motion?

>> Sean Kaldor: The motion is to make a recommendation to city council to make the SRBR payment, is that correct?

>> Richard Santos: Because that fund is making money and it was designed for helping the people who needed it most, most hi people up there in age so it doesn't have the same benefits that we have today.

>> I appreciate that. That's not really what we're -- there's a difference between intention and just mechanics. I guess we're just focusing on the mechanics, right? I don't see a reason to suspend it after hearing Harvey right now. But I don't know that -- it's not the rationale behind the plan. It's just the pure mechanics of it, right? I don't know that I necessarily -- I guess I'd be okay with it but I don't know that I would necessarily want to make a recommendation on the intention of the plan. I mean you know there's other precedent right? So now we're saying

we're following the mechanics of the plan period and that has other ramifications as we go into this ballot measure as well, I think. I'd just as soon take the stand so we decided in the first mace, guess what, we administer the plan. We don't come up with you know the benefit schedule or how things aren done. That was just my suggestion.

>> Richard Santos: We approved it when it was created.

>> Damon Krytzer: What's that?

>> Richard Santos: SRBR.

>> Damon Krytzer: All I'm saying is not that it's good or bad, to me it's immaterial as to the mechanics of it.

>> Sean Kaldor: Then --

>> David Bacigalupi: Mr. Chair.

>> Sean Kaldor: We've got Vince then Pete then Jim then Baci.

>> Vincent Sunzeri: My sense is if we're going to make a recommendation this is where we move beyond what the code is telling us to do and making a recommendation to council on what we think would be the prudent thing to do. And as a fiduciary and trustee with a plan that is Your Honor funded, philosophically I have a problem with that. And so I'm looking at the broader scope of the plan itself as opposed to the specific agenda item of the SRBR. So I'm not going to be in support of the motion.

>> Sean Kaldor: Pete.

>> Pete Constant: Since we're talking about what the intent was and how it operated I think it's important to know and I think before the board makes any serious decisions they should really look at the numbers. Because when I looked at it two years ago before the council took its first action for suspension, the SRBR wasn't giving the benefit to those who needed it if most. There were people who had retired with six figures that got huge multithousand dollar checks and people who retired request \$30,000 payments who got a couple of hundred dollars. So the program didn't address the need that was originally advocated for and it went on for years and years. So I think that's something to keep in mind, if and when SRBR ever comes back. But I also agree with Vincent. We have to look at the overall health of the plan and the funding.

>> Sean Kaldor: Jim.

>> First off I'd like to apologize to the board of not getting the letter before you today, I'm learning the ropes, I apologize for that. This is a copy I would assume another caveat to this is the city council has already had a reading about this. And this document was in the city council, but a packet. So I would have thought because of your discussion that anything that was in that city council packet would have been brought to you so you would have been able to evaluate it. I can only reiterate from what our letter has been saying that first off we like to thank the board for its fiduciary responsibility of taking the funds and putting them aside even though there's a conflict between whether they can be distributed or not. And that does reassure the members that everyone here is looking out for it and the plan. We appreciate that part of it. One of the things that is going on however is in paragraph 5 of the front page one of the actions the City Manager is trying to do is to waive the 60 day review that would give the board a chance to have input and to take care of what you're talking about now. You're being forced to make a decision, basically we believe because the June election is coming up and the SRBR is part of that so I think it's unfair to the board to have that situation done. If other perception problem I they we have is that the 13th check is really a misnomer and has been used by a lot of people to make -- infuriate people. When in fact if we look at this this is actually a dividend on the members' investment in the plan. Because all of our members paid into that plan and this is just a dividend and all of you know what a dividend is so that fund did well. The plan, it was designed because I was around when it was originally designed. It was designed and it is designed to take care of the older retiree and that's what we're looking at and that's why we think it's appropriate. And we would

like the board to make an affirmative action to say yes the distribution should go forward. We realize this year there was no distribution that went into the fund. That's understandable but there is money sitting there that should be utilized before the ballot measure, and gone along with what should have been done a long time ago. So we would hardly support the motion to talk to the council and tell them that you feel this should be distributed. So thank you.

>> Sean Kaldor: Thank you.

>> Jim, as someone who has been around the system for a while, can you tell us how that point system does work? From what I remember the system, the amount of years you have been retired, the final salary, and the length of service I think. Is there a way the waiting works?

>> Sean Kaldor: We can -- can staff answer that question? Pete.

>> Pete Constant: So it's distributed on a point system. For every year you were employed, you get one point. For every year you are retired, you get two points. All the points are accumulated, the amount in the fund is divided by the total number of points and distributed according to the number of points that each person has. That's my understanding. Does that sound about right? (inaudible).

>> Donna Busse: Benefit amount. There is another separate side set of money that gets carved out from the distribution.

>> So the object was it would be distributed if you would evenly based on the point system but there's a caveat to lift the bottom up higher. Because at one time we were looking at constant buying power. And that went away and so the SRBR was brought into play to kind of help the bottom come on up. So that's why we distributed it that way.

>> Sean Bill: One follow up. So when you hear the stories about the bigger checks for the more recently retired, versus the people that have been retired for a long time, how does that come about? How does somebody that's been retired for a shorter period of time have a bigger check than the person that's been -- looking at the point system it seems impossible to have that.

>> I agree I was kind of shocked by the statement of the councilmember. Because I don't -- I can't -- if I looked at my own distribution when it happened, it was not a phenomenal amount of money. And I would say that I've been retired ten years and when we were doing it, I think I got around \$1,000 was all. But I know that my older retirees got a much bigger, bigger stipend. So I'm a little bit taken back by the statement and I'm sorry I don't have any figures here to back that up. But it doesn't seem that that's appropriate or that's really the way things are. Because if for instance the people you hear about the deputy chiefs et cetera that are going out at \$200,000, they have time but they don't have retirement time. So someone who retired here down lower has retirement time they are going to have a bigger point total than the individual who has the bigger salary. So it's not going to -- it is appropriate for the point system I guess is the only way can I do it, I'm sorry.

>> Sean Kaldor: Okay in speaking order we have got Baci then Bettina then Vince then Drew. Baci.

>> David Bacigalupi: My only coming was speaking to the motion. I think as I stated earlier we're prohibited from distributing the funds by the municipal code. But I seconded the motion because if we have a brief opportunity to tell the council that we think the funds should be distributed, then that would be my position. Is to have the chair send a letter to the council saying, we think the funds in the SRBR that are available for distribution should in fact be distributed to the members.

>> Sean Kaldor: Okay. Bettina.

>> Bettina Rounds: I'm trying to get my thoughts here because I have a question for Harvey but I also have a clarification question for myself. Is that so having listened about the point system, this is not exclusively for the

use of the poor retirees at all. I mean, because theoretically, a chief, having been paid quite a bit more, could have accumulated quite a number of points. Correct?

>> Sean Kaldor: That is my understanding.

>> Bettina Rounds: So that's a little different than this is a fund for the use of those who are in need. They may also get it, but that's not exclusively the point. And Harvey, what you were telling us is, for example, if we had strong feelings about what the -- what the benefits are that are being recommended, that's really, we could say something to the council, but that's not really our role. Is that correct? I mean, or isn't it similar to you know what's being put on the June ballot? I mean we could say gee, we think this, that and the other, but those things have been negotiated. This hasn't been negotiated, is that the difference with the -- that they're not distributing it? I'm really quite confused about the role of the board as it relates specifically to our ability to make comments or not on this benefit.

>> Harvey Leiderman: If I may, Mr. Chairman. It's not a question that it's absolutely not your role. There's a continuum of -- there are things that you may -- that you must do, as fiduciaries. There are things that you cannot do as fiduciaries and there's this big gray area in the middle of things that you have the right to do and have discretion whether you want to do them or not. It's within your role to consider this because the municipal code says that if the city council's intending to change any part of the plan, that it comes and gives you an opportunity to consider that and provide input. So it's within your role to do that. What I'm saying is that you -- it's not that you must do it. You can choose to do it or not do it. So I hope that helps clarify.

>> Bettina Rounds: Yes.

>> Harvey Leiderman: You don't have to respond to the invitation, you're given the opportunity to respond but it's not required as a fiduciary to weigh in on the policy issue.

>> Bettina Rounds: Right.

>> Sean Kaldor: Vince Dick Drew and Jim. Did you want to speak to that? Please jim.

>> I want to speak to the clarification point. If you look at it if somebody is on the job 30 years and they retired for 30 years, their total is 90. If a person worked 30 years and retired only two years we are talking about only 34 points. We're talking about two ends of the spectrum. It does deal with the bottom end. That's what I want to point out, we have to quit looking at the money and look at what the formula is, that's the clarification.

>> Sean Kaldor: Vince.

>> Vincent Sunzeri: So I look at our responsibility as prudently managing or administer administering this system for the participants in this plan. That's a comprehensive responsibility. I'm sympathetic for the individuals who receive this check, I don't want to come across as not. What's important is for us as trustees is the bigger picture of the safety of the plan itself. And it's not that complicated. If we go back to 2001 when this was put in place, things were healthy, we had an overfunded status. And paying if we want to use the term a dividend maybe it made sense. If I'm a corporation today and I have an underfunded status and I'm paying a dividend that's probably not a prudent thing for us to be doing. So that's why I'm looking at that aspect of it versus in my mind a secondary decision of providing benefits to those individuals. And all we have to do is look at what's happened in the last four five years in corporate America. We have financial institutions that have been very troubled, and the action has been to in many cases reduce dividends or completely eliminate dividends. So for us to make a recommendation that we think we should follow a charter when they're allowing us the opportunity to I think philosophically weigh in on this that's where I come down on it.

>> Sean Kaldor: Dick.

>> Richard Santos: I don't know where it got to where it is right now because maybe I didn't give my intent. My intent in the beginning was, make a recommendation to the council, to take a look at this. I don't agree with the formula. I hear what you're saying. I never did agree with that. Take care of the people who have the age and

need it the most. Not present-day members who are making good salaries. That was my intent from the beginning. How about the people who need it? The other stuff is hype and perception. I never agreed to it when it was gone and I don't agree with it now. One more time, my motion is I hope I said it properly, recommend to the council take a look at there and hope that that fund which is making money, help out the people who have the age and the financial assistance that they need. Period. Thank you.

>> Sean Kaldor: Drew.

>> Drew Lanza: So you remember when we were at the offsite at the Hayes mansion, there was a slight I put up that talked about the actors on the stage. One of the things I said when I put up that slide, whenever we feel the actors are in conflict we should step away. I think Dick and Vince are correctly representing the opposing actors on the stage. My fear is Dick no matter what we say about the SRBR by the very act of saying it, we will not be saying something representing the other constituency. So if we say, we think the SRBR should be -- I know you are not saying this is what we should say, the SRBR is put out there for our older participants who are hurting. What we're not saying is, and away we could say is no, ear not going to pay out the SRBR because Vince says we recognize in good times you give out a dividend and in lean times you sock it to the taxpayers. Either one of those statements is a correct statement. They are politically orthogonal to each other. I think any time we have two actors on the stage who are making rational comments that are in strong disagreement, we should recuse ourselves from the conversation, because anything we do says we're siding with bad actor. I understand we're fiduciaries for our participants, I understand it's our job to make sure this fund is managed properly. But a core constituency are the taxpayers who make up the difference and I any anything we do to antagonize them is outside of our purview and sometimes you antagonize somebody by not what you say but what you don't say. I think just wading into this is crazy. Having said that I hear where you're coming from Dick which is it does seem to me a bit odd that you can agree to give somebody something, and the city council can say, oops not this year. That strikes knee as an unfair thing. Which side of the thing should we take? I think it's clear we should take neither side of this thing, it's not our role.

>> Sean Kaldor: Do you want to respond to that? Pete?

>> Pete Constant: I just had my staff dig up some of the data since I didn't have it with me. In 2008 distribution, 53% of the distribution went to people earning between 50 and \$100,000 per year. 6.5% of the distribution went to people making 100 to \$125,000 per year. And 2.5% of the distribution went to people who make over \$125,000 a year. So when you add that all up well over 60% of the money went to people who weren't categorized in the low income area. And I do know that I received a spreadsheet from the 2008 distribution and I'm sure it can be made available to the members of the board. And you can see exactly the dollar amount of retirement, checks, plus the years of service plus the SRBR distribution.

>> Sean Kaldor: So I'll take my turn in the rotation here. Harvey, there is a ballot measure afoot, and it has -- it's not silent on the matter of the SRBR is that correct?

>> Harvey Leiderman: Correct.

>> Sean Kaldor: It would essentially eliminate the SRBR?

>> Harvey Leiderman: That's my understanding.

>> Sean Kaldor: And there probably will be a discussion about a vested right benefit to that and all that ensue following all that. So I think there's a lot of discussion is going to happen here and the fact that the city council just voted on a ballot measure that eliminates it means if we go to them saying please pay this it's probably going to fall on deaf ears. I don't know if we're going to accomplish much by asking. I do believe the SRBR formula could be improved. There's a way to focus those benefits on those who have lost significant purchasing power since they retired, especially people that retired in the '70s and early '80s when there was hyperinflation, and their 3% colas didn't keep up, and now they're struggling for 20 years. Instead we've adopted a much more broader formula. There would totally be a role for this board to say, here's a better formula. But I don't think that's going to fall on receptive ears either. So that's where I see this going. I don't think we're going to accomplish much by making the recommendation. So I don't support the recommendation, rather focus on the areas where we do think

we can get some things accomplished through the city council. I am sensitive to those people and our retiree membership that do need the financial assistance. Would I like to give them that assistance but I don't think we're going to be able to do that. Any other discussion? Any other questions?

>> Richard Santos: No I through the chair again you know when I hear the counselor bringing up twice about these high salaries? I don't know what you bring it up. We totally agree to what you're saying. To me that's just hype. All I'm trying to do is talk about the people who need it the most. I heard what Drew said, I withdraw my motion, the board is telling me right now they want to do other things and this is the area they want to deal with, I have no problem. The record should be clear we are all sensitive to those who need it. That's when I came from the heart, even when I was retired, I didn't want the money, what were they doing? I don't know who negotiated it at that time, I still don't feel real good about that? Our brother firefighters and police officers, I'm sure they did it for all the right reasons. But it didn't go that way, and I wish it would. With that I'll withdraw the motion, stay care of business, people who are up there include Councilmember Constant will take the suggestions that we've given, take care of the people that need it the most and I hope that fund continues growing, we'll be watching and hope we can make money out of it. That's what it's all about, thank you for your insight in Linning.

>> Sean Kaldor: Does the second agree?

>> David Bacigalupi: The second agrees. I seconded it for discussion.

>> Richard Santos: I'm unlike you folks I was unaware of the whole thing until I heard about it and it really bothered me a great deal and that's it.

>> Sean Kaldor: Do we have any further discussions or any substitute motions?

>> Drew Lanza: I think what you said Sean was very profound. So I'd like to ask staff that in the event the mayor's ballot measure fails that we put it on the agenda for a July or September -- do we have a July meeting? August or September meeting. To pose a different formula for putting out the SRBR. Because if what

Councilmember Constant says is right then the SRBR is not doing what it was designed to do many I agree with you Dick, that's what I thought it was designed to do. That is something we could look into and say our math says the intent of what the government has done is not fulfilling its needs and I think we're well within our purview to do that.

>> Sean Kaldor: All right, okay, seeing no further discussion, move on to agenda item 2.2. Discussion and action on development of a succession plan. We have a memo in our packet from the Deputy City Manager Alex Gurza. Alex did you want to speak toilet I guess an introduction to this.

>> David Bacigalupi: Mr. Chair.

>> Sean Kaldor: Baci.

>> David Bacigalupi: Please make a note I didn't receive 2.2 by e-mail or in my packet.

>> Sean Kaldor: I'll read the letter very brief. From Alex Gurza to our board saying that as the city and staffing of their department of retirement services including the proposed addition of an assistant director the city administration has been considering developing a succession plan for key department of Retirement services. We would like to receive input and suggestions from the boards on this important issue etched board that we could meet with to discuss the issue of succession planning. Alex.

>> David Bacigalupi: Thank you.

>> Alex Gurza: Thank you for the opportunity to speak before you on this item. As the board knows we have been engaging before your board and the Federated board staffing. Part of that for example was the discussion whether or not an assistant director should be added. From your board chair Kaldor and member rounds have been participating in meetings with us along with Federated. Sort of emanating from those discussions the city administration started to see the need for developing a succession plan. How is it we work with both boards in

staffing issues. I know that one of the topics that clearly this board and the other board has been talking about the issue of governance. But given the governance structure that exists now as you know the staff are all city employees that report up through the City Manager. But having said that we want to develop a model where we get input from both boards on very important issues such as succession plan. And so we would like to have -- to invite the board to assign to your whether it's two or three members, it could be the same members you have meeting with us on staffing and compensation or different makeup to engage in conversation. Let's say for example give you an example, when Mr. Crosby was hired before, there was a process by which it included various stakeholders that participated in the interviews and selection process. It wasn't something that the City Manager went and hired a director and said here boards here the person is. There was board participation in the interviews providing input. We want to engage the boards in developing a model. How would that work for example, how does it work that the boards can provide input to the City Manager and that's what we're asking your board as well as the other board to provide us input on.

>> Sean Kaldor: Thank you. Vince.

>> Vincent Sunzeri: So I think this might be a good opportunity to jump in here and address this because in my mind this covers a much more significant agenda item that we should be dealing with and it covers governance. To would I the Brown Act a limited number both the Police and Fire board and the Federated board met with the mayor, yesterday, and also with Councilmember Constant, to discuss this in anticipation of this particularly challenge coming up. And a concern which has been clearly pointed out not only by Cortex back in 2009, but by Mercer another consultant that did analysis back in 1993, is that we have a challenge with our governance structure. There is no one particular party that's being held accountable. And as trustees to try and manage a plan, it's just a flawed structure. And so our request was that we change the structure by changing the municipal code so that this board has the authority to hire, direct, compensate and terminate the director and the CIO and in doing so, they will be accountable for the two at-will employees on the board. And there are some steps that need to come out of that particular meeting. And in particular, one of these steps was to create a personnel committee. And I'm going to suggest that we consider moving in that direction, that we take the joint boards and create a personnel committee as a way to start to deal with succession planning.

>> Sean Kaldor: Let me jump in there and then Dick. Alex please.

>> Alex Gurza: If I could clarify. Clearly the issue of governance has been a topic and will continue to be for those of you that are new to the board, the city has achieved very hugely significant changes in governance by, for example, adding all the public members with expertise. We know there are more issues to be discussed. That's not actually why I'm here today not that it's not an important issue. As I've spoken to you before, there's an issue of long term changes and short term changes and the process by which these things may happen. So clearly encourage the board to continue those discussions about governance. I'm here really more on in the current governance structure while that still exists how do we work together effectively between the city administration and the boards. And clearly the long term issues may still be there but if we start working on only the long term solutions, I'm looking for day-to-day, how do we work effectively on providing input on succession planning. Maybe some of those can be done simultaneously, but I fear, for example, who the director reports to may not be quite as simple as simply a municipal code change.

>> I'd like to comment on that. We do see that issue. The problem this board is facing is that we don't have any administrative chain of command here. So you're putting us in a very awkward position as fiduciaries for the performance of the plan. We, last year, underperformed index by 100 bips, let's call it or 300 bips, I forget which. Which would calculate out to about \$75 million more that the city had to contribute. And we've been working with you and Deb Figone and the city council and trying to move forward on issues of personnel and it's been really frustrating for this board. That nothing's been done. And we felt -- I want to give you a little background here -- I think you're --

>> Sean Kaldor: Let's take a point of order here.

>> Sean Bill: I just want to say one thing here.

>> Sean Kaldor: No.

>> Sean Bill: If you can't fix the issue.

>> Richard Santos: The chair is calling you out of order here. You need to let him do his job.

>> Sean Kaldor: I agree with everything that's being said here. We have an agenda item that is dealing with a specific issue. We agree that a bigger as far as the committee but if we're going to go around right here and have a discussion on a whole separate agenda item we're not on the item right now. I agree with everything that's being said. But if you have a -- this is an offshoot of our closed session issue. Going on with the lawsuit. The direction we're going to take. And my understanding is that's still in closed session. If we're going to take it all out of closed session and bring up all of our closed session now and have that all in the open forum that's really not under the agenda item, if that's how we want to do this, we can do that.

>> Vincent Sunzeri: Let me just conclude on the comment that I had made which is I think addressing this particular memorandum. And that is, they're looking for a group for input, and that group should be comprised I believe of a personnel committee and that would collectively help in both matters. I'm going to suggest that we establish a personnel committee. I'd like to see that happen made up of three board members. From the Police and Fire side. I would love for that to be a joint committee with Federated and see a similar structure as well.

>> Sean Kaldor: We have a motion, do we have a second?

>> Vincent Sunzeri: Let me also clarify the motion. I believe it should be made up of two of the independent board members on the Police and Fire side. And one of the safety members as well.

>> David Bacigalupi: I second the motion.

>> Sean Kaldor: So we have a motion and second. Do we have any discussion on the motion? Damon.

>> Damon Krytzer: I'm still sort of having a hard time believing this is going to be of any use. Because personally, this is sort of tangent from piecing conversations together, I don't see any change around the control issues. And I don't see any possibility of us benchmarking against other successful investment organizations. I feel like this committee would be a bit of a waste of time, frankly.

>> Sean Kaldor: Dick then myself.

>> Richard Santos: Yeah I liked what Sean Bill was saying and I would be supportive on the subject. Maybe we should have these things then come back and discuss this more. I liked where he was going, there was important stuff and I want him to add that. So is that appropriate to hold off that motion have what we're going to have and come back and address this? The whole thing is so -- it's everything we have been doing for the last whatever it may be for the last year and a half. I don't want to speak on it now. Would that be the best way to handle this so we could bring more information back here?

>> Sean Kaldor: That was going to be my comment. This is a totally appropriate discussion to have and I think the solution is in the right direction and we in the board are in complete agreement on how to handle this issue throughout this entire time. But let's defer the discussion of this until after we have our closed session which is related to the lawsuit and all these other related issues and address it right after that. Bettina.

>> Bettina Rounds: Can I just address Damon and this comes from my background, where people believing that personnel committees are not valued on if line. From a corporate background I think, Damon, that along with all of the investment pieces that the structure and the functioning and the effectiveness of any organization sadly does require some dealing with the human nature part of it. So I would argue that a personnel committee is in fact the right forum to discuss very important issues that are very relevant to the fiduciary responsibilities of the board.

>> Sean Kaldor: Pete.

>> Pete Constant: I just want to ask a clarification. Because I thought I heard two different things. I just want to make sure I heard correctly. One is I heard that you'd be discussing governance in closed session and then I heard that you would talk about governance after your closed session when you are back in open session. I just wanted to say that I don't -- unless it is specifically related to lawsuit at hand governance issues should be discussed in open session. And I just wanted to make that explicitly clear.

>> Sean Kaldor: I'll let Harvey address that but we have a governance related issue that needs to be addressed in closed session. And addressing that issue in closed session might have to do with how we want to address that as an association. Harvey .

>> Harvey Leiderman: Like many subjects, this touches on the litigation that is dealt with in closed session. It also touches with open session items. For example, we have an item on the agenda, item 6.2, the ad hoc governance committee dealing with the Cortex phase 2 issues, a report from that committee and then a discussion. The governance issues can certainly be talked about in open session during the course of that conversation. There are specific governance issues that do relate to pending litigation that do need to be spoap of in closed session. There isn't a bright line to figure out what is right in which forum. But we can discuss these issues further in open session. At least as part of item 6.2, there may be other items on here that also relate to the governance issue. As I understand it Mr. Chair, this particular issue we are talking about now is the invitation by the City Manager's office to work with them on succession planning and I agree with the chair that we should keep the discussion on this agenda item limited to that subject.

>> Sean Kaldor: Thank you, Vince.

>> Vincent Sunzeri: If I can actually a little revision to my motion. In creating a personnel committee I blee we should dissolve the ad hoc short terms solutions committee and create this new personnel committee. I also believe that the chair of the board should be on that committee as well.

>> Sean Kaldor: The seconder of the positions today?

>> I'll second it.

>> Sean Kaldor: Baci, we need you to accept the revisions.

>> David Bacigalupi: The seconder agrees with the motion.

>> Sean Kaldor: I'll take a turn. I completely agree that we take this on now and not defer as I recommended. I do agree we have a number of governance and really personnel related issues to deal with. We have both the ad hoc governance committee and the short-term committee that we've been meeting with the city. Having one personnel committee to deal with all these issues is absolutely the right direction. I disagree with the motion's construct of that committee. I think there's further discussion needs to be had on that. Simply stating the construct should deal with a certain should deal are independents, the chair best prepared to deal with that so I don't agree with the motion.

>> Richard Santos: Just the makeup, Mr. Chair?

>> Sean Kaldor: Yes. There's nothing to say we couldn't have four from each board with adequate representation from both independent and employees or two with an equal split. There's different ways to handle that. Just saying it should be a chair of two committees with four represented from the outside and only two represented from inside the city who have a significant interest in the leadership of this plan whose pensions are dependent on it especially the retiree whose every day paychecks are dependent on that. There is no way I think an independent person would be more unbiased in selecting a good CEO or CIO for this organization than someone whose retirement check is going to be dependent on it.

>> Richard Santos: How about there Mr. Chair: Would the maker of the motion allow the chair to establish the order of the committee ? (inaudible) absolutely not.

>> Sean Kaldor: Damon. Dkdz should be the people on this committee. We already know that I don't want to serve on it already but I'm happy to provide input might I add but I don't think it's actually going anywhere. But I would think that the people that -- I mean we're talking about structure. We're not talking about selecting individual people, they're still going to be appointed by the city. I would think that whoever has the most experience in running a successful investment organization are the structures should be the people that are often that committee.

>> Sean Kaldor: Vince.

>> Vincent Sunzeri: Although I'm not appointing about people my suggestion for this particular personnel committee on this board, yourself, chair Kaldor I think would be appropriate to be on the committee. Having trustee rounds who has a backgrounds in human resources and is the expert in this area makes sense. Having trustee Lanza who has had experience serving on boards, perhaps the most boards than any other trustee would make sense in my belief. Would bring a wealth of many and a strong balance to decision making.

>> Sean Bill: I think that Sean your comments you know I think at some point this board, the board members need to trust each other. We've talked about that offline, you know. And you know I think Drew is probably in the middle of all of the four parties, that kind of keeps it balanced. I also think that you know we've been working on this stuff with the city for a long time. I mean I've been on it for a year, for dick you've been doing it for fearn years or whatever. And we need to figure out a way to move the ball forward and not worry about you know, you know, we've got to get over this trust rish thing.

>> Sean Kaldor: I would want to respond to that. I completely agree and if that's the substitute motion I completely agree. I'm trying not to create a number of independent vs. active, I'd rather say three people are appointed. We can decide as a board who those three people are. I'm not trying to interject the division, I'm trying to remove the division. I have no problem with the recommendation --

>> Richard Santos: We could second it and move on.

>> Sean Kaldor: We have a motion.

>> Vincent Sunzeri: I don't want to change my motion.

>> David Bacigalupi: Mr. Chair.

>> Sean Kaldor: Baci.

>> David Bacigalupi: My understanding of the motion, just says for three people. I mean I think where you comply with the Brown Act if we have four, I like -- I agree with vens's recommendations of who should be on it. But I also believe in the fact that the chair should make those appointments. But I think there's room for one more to be on there. And you know I don't see it as a matter of one side or the other side. Everybody brings to the table different experiences. And I think as a board we want the best experience that we can use, to sit on this committee. So that's my thought and I hope if I understood the motion correctly it allows for that.

>> Sean Kaldor: Okay, Pete and then --

>> Pete Constant: I want to say that the reason that the three is important is if it's going to be joint with the Federated board they can only have a maximum of three because they're a smaller board.

>> Sean Kaldor: Ah.

>> Pete Constant: And so if your intent is to go forward and do a joint board and have equal representation that's the reason to do three. And then I think Vince based on what I'm hearing if you slightly amended your motion to create the personnel committee with the three people that you mentioned that may be a way to bridge the gap here.

>> Sean Kaldor: Thank you for the clarification on that. Vince.

>> Vincent Sunzeri: We can start with that. I think the -- once the personnel committee is created the construct can be defined more specifically with Cortex under governance issues. So let me restate my motion. I make a motion that we create a personnel committee, that personnel committee I believe should be made up of the chair, trustee rounds and trustee Lanza, and that we dissolve the short term staffing ad hoc committee. And collectively partner with Federated to have three members from their board as well.

>> Sean Kaldor: Does the seconder of the positions accept?

>> David Bacigalupi: Yeah, I'm thinking about this because I still don't see where we should be limited in our membership. I think our personnel committee could, when they meet jointly with the Federated board, limit our voting power with the Federated board to just three of our four members. I just see that there's room for a fourth member. And it's just more brain power, more eyes looking at this. And I just don't see an advantage to limiting ourselves to a three-member committee when we can legally have a four-member committee. And I would suggest that as a substitute motion to the maker of the motion.

>> Sean Kaldor: Help me out here. So if a substitute, we would need a second to that, so is there a second, or we'll go in order, Dick then Vince.

>> Richard Santos: Second the motion by vns. I hear what Dave is saying and I would support that but I got a councilperson here saying I give you some visit sounds like he's trying to work with us so it goes over here and we don't have any problems. For right now listen to this, Sean and everybody here, let's get the thing moving, three and three, let's get things moving that's what everybody wants to do, I think that's a good selection, that's my second.

>> Sean Kaldor: We had an original second which approved it we had a substituted motion with no second, next to speak would be Vince and then Drew.

>> Vincent Sunzeri: You have a significant ability to move the ball forward as Sean mentioned. With the long term goals which I think can be accelerated rapidly if you rally round away we're trying to accomplish here. If you choose to stall complicate it, make it messy, you pay as well throw your hands up. So my suggestion is we don't complicate this any more than we need to. I think that you have trustees that collectively all want the same thing. And we're moving in the right direction. And I think that we have an opportunity to screw this up, and I don't want us to do that.

>> Sean Kaldor: Drew.

>> Drew Lanza: Yes, Baci this is Drew. With personnel matters, less is more. If we've got three plus three people already dealing with the City Manager's staff, that is already a monkey house. I would ask you you to let us do it with three. That's already still too many people but I think it's the fewest number of people we have and still have enough brain power and representation so I would plead with you to withdraw your comment or change or whatever the heck you call it.

>> David Bacigalupi: I will withdraw my request for an amended motion. My only purpose was, we have besides the people originally mentioned we have other corporate individuals that have a lot of experience in corporation. And from previous discussions I think they bring a fresh idea of looking at this, rather than government types who have looked at it for 20 years. And I just was trying to chu more of that knowledge and that experience. But the intentions were good so I withdraw my request for an amended motion and I'll continue with my second of the original motion.

>> Sean Kaldor: Okay. I take it my turn in the rotation here I completely support the motion. I think this is absolutely the right direction, absolutely what we need to be doing in terms of establishing the committee and moving things forward. It also addresses the current request from the City Manager's office that we have a group of people that can be worked with regardless what might happen with government changes someone to work with for succession planning with the department. I just wanted to clarify that the personnel committee would be

working with the City Manager per the request here for succession planning and my question here would the ad hoc governance committee phase 2 would the personnel committee still be doing that or would that committee remain?

>> Vincent Sunzeri: I believe that would be separate, that would remain for the longer term challenges that were focused on.

>> Sean Kaldor: Okay. Any further discussion on the motion? Seeing no --

>> Drew Lanza: Mr. Chairman just consulting with counsel, I think this needs to be an ad hoc committee. If it's a real committee we run into the governmental rules and regs. It's only meant to be here for a short period of time.

>> Sean Kaldor: And there's the question of alternates. This is dealing with this issue but we're also establishing a personnel committee, if it needs to be formalized later it can be formalized later.

>> Drew Lanza: Let's kick that can down the road a little bit .

>> Sean Kaldor: Bettina.

>> Bettina Rounds: Let's make it an ad hoc committee and move on.

>> Sean Kaldor: I absolutely agree that it could be a full time committee --

>> Vincent Sunzeri: I amend the motion to make it an ad hoc.

>> Thank you, thank you very much.

>> Harvey Leiderman: Mr. Chairman if we are making it an ad hoc committee I recommend we put a time duration on the committee and revisit it later on to see whether or not we want to make it a standing committee.

>> Sean Kaldor: You're really going to make this fun.

>> Harvey Leiderman: You bet.

>> Vincent Sunzeri: 90 days seems like a prudent time.

>> Harvey Leiderman: That would be short. I'd be comfortable with up to six months and still call it an ad hoc committee.

>> Sean Kaldor: Through the end of the year.

>> Harvey Leiderman: With a specific purpose.

>> Sean Kaldor: And for right now the purpose is focused on succession planning and the goals gifng to the committee to address the goils in here.

>> Vincent Sunzeri: We can always convert the ad hoc into permanent or do we have to establish another permanent?

>> Harvey Leiderman: It doesn't make any difference.

>> Vincent Sunzeri: Establishing the rules here six months.

>> We can make anything hard here can't we?

>> Sean Kaldor: I make this point, before we take the vote, I completely agree, it gives the ability to deal with anything, anything that comes up we can deal with a permanent committee, I think we need to have an HR committee and we can address the governance things that are hanging over us. I think this is a big step for us and I hope Federated is able to make the same step and we can work collaboratively with them and take the management services issues on to the next level. I think this is great. Any other comments, seeing none, we'll call for a vote by roll call. Sean Kaldor aye, Richard Santos aye, Sean Bill, Drew Lanza, Damon Krytzer, Bettina Rounds, and Vincent Sunzeri, by unanimous vote, the matter has passed.

>> Alex Gurza: We have benefited from the meetings we have had with you and Ms. Rounds chair lerve it has opened up some and we know there are larger issues of governance that you want to talk about clearly complex issues but in the meantime we understand that there are pension plans to run and we want to be ability to work with you within the current structure as you know other alternatives are explored so we look forward to meeting with you.

>> Sean Kaldor: Thank you, I think we made some progress, we'll have to report out on some of that today from these committee meetings. So thank you. Don't go too far. Item 2.3. Discussion and action regarding payment of search consultant expenses in an amount not to exceed \$95,000 for the recruitment of an assistant director and an investment officer for the retirement services department.

>> David Bacigalupi: Move to approve.

>> Second.

>> Sean Kaldor: So maybe before we spend 90 grand a little quick overview.

>> Harvey Leiderman: Yes, I can lead in.

>> Russell Crosby: The human resources department requested for quotes, March beginning of April. They had four responses, one alliance, Avery associates, EFL and Ralph Anderson. The prices raked from the EFL's 95,000 down to 28,800 Avery. the national leader in this business is EFL associates. Very well-known firm, long practice. Probably the largest in recruitment for pension plan leadership positions. And then, the other one, Alliance also has done a fair amount of business here in California. The city uses them, has used them extensively for recruitments in other parts of the city and they've had very good experience with them. They're significantly cheaper than EFL. My recommendation is that the board committee thing between trustees and the city administration interview both EFL and Alliance and make a decision.

>> Sean Kaldor: Dan.

>> I agree 100% those are the needs that always come up within this space, period.

>> Sean Kaldor: Leam.

>> Alex Gurza: Mr. Chair, for this item I'm here in my role as the City's HR director. We do have a list of firms that we use for executive recruitments. When we are looking for a particular item we go out for that recruiter and ask them to submit bids we do include others as Mr. Crosby mentioned, he mentioned one EFL and another is Spencer Stewart who did not respond. On this particular line, we want to use the search firms that the boards are comfortable. Both boards, as you understand, we could only use one firm. You know there is a significant price difference between the two, clearly it would be up to the boards which one you prefer. If you were looking for our recommendation of the particular two, clearly both would be qualified. But we think Alliance given their much more modest cost, reasonable cost and also, because they do have experience in recruiting for retirement-specific positions that would be our recommendation. But clearly we're open to either one and then we're going to be seeking the Federated board's input as well.

>> Sean Kaldor: Carmen.

>> Carmen Racy-Choy: There are three investment officer positions open so I'm assuming the search consultant would be filling all three as opposed to just one.

>> Russell Crosby: Yes but the quote was done around one investment officer position and one the administrative -- the assistant director position. In part C if there's a variance between the two and if the board's satisfied you could go ahead and continue to use them for recruitment.

>> It would be for example since you have multiple vacancies in the retirement services, we recommend using one firm for both that recruitment as well as the assistant director. But clearly if the board wanted to choose different, you could pick one firm for the assistant director and one firm for the other but our recommendation is to choose one.

>> Sean Kaldor: Is the 95,000 for both or for one investment officer one assistant director?

>> Russell Crosby: One investment officer one assistant director. you may carry a title like assistant director and investment officer. They may have read that as one position.

>> Sean Kaldor: So you're asking for this board to approve the financial expenditure but to have this I guess this personnel committee pick the actual firm?

>> Russell Crosby: Correct.

>> Sean Kaldor: Okay.

>> Alex Gurza: So one advantage I could say is it would allow the coordination with the Federated board. For example if you chose one firm and Federated opted for a different one, that would come back to you so in that sense that could work if we would also be able to achieve the input of the Federated board.

>> Russell Crosby: And this can move along faster as well. With the committee doing it rather than waiting for board meetings. Each transaction.

>> I just think we need to make sure -- I agree with you Alex you should have the assistant director. Because I think we need to be very sensitive to cost from this board's point of view and the assistant director is really the nut to crack.

>> Sean Kaldor: My only thought is how involved this board wants to get in recruitment of investment officer, you know all these individual positions, is this just something we should authorize the director of retirement services, here's the money, go use the recruiting firm go pick the best people or do we want to be involved at that level? That is my only question. Certainly a CEO-CIO I would want to be involved, maybe an assistant director, maybe.

>> Damon Krytzer: I'm with you. I agree can we give discretion?

>> Sean Kaldor: Okay, I'll make a motion to approve the recommendation and for the director of retirement services to use up to this amount of money, to choose a recruiting firm, and begin their recruitment to fill the open investment officers and assistant director positions.

>> Richard Santos: Second.

>> Drew Lanza: Did you mean to add subject to approval of the ad hoc committee we just created?

>> Sean Kaldor: We are giving approval to use either of these firms up to that amount of money?

>> Drew Lanza: No because no, got it.

>> Sean Kaldor: Because there's a certain level I don't want to get involved in.

>> Bettina Rounds: One question, you do want to meet the assistant director. This doesn't include the choice of the assistant director. Since that was the whole question initially when we were looking at compensation issues, the assistant director was the solution to whether we were going to go, you know, what route we were going to go and how to compensate and --

>> Sean Kaldor: Let's -- if I can recommend maybe this is part of something this personnel committee can work with. The assistant director.

>> Bettina Rounds: I agree, fabulous.

>> Leslye Corsiglia: In my view when topic. Greatly example is under the current governance sphrur we -- how do we gain the board's input on key positions like the assistant director, how would we structure that and that could be topic number 1.

>> Drew Lanza: Great.

>> Sean Kaldor: We have a motion and second, any further discussion on the motion?

>> Damon Krytzer: So motion is to allow director to select the firm and what?

>> Richard Santos: Subject to approval by the board.

>> Sean Kaldor: We're approving it here.

>> Richard Santos: All right.

>> Sean Kaldor: Approving spending this much money to do recruiting and they'll start the recruiting. When it comes down to the actual hiring process, we'll work in the personnel committee. And what level we want to be involved in recruitment.

>> Russell Crosby: You're likely you don't want to okay they're going to be your search firm for probably a long time.

>> Damon Krytzer: They're both leg I.T. firms from what I'm hearing.

>> Sean Kaldor: They are widely known and commonly used in this space. At different levels I want more involvement. I got to say an investment officer we're going to let you do your thing.

>> Richard Santos: Go your way B-u-bba.

>> Sean Kaldor: Sean Kaldor aye,.

>> David Bacigalupi: .

>> David Bacigalupi: , eye, cps Elizabeth rounds, Vincent Sunzeri, we have unanimous vote, motion passes, thank you. Thank you Alex. Item 2.4. We're going to hear right after disability so item 2.5, discussion and action on plan expenses for March 2012. I guess I'll just introduce this, we've asked for a new format to this. In which we provide kind of the director of retirement services giving his official seal of approval that he's reviewed this and they are in keeping with our policies or things we specifically approved as a board. The back is the same level of details in the past if the board would like more detail I'd certainly support that, you know expenses over a certain dollar amount maybe we need to see the invoice on.

>> Richard Santos: Or give us glasses.

>> Sean Kaldor: Or give us glasses. Did you want to Russell nothing to add?

>> Russell Crosby: Nothing to add.

>> Sean Kaldor: Stole your thunder. We have a motion to approve. Do we have a second? We have a motion and second. Any discussion?

>> Drew Lanza: This is really a minor point. I just noticed on the back side that there's only the stipends for four or five of the board members. Anybody know why that is? (inaudible).

>> Drew Lanza: That's the answer, thank you.

>> David Bacigalupi: I'm sorry, I didn't hear the answer.

>> Sean Kaldor: Processing time.

>> David Bacigalupi: Okay, thank you.

>> Yes, I said only the outside board members that received a stipend.

>> Drew Lanza: I just noticed my name wasn't on the list.

>> Russell Crosby: I think we got a regent on the city attorney's office.

>> Richard Santos: Thank.

>> Sean Kaldor: I'd certainly support approving this. My only caveat is for certain times only investment expenses it would be good to see the actual receipt, for example \$12,000 to Cheiron, we want to make sure where the amount is going.

>> Richard Santos: It should be a certain amount where the board always has to be involved.

>> Sean Kaldor: 10,000 or 5,000? Rth that sounds good.

>> Sean Kaldor: Okay we have a motion and second. Any furthering discussion on the motion? All those in favor by roll call myself aye Richard Santos yes,.

>> David Bacigalupi: .

>> David Bacigalupi: , yes, Sean Bill, yes, Drew Lanza, yes, Damon Krytzer, yes, Bettina Rounds, yes, Vincent Sunzeri, yes. Item passes unanimously. Heads up as far as timing here, this might take us to -- what we'll do is we'll run this up until 10:30, we'll take a five minute break and we'll hear the disabilities right there or soon thereafter. Item 2.6, discussion and action on department of retirement services' administrative budget proposal for fiscal year 2012-2013.

>> In your board packet you have a PowerPoint presentation and sorry I'm trying to get the slide actually up on the screen as well. But in the meantime I'll go through the print-out if you wouldn't mind. So keeping in line with the expense report that you just seen in the previous agenda item. I've continued to use the same budget categories that you see, in this year's budget and I've outlined what the budget categories are on slide 3. And really you're looking at a breakdown of the personnel cost for retirement services staff. The next line is the nonpersonal and equipment and that pretty much represents all administrative overhead costs things like rent, maintenance agreements, fiduciary insurance, supplies, postage, printing et cetera. The next line is the medical director and support staff that is after that, Dr. Das and his support staff, and the last line is professional services other. And I feed you to keep in mind that this excludes all investment related expenses. This really is your

actuary, your external auditor, pension administration services, general and tax counsel. Governance consultant and other retiree benefit education providers. And when you see the monthly expenditure reports you'll see it broken down into the same category. The one piece that you'll see that is an additional line in the monthly administrative and professional fees report will be the investment expenses. Investment expenses for the money manager fees aren't budgeted because they usually are some sort of proportionate calculation to what the assets are. So there's difficulties in projecting out what those will be. There are some fixed cost administrative investment cost or contracted and that would be your investment consultant and a legal services for investment related agreements. I can take questions as we go along, or can you kind of chime in if you've got a comment. If you've got a question on something I'd be glad to provide it. So in moving on to slide number phaser --

>> Sean Kaldor: Please bept.

>> Bettina Rounds: Do you have head count numbers?

>> In slide 4 I have head count.

>> Bettina Rounds: I have no idea what the \$2 million actually covers.

>> Just to address your question, currently the board has approved a head count of 34.5 department of retirement services employees that are shared split-time with the Federated plan and the Police and Fire plan. The City's budget system however only has 33.5. Last fiscal year or last budget year I proposed adding a senior accountant position, and it subsequently wasn't added. So it has gone back to city council this year, and I hope that it will be approved begin the great need for accounting. But currently, we only have 26.5 of the positions filled.

>> Vincent Sunzeri: So if we are to potentially get to three investment officers would that be part of this 34 number or is it separate?

>> It is, ultimately if you add the assistant director, the goal would be to reach a 35.5 head count. And right now, it would be the assistant director. There would be three retirement investment officers that are vacant, one division manager of benefits, one financial analyst for your investment group, one administrative staff for the investment group, and one analyst for the retirement group.

>> Vincent Sunzeri: That would get you to your 35 number is that what you're-d.

>> Yes.

>> Vincent Sunzeri: All right, thank you.

>> Richard Santos: And better chairs.

>> Keep in mind this is staff you share with the Federated board. Really you're only getting 20 hours a week of the staff.

>> Vincent Sunzeri: I have a question on the nonpersonal equipment, looks like there's a line item that might be addressed. For me the pages aren't numbered so I'm not sure what page it might be, so there's a non-- there it is I'm sorry. On page 7. So we were spending approximately \$420,000 for a particular analytic software that we're no longer going to be using.

>> It was proposed that we would use an analytic software for Alborne. Subsequent we used Alborne for a consultant, it was put in the nonpersonal line and was expended in the investment expense.

>> Vincent Sunzeri: Thank you.

>> It appears that I'm online. So let me kind of catch up on screens here. Okay. So slide number 4. And what this slide has is the actuals for the fiscal year 2010-2011. The adopted 2011-2012 which is the current year budget,

with modifications that have been made throughout the year. A forecast of what I believe will be the numbers at your end and then the proposed budget. The final column has the changes between the adopted budget for the current fiscal year and the proposed for the next year. And I'll go over the year-over-year changes in the following slides. While I did mention that we do not budget for the money manager fees I did want to provide some sort of basis for what you're looking at, and what proportionate share they are to our plan. So what you're seeing here on this first table is really a summary of the personal services which is really the retirement services staff, compared to the plan net assets. And you see that from 2008 all the way through the forecasted budget. And you see it as a percentage and it's been pretty constant. You know about 8 to 9 basis points that you're looking at. The administrative and everything else, pretty much everything else and your medical director and again you've got a way to gauge where those fees and expenses are going as far as a percentage of assets. You have a, why the costs are going. In this year when you're looking for the budget for next year what you're seeing a lot of the increase is related to the expected legal costs that we think we're going to incur going good outside of the city attorney's office to provide the majority of our legal support. There may be a lot more additional cost as well as the actuarial services that are also increasing because of the demand for services. The last table there addresses the expenses which are the money managers and other investment cost and you see it again as a percentage of net fund amounts. The projected amount was based off of just a roll-forward of what NEPC had as of December 31st and adding in what the actuarial assumed rate is. Have I've got questions there I'll continue on.

>> Drew Lanza: Good presentation.

>> So I'm going to leave the main slide on but I'm going to go over what the variances are. When you are looking at personnel services you're seeing a very small decrease in the personnel service, for retirement services and this is greatly due to the benefit costs that are coming through. The nonspecial and equipment as pointed out earlier, a large portion of that decrease has to do with Alborne and moving out of the nonpersonal line and moving into the investment expense as a consultant. In addition we had minor increases for postage and printing. A lot of the paperless outcomes haven't happened yet so unfortunately there are still some costs related to that. In addition, for the budget for the next fiscal year, I've included, and I actually may have this number a little low given the new changes for city council, I assumed there would be one health trust establishment, the Police and Fire

fund, I understand there will be a separate Plaintiff and as such there will be fiduciary insurance related to that, as a result this number will have to be included slightly here. I've also included a slight increase for fiduciary insurance for current litigation so I'm not sure if the premiums will increase. Moving on the professional services, well, there's a small decrease, I'd like to highlight that I was really budgeting and forecasting some of these figures off of the agreements that we have with our current actuary and legal services. But given the environment that we're in and the volume of requests that are going out to legal, and the actuaries, I'm assuming that in next fiscal year we will need to come back with an agreement amendment for either of the two. So while I don't have it included in this budget piece I'd like the board to be aware that these numbers may be exceeded and obviously will come back to the board before they are exceeded. And the last line is for our medical director, there's a slight increase here and really this is the consolidation of all of the medical director and support services that we have. And I'll take any questions if you have them.

>> Richard Santos: Thank you, Mr. Chair. As always you do a fine job, appreciate it. You know, I'd like to -- for agenda items or whatever, I'd like to see Dr. Das come here and I know when the personnel committee comes here I've always had a concern we pay for someone else and things like that. I'd like to hear from him and maybe the board in terms of what do you need to make it more efficient, do you need staff, whatever, what are we getting out of this amount of money? Actually hear from him. Maybe it should be on the agenda or invite him as a board whatever it takes, I've had a couple of opportunities to meet with him, I was really impressed, find out just what we need. So I'd like to know what are we actually getting for this amount of money and what does it take that you need more or whatever have you. Things that have -- anyway, I know the personnel of the committee will be looking at that because I don't know how you serve two masters and go on and on. Doesn't mean my concerns but do the board do we invite him here for this or put it on the next agenda or what do you do?

>> Sean Kaldor: I'll make it a note to put it on the next agenda if the ballot measure passes.

>> Richard Santos: It's better to wait until after the ballot if there is going to be some related to that, so thank you.

>> Sean Bill: How are expenses allocated? Are these like our share of the expenses on screen? And the other plan has their own separate, yeah.

>> Russell Crosby: And your particular management fees they're all directly out of your portfolio not theirs.

>> Damon Krytzer: Do you have any expectation yet once you start to execute on Alborne, where am I looking, the 38 basis points you think that will go to 50, 55, or --

>> Russell Crosby: I'm thinking it's going to go up, it should go up significantly. And as you move into active management as well. The other piece isn't just the hedge fund piece but your active. Out of passive. That's going to be more expensive as well.

>> Damon Krytzer: Hopefully it's a smaller percentage right?

>> Russell Crosby: Smaller than hedge funds right.

>> I wanted to clarify on the expenses you were requesting? There is a 50-50 on some of the overhead rates but on the Police and Fire fund those are allocated as such.

>> Bettina Rounds: So when you look at Dr. Das is that just our portion of Dr. Das and then there's another portion of Dr. Das, so we're not really looking at what Dr. Das is?

>> Russell Crosby: The whole Dr. Das. You're looking at your share of Dr. Das, like the staff, you're looking at your share of the staff. Brian Doyle so in truth it's -- yes, more.

>> Sean Kaldor: So it's not just Dr. Das, it's all department everything else associated with it.

>> Bettina Rounds: So you could almost say this is the budget times two if you're really thinking from the City's point of view.

>> Sean Kaldor: Correct. Even more right? Dr. Das does other services unrelated to retirement services.

>> Russell Crosby: For the city.

>> Bettina Rounds: For the city which is your point.

>> There is an allocation for Dr. Das that is actually worked out.

>> Sean Kaldor: You did a lot of work on this and I know the budgeting process in the City of San José can be very tiresome and grueling. At a top level I have no issues for anything you're asking here in the budget. What I want to know from this board is do we feel as fiduciaries we need the next level of detail which would kind of be the organization chart so we know exactly how many headcount and how many coops how much is Ice Miller, how much is Cheiron, how much is NEPC, should we have this one level of detail to be able to approve the budget?

>> Vincent Sunzeri: I agree.

>> Richard Santos: Mr. Chair, most budgets we work with, line items are there broken down.

>> Sean Kaldor: Would it be without giving us every nickel and dime would it be possible to give us one dive deeper than this, to help us see -- I know you've got an organizational chart helps us understand where we're spending our money within the organization and then especially on personnel services how much are we spending on each of these big picture is lost on us I think.

>> Sure and you're looking at topes consultant type of contracts?

>> Sean Kaldor: Yeah I think and you know where the big buckets are, we're spending \$200,000 open something that's worth breaking out, I can't envision all the different pieces but to me that's something worth seeing and then is there any contingent planning for the ballot initiative as far as staffer resources or amount that will be needed in order to implement the extra plans or the IRS approval, you're going to need more people to do more accounting for fundamentally a couple more plans.

>> Yes, when I put together the presentation for last fiscal year I had anticipated we would have one additional plan from an accounting perspective which is the best we can, that we would need more staff in accounting to manage it. Now with the addition of two plans for the Police and Fire and OPEB, with the staff I put together I'm not sure that it can actually support all of these pieces. As the ballot measure comes forward and as more of the ordinances go through city council I will need to go back and from an accounting perspective analyze whether we have enough staff. And even then continue to evolve and have a vet plan or have a new tier or other pieces then we do get into a lot deeper fund accounting where you will need some more high-level accountants which we currently have the budget for myself and two other analytical type accountants, and I do not believe that's appropriate for what you're going to move into.

>> Sean Kaldor: How does the might or might happen, we need X more resources for it if it doesn't happen then we don't?

>> Well really, really on that portion from my experience with working with the City's budget systeming everything is done one year ahead of sometime. So we would have to have something into this budget system. But I believe there is a mid year budget and there are other options, maybe Pete can just --

>> Pete Constant: There's several opportunities to change the budget. With us is, there's the mid year correction and we have an end of year -- we have an annual report that's going to come up after the budget and yearly but we will take individual separate budget actions when, we could do that on any given Tuesday if it were

warranted. But the typical things is you have the budget that's passed in June and you have the annual report which is I believe in December, mid year, February, March, you have different points along the way.

>> Sean Kaldor: Thank you.

>> Russell Crosby: Other than the staffing budget you regularly modify it during the year, we bring those to you during the course of the year. That's why philanthropic is saying, the budget for this year actually includes those modifications you made throw the year-to. If indeed the ballot measure passes and it looks like A and not B, we can come back to you saying, hey, we're going to need additional resources, other than the staffing one which has to go through a whole different city processes. We can use temps, there are a lot of different options.

>> Sean Kaldor: I was wondering do we have them in there and pull them out or not have them there and add them?

>> Russell Crosby: It is too hard to start from that standpoint.

>> Sean Kaldor: I guess I'll make the motion to ask staff to come back with Wass in there organizational chart and the key professional services contracts and any other major categories. Just so we have a good understanding what it is we're dealing with.

>> Richard Santos: Second.

>> Sean Kaldor: Seeing no discussion sckd sckd aye, Vincent Sunzeri aye. Motion passes unanimously. Thank you philanthropic, sorry for giving you more work to do, trying to cover our jobs. All right with that, we will take a five-minute break. And then we will return let's call it at 25-till according to that clock there, about a seven-minute break and we'll return to do the disabilities or retirements. [ Recess ]

>> Sean Kaldor: So we will start back up. We will, slight little adjustment trying to accommodate some schedules here. So we will commence with the retirements portion immediately after retirements we will hear item 3.1 and 3.3. And then we will continue with 2.4 and the remainder of the agenda.

>> Damon Krytzer: And disabilities?

>> Sean Kaldor: We are doing right now. Item four.one, service retirement. 4.1A. Moses A. Barreras, police officer, police department, Effective June 23rd, 2012, with 25.30 years of service.

>> David Bacigalupi: Move to approve.

>> Second.

>> We're doing them all.

>> Sean Kaldor: With respect to the retire, we appreciate their service , because we are doing a roll call vote today, I'm going to do these all as one big motion rather than individual motions as we customarily do them. So that was item Alameda County K included is item 4.1B. Juan C. Bautista, fire engineer, fire department, effective June 23, 2012. 20.02 years of service. 4.1c. Gregory K. Lindh, police officer, police department, effective June 23, 2012, 25.90 years of service. 4.1d. John B. McElvy. Police officer, police department, effective June 23, 2012. 25 years of service. 4.1 E. Mitchell J. Wisinski, fire captain, fire department, effective May 26, 2012, 28.97 years of service.

>> David Bacigalupi: Mr. Chair.

>> Sean Kaldor: Baci.

>> David Bacigalupi: I people my motion to include all five of these individuals who put in all their time with the City of San José, for -- to approve their request.

>> Sean Kaldor: We have a motion and second to approve all those. Is there any discussion on the motion? We'll take a loll call vote. Sean Kaldor. Aye. Dick Santos. Aye. David Bacigalupi. Aye. Sean Bill. Aye. Damon Krytzer. Aye Drew Lanza. aye Elizabeth Rounds. aye Vince Sunzeri. aye.

>> Sean Kaldor: Motion poms. I worked with both, an engineer and a captain I thank them very much for their services.

>> Richard Santos: Mr. Chair, I worked with both of them, in fact Michigan Wisinski's father was union president for years did a great job for us, unfortunately he died right after he retired, great guy, so to Mitch, I didn't know this situation was happening but anyway, the best to all of them, thank you.

>> David Bacigalupi: Mr. Chair.

>> Sean Kaldor: Baci.

>> David Bacigalupi: Yes also as well as those two fine firefighters they were great police officers put in their time did a lot of work and I had the opportunity to work with all three of them. And I don't know if they're present or not but probably not. Hopefully they're already starting their retirement and I wish them well.

>> Sean Kaldor: Great, thank you. We'll move to item 4.2, the service connected disability. Application, John Mitchell, police officer with the police department effective May 3, 2012, 13.33 years of service. we have Mr. Mitchell and his attorney present. Before we hear staff summary of this I'll ask John rose maybe to introduce yourself. John is joining us from the police department he's going to be our new liaison. I'm not sure what is the exact position description for the personnel? Is it --

>> I'm actually the lieutenant of personnel unit.

>> Sean Kaldor: Lieutenant of the personnel unit so thank you I appreciate you coming out and we'll be seeing you as a regular attendee of our meetings here. As well you have backup? Shawnee Williams. I appreciate you coming as well okay Donna.

>> Donna Busse: Police officer John Mitchell is requesting a service connected disability based on his low back and heart, 50 years old with 13.33 years of service. Currently he is on long term disability. His work restriction is that he should avoid scerks in as he is per the consent decree volunteered to vacate his position.

>> Sean Kaldor: Mr. Boyle would you like to give us a summary?

>> Yes I would thank you good morning. Officer John Mitchell has worked for about 14 years as a police officer for the City of San José. He's unable to do the job of full duty police officer because of his cardiovascular condition. Due to the limitations he entered the exempt officers position and has been doing that modified work until recently. Lieutenant John rose has stated that officer Mitchell is no longer able to have a position as annal exempt officer dr. Das has clulted that officer Mitchell should avoid extreme physical exertion in April uncontrolled condition us based opened hi heart condition. His blood pressure and heart condition was first noted in 2006 and 2007. There is no contrary medical evidence and based on the fact that he cannot do full duty patrol with that restriction and further that there is no position available for him, in the department, we respectfully request that you grant officer Mitchell's request for a service connected disability retirement. And I would ask John would like to say something so I want to give the microphone.

>> Sean Kaldor: Please, we welcome your comments.

>> Thank you. I wrote this out, so it might make it a little -- I might stumble a little less and get through this a little quicker for you. Good morning. This is a very difficult process for me to be here today. This is not how I envisioned leaving the San José police department nor how I wanted to do so. I really loved being a police officer

for the San José PD, I'm very proud to be part of that family. To say this is a disappointing moment is a severe understatement. There came an abrupt point when I wasn't able to be a police officer doing my duty on the street. It wasn't my decision. I was told by doctors that I couldn't do it anymore. And immediately pulled off of a my job as a motor officer, difficult training program to be part of. These injuries had profound effect on me professional, because although fortunate to have been given an opportunity to serve with the investigators in the police department I'm no longer able to serve in uniform capacity. Nor have been able to participate in things that I wanted to do to finish our my career as I intended. I've also recently been without job for nearly two months, a position opened up for me after having that job again for a couple of weeks and before really you know learning how to do it properly, I was replaced by somebody more senior and sent home over Christmas for several weeks. These injuries have had effects in my -- deep effects in my personally as well. Having to explain things to my kids and family about what's changed and what's happened to me in medical terms has been unbelievably difficult. I've been forced to alter many activities, been prohibited from others and worst of all considering that my own mortality may occur sooner than I'd like and equally as abruptly without notice as I've learned about it. I've not been able to maintain a level of physical fitness like I used to as well. Even though I wasn't physical cli able to perform the activities that I loved to do, I think it's important for you to know that I care about the people that live in this community and the officers with whom I've had the honor to serve with. I felt it was paramount to contribute in ways that I was best able to do under the circumstances while I could. The last few months have been especially difficult but we have to respect the rules that govern us because we are a group that are expected to follow orders. I'm disappointed to have reached this point. This is not at all how I intended to finish my career and I wish things could be different. Thank you.

>> Sean Kaldor: Thank you, Dr. Das do you have anything to add?

>> Dr. Das: No. I don't.

>> Richard Santos: Dr. Das, if officer Mitchell had a light duty job in the department, could 39 positions, ten today, due to this heart condition could he do that job?

>> Dr. Das: I believe that with restrictions he would be able to do a modified duty position, yes.

>> Richard Santos: And officer Mitchell were you working light duty?

>> Yes, sir.

>> Richard Santos: How long were you you said two months or something?

>> I was on light duty for four years, five years. I'm not sure exactly.

>> Richard Santos: Five years you were on light duty and did the department take you off of that?

>> Initially the department did take me off of that. They eliminated several positions last November or excuse me October. And then, you're given an opportunity to be placed in that modified program based on seniority.

>> Richard Santos: So you got bumped?

>> Yes, sir.

>> Richard Santos: Okay, so Fay you worked for almost five years light duty?

>> I worked for several years, I was bumped out of the program. Or rather there wasn't a position for me in the program I should say. And then for approximately two months. And then there was briefly, and then there wasn't. And then there was again. So it's been a little confusing.

>> Richard Santos: And when you rode bikes, how many years?

>> About a year and a half.

>> Richard Santos: And were you bumped off of that because of your condition?

>> Because of my back originally.

>> Richard Santos: So it wasn't heart related it was just your back?

>> It was -- let's see, both, or --

>> I believe it was in treatment for his back that they discovered his blood pressure was out of control. So I believe it was both.

>> Richard Santos: So both those issues got him off the bikes. Thanks.

>> Sean Kaldor: Don, just so I understand, this came in our -- this is deferred from November 2011 so this was one of the original group of when they eliminated all of the positions we're just hearing this now?

>> Donna Busse: I can't remember exactly but at the time there was question of whether or not because of the other retirements whether there was space for him. And apparently he did have a job available to him with the other retirements before him but now through the consent decree he has volunteered to vacate per the department's request so now there is no job for him.

>> Richard Santos: So here's the I know Alex is out there. Here's the issue it's hard for us to understand. We understand the cutbacks and so on 39 positions then you have ten and then again how do we know we have a position in light duty if this officer could worked in and maybe returned or whatever have you. I understand dollars and cents and the cutbacks and all this. This is really hard for us as a board and we could have personnel director, personnel committees they could all look into this. Should the city choose to have modified duty especially people who might have the ability to heal and come back. That's the hard part for us. When most of

them come here they want to continue, come here, they all have young feamtion, why can't we have positions some type of temporary position, if they can't come back over here but to take that away I know if I was there today I'd want to work and hope I could get mended to come back but these have no opportunity.

>> Sean Kaldor: Alex. Thank you.

>> Alex Gurza: Alex Gurza deputy City Manager. It's a very difficult situation when an employee can no longer perform the essential functions are their main job not only in the police department but citywide, especially somebody who wants to contribute to the city and to the community and so that is an issue we are going to continue to --

>> Richard Santos: Alex way back when we had what you call alternate employment it with wasn't popular I understand it. In some cases especially some of the young officers who don't have the option of 20 years or 25 or whatever, want to continue whether it be used to make the same salary and go to a different occupation. And some wanted of course, some didn't. Thech then they can come back whether it's the medical and the board can make a decision based on our doctor and all the different things. That's a real tough one. I know it's difficult economics but wow.

>> Sean Kaldor: Damon.

>> Damon Krytzer: I'm going to preface this again with the fact that nothing qualifies me to interpret anything that I'm going to ask now but, these are I guess questions for I guess Dr. Das but I'm not sure about the first one. So as far as the backup is concerned, there was a note from '06, I'm having a little rough time with the dates, from 06 it was you were still comfortable riding the bike and you should probably take a few days off. When did you go onto modified duty?

>> In I believe it was 06.

>> Damon Krytzer: Okay. Because I didn't pull that out of the -- okay. And is that also when they found the issue with your blood pressure? Was that '06 too?

>> I believe so. I don't remember the exact dates but I believe that's about right.

>> Damon Krytzer: Dr. Das I have a question about the back and a cardio-question. What are your thoughts on work related versus not? From a blood pressure standpoint?

>> Dr. Das: From a blood pressure standpoint, you know, I think that there's contributing factors, Dr. Anderson kind of identified that we've got genetic which plays a high role in it. The salt he mentioned adds different -- different people have different thoughts on the role of thought. There's a different issue as far as exercise which it sounds that Mr. Mitchell was able to perform at a fairly high level. The other issue was his nonsteroidal antiinflammatory medications, by a mechanism there are things called Prostaglandins that are released, so the kidneys get profusion poops when you stop the profusion of Prostaglandins it causes the kidneys to get lest blood flow and it increases blood pressure.

>> Damon Krytzer: So was hit blood pressure not controllable because he was kind of chronically on NSAIDS would you say?

>> Dr. Das: I think it contributes. Did nonsteroidal antiinflammatory have a and when you are looking at individuals absent other risk factors that's one of the things you are looking at.

>> Damon Krytzer: Does that change or is that the way it is?

>> Dr. Das: Ideally it should change. To be honest with you, I know for a short period of time when I've identified it with people it has control but that's when we're looking for it in people that are taking it for a long period of time I don't have peernl experience and I haven't really looked at the literature to find out if people get better after long term Nsed use because of that .

>> Damon Krytzer: And a bad quick is, okay, he was comfortable riding his bike after the incident and then there was kind of systemic change, it was like degenerative what is your impression gm I only rks heart condition because what I felt is it primarily the limitations for his lower back were symptomatic or subjective in nature. So I did not provide any work restrictions for the lower back. It doesn't mean that he's not experiencing pain, I don't dispute that. The question is whether it's an nerve root compression causing weakness. He did have a history of nerve root compression when the disk resorbed. There was a condition there so it did improve.

>> Damon Krytzer: From a cardiac standpoint it scenes reasonable that the NSAIDS had something to do with his blood pressure and it seems like he had to take the NSAIDS because of an injury. That in itself is not -- aim going in the right direction here?

>> Dr. Das: Yes.

>> Damon Krytzer: Okay, can you elaborate?

>> Dr. Das: What I'm saying is basically there is a lot of contributing factors to high blood pressure. Genetics being the one. However, there are other factors that can contribute significantly to developing high blood pressure. And Mr. Mitchell had a low back injury for which he received how long you should take them but in the medical community, we prescribe NSAIDS on a long term 55 a lot of people. And so it's reasonable to see a change in someone's blood pressure especially if it was normal and then it increases and there's a change and there's an increase in the blood pressure. After someone begins taking nonsteroidals on a chronic basis. I think it can definitely be a contributing factor to developing high blood pressure.

>> I would like to address if I can follow up with what Dr. Das has said to point out to you that on page 149 of your materials, Dr. Smith, Mr. Mitchell's treating cardiologist, has said that the work related contribution from the City of San José's work as a police officer is over 50%. So that's Dr. Smith's opinion. And Dr. Anderson points out that it's

not only the nonsteroidal antiinflammatory meds taken for work injuries but also work-related stress as a police officer. And that's on page 120 and 135 of your materials.

>> Damon Krytzer: Do you have a response?

>> Dr. Das: Those are opinions. It all comes down to what I try to rely on is the medical literature. The role of stress is controversial. There's smart people on both sides of the issue that feel that there is a component of stress. It's hard to quantify in particular in terms of saying what the day-to-day issues are in terms of is there a direct cause and effect and that I don't think has been established. But there's a lot of people that are looking for that that believe it that are in the epidemiologic community. So there's studies that say both sides. So I don't really have an opinion because there's you know there's good opinions on both sides so I just kind of stay out of that.

>> Damon Krytzer: Thank you.

>> Sean Kaldor: Maybe if you could help knee a little, I just want to understand the difference. This is on page 1-7 of Dr. Das's summary. Going from the 2008 types of analysis into the 2011, in 2008, item number 4 put on a monitor, no SVTs occasional PVCs which I think were three an hour or so, occasional couplets, no biGemony and basically no relationship between arite my aat maximal stress test, negative for ischemia and it goes on. Then three years later showing shortness of breath with palpitations with stress and some of that is brought on by the back pain. Is that a progression of the disease? I don't know who I'm asking, I'll start with Dr. Das. Is that a progressive progression of the disease or different conclusions?

>> Dr. Das: I don't think they're inconsistent. It's hard to as you know in medicine people have symptoms that are not necessarily supported by objective finds and maybe they present a couple of years later. Just because we can't find them doesn't mean they're not there. So that's 80 hesitate to say it's not a progression of the disease. For me it makes it clean and easy if you have a progression of symptoms and then you see something like blockage or some type of test shows that yes there is. But in terms of there hasn't been any significant follow-

up testing that I can see that would tell you one way or the other whether there's a progression of disease. So -- so I mean, the best answer I can give you is, I don't know.

>> Sean Kaldor: That's not a good answer. [ Laughter ]

>> Dr. Das: That's not what you want me for, I know.

>> I don't have a medical answer for you. I can just point out that Dr. Das also says that the left ventricle increased in size after that one year period, which shows the heart damage from the blood pressure.

>> Sean Kaldor: Dr. Das that is over that one year period that is a change?

>> Dr. Das: Yes.

>> Sean Kaldor: You did put the restriction on here should avoid extreme physical exertion in uncontrolled situations, which is basically the definition of a police officer's job.

>> Dr. Das: Yes.

>> Sean Kaldor: You feel that is well warranted?

>> Dr. Das: I think it is. The post left ventricular hypertrophy is a condition.

>> Sean Kaldor: You wouldn't hire them today?

>> Dr. Das: That's the recommending. I wouldn't say we wouldn't hire them but I'm saying that's the recommending from post..

>> Sean Kaldor: And I guesswork causation would be the other -- Damon touched on that. So we have a back injury and the back injury definitely seems to be aggravating the case when the back pain is increased but if we deal with just let's look at the back pain, so that seemed to have happened on a -- be noticed and aggravated in a work environment but a lot of the description tends to be degenerative in nature.

>> Dr. Das: As far as the lower back goes?

>> Sean Kaldor: Yes.

>> Dr. Das: I didn't provide restrictions for the lower back So in terms of the work related injury there absolutely is a work related injury in terms of the back pain, okay? And does that compromise someone's functional ability? Absolutely. But if we're going to piece it apart like I do, not like everyone does and looks at the degenerative disk condition and say that's responsible for his problems and his injuries, I would argue that the degenerative disk disease is not responsible for his work related injuries, there are other factors that contributed to that. But it doesn't mean that he doesn't have pain from an injury. But my argument would be is the disk is not the painful area that's responsible for his pain after the injury. That's what the medical literature says. It's probably not the dick. It means he's probably got an injury, he's injured another part of the back and we incapacitating standpoint, is there pinching on the spinal chord or a nerve root, no. But does that mean there's nothing wrong? No.

>> I would point out that he had an extruded disk. Extruded materials, disk broke and the term came out and then after treatment it kind of went back in a little bit and helped. But I don't think there's any doubt that that's a work-related back injury. And we didn't prepare for all the injuries that have caused him to need to use antiinflammatory nonsteroidal antiinflammatories. But he has unresolved claims for November 2nd, 2005 back jury, August 426, back injury, April 4th 2007 right upper extremity injury, an April 23rd 2009 left knee injury, June 18th, 2009 back injury, a December 30th, 2010 bilateral for work related injuries for an awfully long time.

>> Sean Kaldor: Bettina.

>> Bettina Rounds: And you agree with that Dr. Das?

>> Dr. Das: As far as taking nonsteroidal antiinflammatory medications for a long period of time --

>> Bettina Rounds: Could contribute to work related injury?

>> Dr. Das: From a causation standpoint he received treatment for an industrial injury, irrespective of where whether I feel injured his lower back and received treatment for the lower back injury or the lower back pain. It was a nonsteroidal antiinflammatory drug that I feel very confident saying that nonsteroidal use can contribute to developing high blood pressure. That is not really true, if you use it for a long period of time in unremitted fashion, it can definitely cause high blood pressure. So I feel comfortable with that. FTC.

>> Bettina Rounds: Thank you.

>> Sean Kaldor: Help me with my thought here. I see definitely a work related back injury, but the symptoms of the back injury aren't resulting in work restrictions. But the treatment for the back injury is contributing to a cardiac condition that is resulting in work restrictions for a dtd he does have symptoms from a lower back injury for which he receives a treatment. I didn't provide restrictions based on symptoms that provide restrictions based on capacity. And so that's the distinction. And so I believe that he has the capacity to do things with his lower back. Not necessarily comfortably, but I feel the restrictions I've provided are reasonable due to the cardiac disease present.

>> Damon Krytzer: So if I can even make that simpler, his lower back required NSAIDS, the NSAIDS were a contributing factor to his high blood pressure?

>> Dr. Das: I would -- the only thing I would -- he received NSAIDS, I'm not going to argue that he required NSAIDS, he received them, it's what we do as physicians but I'm not going to argue he required it. There are other options.

>> Damon Krytzer: Thanks.

>> Sean Kaldor: And if those options were to be pursued now, you mentioned ceasing NSAIDS now --

>> Dr. Das: I don't think it will make that much of a difference.

>> Sean Kaldor: It's too late?

>> Dr. Das: That's my own personal opinion based on --

>> Sean Kaldor: Silence is deafening.

>> David Bacigalupi: Mr. Chair.

>> Sean Kaldor: Botch.

>> David Bacigalupi: Based on modified duty component I would move to approve the application for service-connected disability.

>> Sean Kaldor: We have a motion to approve. Do we have a second?

>> Richard Santos: I'll second for further discussion.

>> Sean Kaldor: We have a motion and second. Is there discussion on the motion? So I believe there are genuine symptoms of the back injury. But they do not appear to be preclusionary from doing the job. I believe the cardiac symptoms are absolutely genuine and serious and disqualify you from doing the job of police officer. How do I tie that to an industrial disability? Can you help us make that connection again?

>> Certainly. A work injury and its treatment are all part of a work injury claim. And if an injured worker is taking nonsteroidal antiinflammatories and it creates a compensability consequence and is also an industrial injury. So taking the nonsteroidal antiinflammatories over time caused the cardiac problems which also become an industrial injury. Derivative of the back injury, if you don't want to believe that the stressful nature of the police officers's job is a factor, then you can connect it to the work, to the back injury. But the treatment, even if the -- even if the back injury was not disabled, its treatment caused a compensable consequence industrial injury. And it's all industrial. Under all the -- not using heart presumptions but under all the normal regular labor code sections, all the cases that we have and all the medical opinions as Dr. Das has just given you.

>> Richard Santos: Well, Mr. Chair, as always, trying to be honest and looking at this, as a professional and we've been here a long period of time, we've had other cases that are very similar. In one case long back we look at basically nonindustrial. My conduct obviously from the silence, people are in a quandary, I'm not just reading the people, it's what I feel. Dr. Das what I'm reading and understanding, it said he didn't have no restrictions on the back injury. When you give the medication that changes it. To me it's not industrial. For me to help out the best I can I would need further information on this job related injury. There's got to be more to it. Example, on the back or what have you, not to say I'm a perfect human being, I've had nine and ten. I've read this thing thoroughly over and over. I've been in a quandary last night and here today, it bothers me because I'm here to help. I've got to be honest with my colleagues, we've had these conversations, trying to understand. So I'm in a quandary so I would say nonindustrial or bring back more information to satisfy me as a person. That's all I could tell you. And I've read it thoroughly, I'm not going to debate no more, I've done the best I could, and if we keep on talking I'll be just more frustrated.

>> I'll be happy to provide the board, this is a copy of officer Mitchell's medical file with the medical reports that have treated the orthopedic injuries. I can provide you with treatment. He did have an extruded disk from that injury. I can provide you with the MRI results. I can provide you with the treatment reports of what he had. I'd be happy to do that.

>> Richard Santos: All I'm talking for my fellow board members, I would be satisfied of the one of the eight.

>> Sean Kaldor: I would agree that a tighter correlation between a work injury and a work-related disability would be need to substantiate a work related injury.

>> Perhaps we could defer the matter somehow, so it doesn't come back in 30 days. It will take some time for me to put this together.

>> Sean Kaldor: You mentioned there are other injuries that don't necessarily relate to the --

>> I'll lit them all.

>> Sean Kaldor: Once those have been worked through he can reproach to resubmit the application. Continue it then. Baci.

>> David Bacigalupi: Mr. Chair I'd like to withdraw my motion based on counsel's request to defer this case.

>> Sean Kaldor: Deferred or continued? It's continued. To further hear. Thank you.

>> Drew Lanza: Let me just jump in from the time word. It seems very clear from the thickness of the file and the number of times that you were seeing doctors, that you're injured, we want to dot all of the Is and cross all of the Ts and make sure we are doing this in absolutely the right way.

>> Richard Santos: Thank you.

>> Sean Kaldor: Okay. So we will then resume as mentioned, item 3.1. 3.3 and then we'll probably take another break and see if lunch is here, and start the education session. Okay, so item 3.one under old business. Discussion regarding alternate five year projection of the -- do we have Cheiron on the phone?

>> Bill Hallmark: This is Bill I'm on the phone.

>> Sean Kaldor: Bill, Other Post Employment Benefits OPEB plan based on certain actuarial assumptions in years three to five. To be received and filed which is -- was deferred from the April 2012 board meeting. Bill.

>> Bill Hallmark: Okay, so we roused some prior OPEB projections that reflected the current bargaining agreements that included the division between the city and the employee, the phase-in, and if caps on contribution rates. And so in the March board meeting, you requested that we produce some alternate projections showing the full cost when the current phase-in agreements expire, with no explicit division between the city and employees on who pays the cost. And no caps. So this letter or report on the first page there's a table showing the projection combined for Police and Fire and for the city and employee showing the rates going from 15.6% of pay up to 29.89% of pay for the fiscal year ending 2017. Those reflect the different pace at which the Police and Fire phase-in work, using the current methodology which includes a 27-year closed amortization for police, a 29-year closed amortization for fire, and no valuation of the implicit subsidy. On page 2 you have the same information but broken out in more detail for police only and fire only. And then finally, we added because to contribute the full annual required contribution under GASB 45, you would need to be also prefunding the implicit subsidy which is currently paid by the city on a pay as you go basis. So the table on page 3 shows the additional amounts that would be necessary to switch to a full pre-funding of the implicit subsidy when the current phase-in agreements expire. And then contribute the full annual required contribution. So I believe the intent of this is to share the information with the city and the bargain units so that they all have the information they might need to deal with the agreements beyond their current phase-in period.

>> Sean Kaldor: Sean.

>> Sean Bill: So on the health care inflation or is that ramping up the contribution rates or can you explain that?

>> Bill Hallmark: Yes, it's largely ramping up the contribution rates. Because during the phase-in period they're significantly below what is needed to fully fund the OPEB plan. And there are caps. Now, with the significant drop in payroll we experienced in the last year, the rates in the face-in agreements are set as rates not as dollar amounts. So we're collecting a lot less than was originally anticipated. So once those agreements, the phase-in periods expire, there's a significant jump in the contribution rate.

>> Sean Bill: And is there any clarification, is there a time horizon to close the unfunded liability on the OPEB or is that what we're ramping towards or extended process or --

>> Bill Hallmark: For police, when they started the phase-in they set a 30-year period from the start of their phase-in periods. So as of June 30th, 2011 it was 27 years for police and 29 for fire. (inaudible).

>> Carmen Racy-Choy: Obviously the Police and Fire have different agreements with the city, which require both sides to move over five years to fully funding what you would call the arc which is the true cost of the plan given that year's valuation. But then the unfunded liability which has been created through, now, pretty much dozens of years of providing this benefit, will be paid over 30 years from the beginning of the agreement with each of Police and Fire. So it's kind of two different time frames for two different things. A five year time frame towards moving to paying the full cost, given the valuation, and a 30-year horizon for really bringing -- closing the unfunded liability, under the actuarial assumptions.

>> Sean Kaldor: So Bill, this calculation was done at the time City's request. If we were to say we've had this health care fund, it's never been funded, essentially, it's been paid for as an ongoing cost, is that correct?

>> Bill Hallmark: It's been partially funded. There was a prior funding method that looked at I believe ten years of expected payments. Pain it was 15, I can't recall off the top of my head. It developed a partial funding based on that.

>> Sean Kaldor: And that leaves us with about a billion dollars of liabilities and we've got about \$50 million in the bank, or \$50 million worth of assets.

>> Bill Hallmark: Basically open that order.

>> Sean Kaldor: We've gone from something that was never funded to basically 100% of funding. Is this the way you would do that, this contribution plan you've outlined here, would that be a recommended way to do that?

>> Bill Hallmark: We have not made a recommendation on how to fund this and I think you know, what we followed is the methodology that was set out in those current agreements. I think if we were to recommend a methodology we would want to have a discussion with the board over the objectives, and kind of competing objectives and how you balance those. I mean, you are obviously starting from near zero funding. And trying to get to 100% funding over a period of time. And that raises, you know, generational equity questions as well as solvency questions which kind of compete against each other. So we have not gotten through that analysis. And I don't believe the board has gone through that analysis. It would be premature to make a recommendation.

>> Sean Kaldor: Okay, thank you. Any other questions or comments? Alex Gurza this was prepared for you. Did you want to comment on it or do you have questions?

>> Alex Gurza: Thank you Mr. Chair. I say thank you although it's lawrnlg as you know to see 30% contribution rates for the health care not including the pension. It unfortunately wasn't too much of a surprise. We wanted to see how it related to the Federated numbers which we already have. Unfortunately there it's in the range of 30%. Just to be clear in terms of trying to reach sort of full funding, we knew when we bargained these agreements that it was going to take a long time to ever get to full funding. And it's a 30 year amortization period

as we talked about. So there's a difference as has been pointed out between the phase-in and when you might get to full funding. Some people get confused I know you don't but some people get confused that in five years we might be getting to full funding. In five years we're make the arc. We're not evening paying the arc on the retiree health care. The reason we phased it in is because going to what was referred to as the policy method, that's what we referred to Mr. Hallmark mentioned paying the funding, to pay the arc was very dramatic. And so here we're simply trying to get to paying the arc and that's the frightening number which is 30%. So we definitely have between the city and employees a significant challenge we need to work on which is what we've been thinking about, is how do we reduce the liability of this cost? Because pushing the cost or not paying it doesn't make it cheaper as we know. It does raise I think Mr. Hallmark put it well between those two book ends, the solvency of the retirement fund and the generational issue about trying to fund this benefit. So very, very difficult issues that we're grappling with but thank you for the information.

>> Sean Kaldor: Thank you, Damon.

>> Damon Krytzer: Who is on the formula, the decision to pay it down, was that us or who came up with that?

>> Alex Gurza: Actually that was the product of the bargaining because one of the issues we talked about is who pays the cost? In the municipal code it sets out the funding for retiree health care is different than pension. What it says for medical care for example is that the costs are split equally, 50-50 on a one to one ratio. And then through bargaining, with the various bargaining units, we decided how do we deal with this? Because what GASB 43 and 45 made very clear, when those reports started to come out is what a gap there was between the benefit being -- that we're offering and the funding. And so really we sat down and say how do we get there? How do we start at least paying the arc? And so the phasing it in over you know the five years and then in case of Police and Fire with these limitations was a product of that bargaining.

>> Damon Krytzer: Okay, I mean I guess it sounds like it's outside of our scope. We're sort of talking about trying to pay down a large credit card bill effectively right? I wonder if it sounds like along with the last issue, we do have a little more fiduciary responsibility as far as how we're allocating money away from retirement benefits. I wonder

if that's -- if a better formula or some rules around the formula based on our funded status for example or our returns are something we should address or should we just leave it alone?

>> Sean Kaldor: So it's an interesting one and a little bit of history. Up through 2005 we as a board our actuaries estimated some \$200 million in liabilities for health care that year with the new GASB rules someone said no it's not \$200 million, it's actually a billion. So there's a big leap to make and how do we get to put all that money in there? So I think the bargaining groups and the city have worked out a way to get up to that. But I don't know if we as a board can tell the people paying into the system no, here's the rate you got to pay into it or if they tell us this is the rate we're willing to pay into that. I don't know the answer to that.

>> Damon Krytzer: What I'm suggesting is we potentially because I agree with you could have our actuary weigh in on some thoughts as to how to pay it in and/or our staff on funded status and certain A's of rirms. We don't want to obviously bring down our normal return because we're siphoning off, every time we have an up year. But at the same time I don't know if a straight line is the smartest way to pay this down in a really variable market.

>> Richard Santos: In one breath we're saying SRBR we shouldn't be involved, it has to do with funding. Again I'm in the position any time funding affects the dollars and cents of the sol vency of this that's why we have to weigh in. That's where Harvey is here. We've got to step in and do something to protect the fund. We're supposed to protect the fund no matter where you're related and so that's number one.

>> Damon Krytzer: Let me just interject a bit to agree with Dick. The reason I didn't interject on SRBR is \$7 million, yeah I see a billion dollars is like a real solvency issue. That's why this is a bigger issue for me. The SRBR you're right but --

>> Richard Santos: I've got to say when it comes down to it we got to protect the fund no matter what, certain political issues no matter what the fund comes first.

>> Sean Kaldor: Health care is a bit of a unique animal. Most plans don't prefund their health care cost. I think it's fiscally prudent to prefund it but it's a transition going in not doing it all to suddenly doing it. that's a big change of a shim. But we could weigh in I mean it's the choice of this board if we want to give some suggestions or ideas, maybe have our actuary come one plans. But again I don't know our role in Harvey maybe I'll ask. Do we tell people how you have to fund the plan, or do we say we're willing to pay the arc and we tell them what the arc is?

>> Harvey Leiderman: Just so there's clarification on this subject, the pension fund assets cannot be tapped to pay retiree health care. They're two separate trust funds so there isn't an issue about our using or the solvency of the defined benefit plan assets being affected by the retiree medical plan. It has to be separately funded, there is a separate trust fund, there are IRS regulations about how much they can put into it everywhere year.

>> Damon Krytzer: This is city cash flow?

>> Harvey Leiderman: This is city cash flow, has nothing do do with the defined benefit plan we were administering.

>> Damon Krytzer: I was off.

>> Drew Lanza: They just intersect when the contributions put into the two are huge. When the two trust funds are huge --

>> Harvey Leiderman: When each food both beasts from the same source that's when the plan sponsor has a Digel moment.

>> Sean Bill: Before we go too deep into the rabbit hole, we haven't seen much on OPEB, what are the board's responsibilities with regard to OPEB?

>> Harvey Leiderman: We invest the trust funds but the terms are negotiated between the city and the employees. If they're going to be different from 50-50 that's my understanding on it.

>> Damon Krytzer: So I take all my comments back then, I don't actually want to weigh in at all frankly.

>> Sean Kaldor: Not encouraging us to go down that route.

>> Damon Krytzer: I just turned the page over.

>> Sean Kaldor: Okay this was note and file, was there any further discussion on it? Just note and file. Okay, item 3.3. After 3.3 we'll take a little break. We're going to -- 3.3. We can do a quit footnote. Discussion and action on. 3.2. Discussion and action regarding revised resolution 3762 setting city and employee contribution Sorry. 3.3. Discussion and action on questions to pose to the city regarding implementation of June 5 pension ballot measure and its Impact on the administration and investment of the fund. Harvey.

>> Harvey Leiderman: Thank you, Mr. Chair. Trying to do this remotely, have it up on the screen. What you have on the screen is the same thing you have in your pacts. Thought it would be easier to do that. See this will work remotely. Oh, good, it does. Coming out of the retreat, the board rightly started expressing some interest in looking at the ballot measure, now it's called measure B. And trying to figure out how we're going to administer this and what the impact might be on the pension fund for this change introducing new tiers, changing having a voluntary opt-in program et cetera. And so we started with the board to put together with the assistance of Cheiron, and Bill are you still on the phone?

>> Bill Hallmark: Yes, I am.

>> Harvey Leiderman: Oh, trick and you have this exhibit as well, I think. So Mr. Chairman, it is really a question, we put these potential questions together for the purpose of asking the city to provide some classification on some of the ballot measure provisions so we could in a cooperative process start getting our arms around both

the administrative issues that the imloot measure triggers and also the impact. What we have not yet done is talk about the impact on the investment side of the portfolio. Because until we get answers to many of these questions we simply don't know whether or not it's going to change the asset allocation model, for example, the cash flow of the system, those things will come in the next phase, I think. So Mr. Chairman I will do it whatever way you want. If you want to just go through the various questions we can do that. If everybody -- the way I've laid this out is hopefully it makes some sense. Putting in the section reference to the ballot measure and then the sections that basically what they provide. And then the questions that we've put together to hopefully feedback to the city and see if we can't all roll up our sleeves together and try to get a better idea of what the administrative impact is going to be on this fund if and when the measure passes.

>> Drew Lanza: Harvey are we kind of advertising this as the most complete list we can compile at this time?

>> Harvey Leiderman: No. This is sometimes you hear the expression 30,000 feet. This is about 15,000 feet. Bill you know could bring us down to three feet. Because I know that he's got a multitude of additional questions that would come. But we those these were the key ones that need to be asked at this level, to really get a sense of some big picture items that are just not fleshed out in the ordinance itself. Keep in mind -- I'm sorry the ballot measure itself. Keep in mind two things. The city has said that two things are going to happen if the ballot measure passes. First of all, the city intends to file some sort of validation or declaratory relief type of action. Because they know and we all know that there are some legal issues involved here on changing member rights. If this ballot measure passes that need to be wrestled with and they're prepared to wrestle with those measures. The other issue is like any other ballot measure this needs enabling legislation. Enabling ordinances to be written. I assume that part of that process at the city is underway now to do that. We just don't know what they're going to be. So much of these questions deal with what are you going to put in those ordinances, what are your thoughts about how you're going to implement this and how we can do it in the time frame that's been provided here. So if you like Mr. Chairman we can go through them question by question, we can take them in any order you like.

>> Sean Kaldor: I think the board appreciates the level of complexity and questions that need to be answered. I don't know if we have ones to add to what's been developed. I don't know that we need to go through them all in detail. Myself having looked at it, I think you hit on a lot of the questions. There's probably a lot more questions like you said, it's still at the 15,000 foot level. There's a lot of execution implementation issues. It gives the idea of the reasons why we couldn't really price things out or come up with an actuarial estimate with so many things that we don't know. It also would hopefully help counsel craft whatever ordinances to address these questions that could be just defined as a matter of law. Would the board like to go through it question by question?

>> Vincent Sunzeri: I don't know if we need to go through -- I'd be curious on timing that we would be looking for some feedback from the city on these particular questions. And this is a pretty overwhelming list to start with. I guess this is a probably great starting point to get the feedback and I imagine once we get a response back there may be an additional set of questions that are created and I'd suggest we wait until that time.

>> Sean Kaldor: Alex Gurza would you like to speak on this?

>> Alex Gurza: Thank you, Mr. Chair. Mr. Leiderman applies comments at the beginning by trying to develop a collaborative process that you get the answers you need. We clearly understand there are many complex questions and answers that you would need to know in terms of how to administer the changes. So I think what might be beneficial to us is talk about how we go forward and how we work with you to get the answers to these questions but as similar to our earlier discussion we have another board that also I would imagine has the same questions that are going to be before them as well. So we might suggest again, a sort of team of people to get together and start discussing these issues. So for example, on the city end, we would include our city attorney's office, the City's consulting actuary Mr. Bartel. I would imagine on your end it might be similar sort of people your counsel, perhaps Cheiron or a board member or two. We'd like to talk about how you would like us to proceed. Rather than receiving a list of questions we would need a sit-down sort of forum to talk through some of the questions so we might suggest some sort of process like that.

>> Sean Kaldor: Drew.

>> Drew Lanza: So being the head of the one-man committee which generated this as an action item, I'm fairly certain of this, Russ was the one that originally proposed it. So the point of doing this was to get all of these questions on the table ahead of the ballot measure. So that at D-day plus five minutes we were ready to go. So assuming the ballot measure passes right, and before the council or anybody can do anything, we're ahead of that curve saying, this is what we need to do. So that would say is we would probably have the structure to set up that dialogue but not have the dialogue until after the ballot measure, does that sound right to you Alex?

>> Alex Gurza: Either way. We're already in May here so I think we can begin sort of the discussion of the questions you know the -- you know if it passes or if you'd prefer to wait immediately after I mean really I think we're open either way.

>> Sean Kaldor: My thought, this would be a list of questions to make sure got answered, in the process of developing the ordinance, if we see the ordinance, you've answered some of these but there are still unanswered and here are extra questions it brings up. I don't know if we want to have the resources sitting down, we're not trying to negotiate it with you right? We want to make sure the questions are answered so we could actually do whatever is developed. Harvey.

>> Harvey Leiderman: I think it would be helpful to know what the City's time line is so we can react to that. So if there is an expectation for example that some of this gets implemented starting July 1 I don't think we can wait. If none of this is going to get implemented until after you know a court weighs in on validity and then ordinances are proposed then we have some time. So I just don't know whether the city intends that any of these provisions would go into effect until say the new fiscal year.

>> Alex Gurza: I think that's an excellent question. I think some of that is yet to be determined. If the ballot measure passes there are certain items that don't take effect right away anyway. So for example the additional contributions employees may have to pay to stay in tier 1, that doesn't go into effect until June of 2013. So even after implementation of the items in the ballot measure some of them don't take effect. There are others that could

be in effect earlier. The ballot measure talks about ordinances needed to be put into place, there is I any a goal of the ordinances. So I think not all of it would be put into effect all at the same time. In answer to your question. I do think it would be helped -- getting the questions is helpful but again having the opportunity to talk through because as our attorneys work through the ordinances it would be helpful to talk it through and say what clarity would the boards need in ordinances on items. Setting up that most for a dialogue we think will be very beneficial.

>> Sean Kaldor: Drew.

>> Drew Lanza: Correct me if I'm wrong Pete, the city would seek judicial clarification then the ordinances would be generated and we have received some Insurances from Pete from the mayor that zero to 60 in nothing flat and therefore will work with us. Is that fair to say Pete?

>> Pete Constant: Yes, that's fair to say. Although the council will take a second action figuring out the strategy for the declaratory relief and I can't tell you exactly what items are in that yet. But I will emphasize what I said before is, we're not going to try and make you do something you can't do just to say, give you an artificial deadline say do it by here when we know darn well you can't do it.

>> Sean Kaldor: For purposes of our planning you can't -- you don't know how all 11 are going to vote and what's going to happen, but as I see there are certain issues that you would go to the courts on such as charging the unfunded liabilities. But on the disabilities I hear probably not so much going to the courts. That's one of the ones we have a big role in here and if there's a goal to implement that it comments down to that time line, right? If you want to do it, I guess you need to start interviewing people and what we are being asked by everybody, if I put in my application today, you can't hear it for three months, Dr. Das is backlogged, new process, old process, those are questions I ask now.

>> Alex Gurza: Those are all excellent questions, as Mr. Leiderman said, there are many, many more questions, depending how close to the ground you get. As the owners are drafted we would like to again get your input on

those things so there are things we know you could implement and we could talk through the many questions that come up whether it be the disability process or any of the other items.

>> Pete Constant: If I could add, we have followed these same processes, whenever we make a policy change there are significant pipeline issues. People, we see a lot in the development side of our business where somebody could be, you know, just an application is the only thing that's been submitted to people who are already getting ready to dig and build a foundation and the rules change. So everybody we do that we have extended discussions on how we handle those things that are in the pipeline and where are the marks and all of those are put into the enabling ordinances.

>> Sean Kaldor: Harvey.

>> Harvey Leiderman: Actually it is a good, really good conversation because as I read the ballot measure, just take two examples, I put up on the screen and it's on page 4 of the handout. Disability retirement, if I understand Mr. Gurza correctly, that if the ballot measure passes, that the rules, the new rules about disability retirements would not go into effect immediately, it would be subject to enactment through ordinances, is that right? .

>> Alex Gurza: That's correct.

>> Harvey Leiderman: Okay, that's very helpful to know that about timing. And then the other one, that -- well, let's take a couple. The SRBR elimination. Same thing. Going to go through for ordinance or is the SRBR eliminated immediately?

>> Alex Gurza: That's a question I'd have to consult with the city attorney's office but I do think possibly that would need an enabling ordinance to change the municipal code because currently it's in the municipal code. So I believe -- I'll confirm that but I believe that will also need an ordinance.

>> Harvey Leiderman: Okay, and finally the whole section on what actuarial soundness is and minimizing risk to the city, would these actuarial-related issues wait for enacting ordinances or do they go into effect immediately so we need to start instructing our actuary to change their course of conduct starting July 1?

>> Alex Gurza: That one again I will have to get back to you on whether that will say what the charter language says or those are issues we all know are --

>> Pete Constant: My opinion for what it's worth is it would require some ordinances to give structure because it's a very broad definition and I think it would need that so you would know what we're talking about.

>> Harvey Leiderman: That's fine. In the municipal code right now there is a statement that all plans will be administered actuarially sound. But it doesn't go into the detail of risk and economic climates and that sort of thing. So this is a helpful conversation because at this stage like I say it would be very important for this board to be able to know whether or not we have to hit the ground running within the next 60 days or something or whether we have time to work cooperatively with the city and come up with enabling ordinances that it will help administer for the city.

>> Sean Kaldor: And Federated will have the same questions?

>> Harvey Leiderman: The same questions.

>> Sean Kaldor: So how do we want to proceed?

>> Harvey Leiderman: If I may, Mr. Chairman, this was teed up and starting at the retreat, it would be a motion by the board to authorize council or the board to transmit these questions to the city and start with a process of dialogue to arrive at answers.

>> Sean Kaldor: Sounds vague enough that I don't have to do anything.

>> Harvey Leiderman: Absolutely.

>> Drew Lanza: I'll take that motion.

>> Sean Kaldor: So we have a motion by drew and a second by Dick. So basically we're saying we're going to send all these questions to them and we'll set up a process for dialogue. I think we'll need to include our appropriate consultants especially on the actuarial front to get these kinds of questions resolved, even the definition of what actuarially sound is, they will need to know so they can make their decisions to be compliant with that rule. Is there any discussion on -- Vince.

>> Vincent Sunzeri: Harvey did you put these questions together and Drew did you have a chance to review this before this came to us?

>> Drew Lanza: We did have a chance to review.

>> Harvey Leiderman: Well, I'm the scribe. They represent essentially Cheiron's work product and my work product.

>> Vincent Sunzeri: Okay.

>> Sean Kaldor: All right, any other discussion? So we have a motion and a second. Seeing no further discussion, all those in favor, Kaldor aye, Santos, Bacigalupi, Bill, Krytzer, Lanza, Rounds, Sunzeri, all approve, motion passes unanimously.

>> Drew Lanza: Mr. Chairman, we set about a dozen task force ahead of the ballot measure. I can say we have deliberate acted on or deliberately passed over all dozen of those, so we are done ahead of the ballot measure.

>> Sean Kaldor: Good accomplishment. Let's take a ten minute break to grab your lunches and we will resume at noon on the dot starting with the educational session on the educational session from counsel on conflicts of interest, 2.4. [ Recess ]

>> Sean Kaldor: Okay, we'll reconvene. We have everyone present. We'll continue with item 2.4, an educational session from counsel on conflicts of interest.

>> Damon Krytzer: (inaudible) style I love it.

>> Harvey Leiderman: Like dancing with the stars. Rather than -- do we do this for the tape? I'd rather be doing this, I'd like to talk with you folks, rather than doing a fiduciary duty primer, I want to jump into potential conflicts of interest. I want to start you off with baseline fiduciary duty type stuff. So I want to pass around these, if you would Donna, thank you. FTC I want to start to get us into this with the fundamental fiduciary duties of board members. Which you've probably heard about and most of you have taken training. You got to take ethics training, you probably get this in the ethics training every two years. Let me pop those up pretty quickly. So we have three fundamental fiduciary duties as board members that are responsible for following because you are trustees of a substantial amount of money that doesn't belong to you. It belongs to some of us but not most of you. These three rules, I want you to come back, what I'm passing out is basically a cliff's notes, a cheat sheet to use during this. We have a primary royalty role. It doesn't matter if you are elected by retiree members or appointed. When you come and sit around this horseshoe you are responsible to these things which is an absolute loyalty to the members and beneficiaries of the system. This is not Congress. This is not representative democracy where you are supposed to bring home the pork to your constituency. This is, you have a responsibility regardless of how you got on this board, and frankly the California trusts this board to act collectively. That's why all these boards are brought together with a variety that you have here. Different walks of life, different experiences, this is what's called an interested board. Many of you have direct interest in the benefits of this system. Exclusive benefit rule is the rule that basically says, actually we were talking about this earlier today, that the assets of the defined benefit plan that you administer must be used exclusively for the purpose of delivering the defined benefits and paying the cost of administration of the system. It cannot be used for anything

else. If you're administering a retiree health trusts those assets can only be used for the retiree health trust. They can be commingled for investment purposes, if you find that cash flow needs are the same or can be handled that way. But they must be, the DB funds must be used to pay for the benefit of the members and to pay their defined benefit and pay for the expenses of the system. The you come together collectively and exercise your judgment. You're expected to be prudent experts, you're held to a standard of somebody who's familiar. I think phrase that best summarizes this is that an empty head and a good heart is not sufficient. You can't come here and just have good intentions, and maintain yourself in a state of ignorance. You have an obligation to educate yourself, you have an obligation to do what is prudent and mostly, what that means is, we have to follow a process of decision-making. You're not guarantors of the answer, you're not guarantors that the portfolio is going to perform in a certain way. What you are guarantors of that you will follow an indulge process that will bring to you a conclusion, the best phrase of the constitution you've got there article 16 section 17, I think it's C, but just look at the prudent person rule. It says you have the responsibility to act prudently under the circumstances then prevailing. Circumstances change. What was good two years ago, may no longer be good. What you saw in the market and made decisions on investment decisions a couple of years ago you need to revisit. That's why we come back for example every three years to do an actuarial study, experience study. Because your requirement of prudence has to be under the circumstances then prevailing. Finally, the last one is here you got to follow the law. And the first page of what I just handed out to you is something that is nonintuitive. You are all familiar with the constitution and the municipal code that shows you have those three duties that I put up there. There are a lot of laws, I'm sorry there are a lot of laws, folks that you need to be aware of and I tried to outline some of the more important ones there on the first, the second page -- the first page of this I'm sorry because besides the constitution and what's in the charter and the municipal code the political reform act tells you about conflicts of interest and when can you participate in decision and not, the FPPC charge with ordinance creating regulations to carry out, the political reform act, it's just loaded with regulations, the public records act you know, certain things, this is a public body, you have to produce documents to people. The Ralph M. Brown Act, governing open meeting laws, and the City's sunshine law, we have a lot of sections about funding in the 7500 series of the government code. That's also by the way where you can find all the provisions about fiduciary insurance. In that section, 1090 is conflicts of interest. The labor code tells us what we can and cannot do with regard to collective bargaining, mostly we have no role in that. The the whole role of the internal revenue code this is an exempt trust,

exempt from federal and state taxation. But in exchange for that exemption there's a whole bunch of rules that we have to follow. Mean while, the SEC has a lot of rules also. The SEC tells us what we can and cannot do with our investment managers. The SEC tells our investment managers that they can't contribute to your election to this board. It says that they cannot contribute to the mayor of the City of San José. Unless they happen to live here. If they want to do business with this board. Because the mayor has for at least some of you the authority to appoint you to this board and that would be a conflict of interest according to the SEC. The SEC is also actively investigating representation et cetera made by pension bond offerings that every sponsor makes when it goes out into the market there is a lot of scruntl, I don't know if you know this but the SEC has set up offices in Philadelphia and Los Angeles specifically to look at funding contributions that come out of our retirement systems that go into the bond offerings that are made to investors in terms of whether they fairly state the unfunded obligations of the city or county. Then finally we've got our own bylaws charters and that sort of thing. And every month we keep coming up with more charters. So here's what I'd like to do. We're going to pick on Ms. Rounds. Let's talk about this. Use these sheets as a cheat sheet and let's talk about some situations that come up, I want to talk about conflicts of interest with investment managers, all right, I've got a scenario I'd like to put before you and see if you would like to comment on this. Ms. Rounds, you're at the airport. You're on your way to an investor conference and you run into the client relations officer of a global tactical asset manager, okay? You set together on the plane and at one point you lean over and confess, I don't really understand derivatives. This manager gives you a primer on derivatives and you're very grateful with that. Anybody got any issues with that so far? This scenario? Damon, no? You're okay with this? Is this the place you should be getting your education, with one of your investment managers?

>> Drew Lanza: One of our investment managers?

>> Harvey Leiderman: Yeah yeah yeah. This is -- well, does that matter? Would it party whether they're actually running money for you now or they want to run money for you? (inaudible).

>> Harvey Leiderman: It probably will, yes. Okay, everybody okay with this so far, it's all right to get some education sitting next to a person in a plane who doesn't run money for you. Let's see what happens.

>> Drew Lanza: We are assuming this is somebody --

>> Harvey Leiderman: Let's assume this is not a current manager but someone who would really like to get their hands on your money, all right? During this flight she says listen Bettina, I can call you Bettina now can't I? I've got a deal for you. We have a new strategy, Bolivian currently hedging and can you get us into the board quickly? Because we have a window of opportunity here, you know these things don't just sit around and make for people to make decisions. And you say, this is great. I just came out of a board meeting, and you know, we are -- we're really hurting. We need alpha. Okay? We need alpha. How we doing so far Drew?

>> Drew Lanza: Just passing along to Russell.

>> Harvey Leiderman: Okay, is that the deal?

>> Drew Lanza: This is the opportunity but here --

>> Harvey Leiderman: Is it okay to talk about investment opportunities with an investment manager on the plane?

>> Sean Kaldor: At some point they're going to take a sales pitch or an argument, I've already heard from this individual so I'm getting a little cautious about that.

>> Harvey Leiderman: Dick some can this a sale pitch?

>> Richard Santos: Sound like it.

>> Harvey Leiderman: What would your ratios be?

>> Richard Santos: I've been to areas (inaudible) have the director give him your card, give him a call, glad to meet with you, I wouldn't invite him or whatever it might be. I tell him I'm not the expert on investing. I'm a board of directors and so on. But I said give them a call.

>> Harvey Leiderman: Didn't we just talk at our last session in a charter that maybe this is one of the reasons why you guys were put on this board though, was to develop opportunity? Damon didn't we talk about that?

>> Damon Krytzer: I recall that sure.

>> Harvey Leiderman: So is this one of these opportunities you're sitting on this plane should you be talking about these things or would you refer it to staff?

>> Damon Krytzer: Ite still refer it to our staff or consultant at this point.

>> Harvey Leiderman: Let's see what Ms. Rounds said? She says of course I'll put it on the agenda. About I'll tell you what I'll do for you says Bettina. I'll try to bypass this cumbersome process, I understand we better jump on this opportunity. How about that Drew, you comfortable that your colleague reaction that way?

>> Drew Lanza: No, I absolutely wouldn't do that, I wouldn't put anything in an e-mail, I wouldn't tell Russell by phone, not an e-mail, I would say here is somebody interesting I met on a plane. I wouldn't say a rush or anything like that.

>> Harvey Leiderman: Okay, no prejudice.

>> Drew Lanza: That came out wrong didn't it?

>> Harvey Leiderman: We're going to have a whole session on e-mails.

>> Drew Lanza: Just the two of us.

>> Harvey Leiderman: I'll e-mail you when I want to talk about it. So does anybody else have any other problem with your colleagues expressing a view that you know, the process that you undergo is cumbersome and we're going to try to get around it?

>> Sean Kaldor: Just a quick reminder, everyone please speak into their mics if they have comments.

>> Harvey Leiderman: Good, let's do that. I'll pass this around.

>> Sean Kaldor: I know what's going on.

>> Harvey Leiderman: Let's see what happens here. You get it on the agenda, a week before the meeting the manager calls you to say hi and Bettina says you know what here's what I'm going to do because it can get really embarrassing. Everything is on camera that we do so how about I bring three other board members with me to lunch so we don't have a Brown Act problem. Right? So you can talk with them and clue them in on what they ought to be doing and how they ought to vote on this thing and they won't be embarrassed or ask silly questions about Bolivian currency, that's gracious, isn't it? I'm digging a deep hole for her. Well, all right. So you go to lunch. With three others, anybody -- everybody okay with this, any Brown Act problems or what do you think Sean?

>> Sean Bill: I think Lloyd fine of Goldman Sachs said it best, in our life it's full of conflicts. It's all how you take it out of context. We're all in the investment business, I think where it gets, where you have to be carol is how you move it through the process. And my belief on that is that you know you shifted over to your consultant or to staff, not even necessarily with any you know color on it but just hey this is out there, it's worth taking a look at. And then you let it go from there.

>> Harvey Leiderman: Suspect that frustrating though?

>> Sean Bill: You know, my opinion on that is that as more and more money managers come into you, it's actually quicker and quicker that you want to flush them out to the consultant. Now, there are certain opportunities, you know certain funds that you have followed for years and you know that you think boy I want to hear what this guy has to say. And you know, I think at those times you would be doing a disservice to the board if you didn't get that input. You know I think largely the reason that independents were brought onto this board were to improve board governs and improve investments. The most recent city update is point number 1, that's why we're here. I think this is very helpful in terms of drilling down into the process of how does -- how do those conversations move forward.

>> Harvey Leiderman: Because this is about gomps. Are you comfortable from a governance standpoint with four board members sitting down together with a prospective money manager? Vince says no, I don't like this. Vincent is thinking who's paying for lunch? Versus you got it.

>> Harvey Leiderman: Why are you uncomfortable?

>> Vincent Sunzeri: It all dependency in my mind what the intent of that meeting is. If going into that meeting with these four members is the prepitch before the actual board meeting, that is completely unacceptable in the world I currently operate in and would also be unacceptable for board members in this construct as well. And then additionally, for them to be compensating through the form of purchasing lunch is a big no no in the world I operate in. So there's a lot of conflicts. To Sean's points though, I think there's some validity to hearing what other funds are doing. And those conflicts are, are you going to gather information, are you going instead to a meeting where they're trying to sell you? Presale you, if you will, before an actual board meeting. And I think you just have to be bright enough to understand what really can be some gray areas there. And avoid that.

>> Harvey Leiderman: Mr. Chairman can you draw a bright line for us between education and sales pish?

>> Sean Kaldor: I can't but education can certainly talk about a industry in trends but a sales pitch can talk about a firm and what's unique.

>> Harvey Leiderman: Does everyone agree with that? It's in the area?

>> Vincent Sunzeri: It's a matter of talking about product, performance versus market outlook. Those are very different things.

>> Sean Kaldor: I can also spend ten minutes talking about industry in the way that the only solution would be a gold fund and I just happen to have a gold fund I want to pitch you guys on. Gold fund or the one they have? I think board members have to do something it's not a Brown Act violation but it starts to get in the spirit of is a group going to go through and prescreen and what are they hearing that the rest of the board isn't hearing and this would be a matter we all work together and that would be the concern there.

>> Harvey Leiderman: Damon.

>> Damon Krytzer: I think part of the job is for someone to prescreen. You can't look at everything right? And try to figure out what -- I mean there's two realities to me, one is a \$50 lunch to fidelity, I mean it's hard to constitute that as a gift. That's you know what I mean that's like finding a nickel in your car seat. So I don't feel like that in itself and this isn't a defensive, that just doesn't seem that material to me frankly. It's not like they're buying you a car. It's just a way to get some of your attention. A, and I've been doing that for 17, 18 years, without having any kind of a conflict of interest. And I feel lying the legitimate managers and it doesn't just mean large are also, you go into this with a bit of skepticism. They're quite sensity as well, I've seen so far as a trustee they've been quite sensitive to what's appropriate and what's not. And sometimes okay it's the fence, obviously they're selling something but I've felt that 99.99% of the time, they've been very respectful of a process and asked you know how to include you know what's the decision making process as well. So I think this is just laid out in a way that's super-helpful but also, more binary than the way it really occurs. Like this is you know shady the responses are

shady, the situation is a very valid one and I think there are ways to Sean's point that we should discuss handling it that we are all comfortable as a board with.

>> Bettina Rounds: You but I think you have that mechanism already, you've got the investment committee and the difference between the corporate world and the public sector there's a requirement to be far more transparent where in the private sector where you can maneuver, and that part of what we've been working on with governance and all of these things is to really have the process where the questions can't be asked. You know, that we're not making ourselves vulnerable or what we're doing as fiduciaries with the plan. And it came to this slide before, you know also, when you said, does anybody have any problems with her you know tucking with me talking about the cumbersome staff and consultant review process. I think that's another issue, actually, that is concerning sometimes, is the -- and I think Drew and I western certainly you know aware of this in the Cal PERS meeting where there's a fine line between what you can comfortably say and what's appropriate to say, about how you all work, you know.

>> Damon Krytzer: Reality though --

>> Harvey Leiderman: One of the questions to ask your cells though is would you like this scenario to take place without you being part of it? Are you comfortable, if those four people over there do this, and you're not there?

>> Drew Lanza: Well it all depends on process and transparency. We need to find out more about this, spread broadly and come back and report. It's fine, process and transparency sets the stage right?

>> Bettina Rounds: That's right. If it's the investment committee doing it and they agreed to do it, bless 'em. I certainly don't want to be part of it.

>> Harvey Leiderman: You've been blessed. That's good. All right let's pick up here. So you're at lunch and she says, here's what she's going to do you give us \$100 million and we're going to put it into the publicly traded funds that hedges Bolivian currency. Now let's see what happens next. At this same conversation at lunch she tells your

colleague Ms. Rounds that she's going to make a thousand dollar contribution into the mayor's reelection campaign in your honor and that just is delightful, suspect it. So you got any problems with this Sean?

>> Sean Kaldor: We have a \$500 limit don't we? It's for the mayor?

>> Harvey Leiderman: Pete why don't you weigh in on this?

>> Pete Constant: No it's not okay.

>> Harvey Leiderman: Why?

>> Pete Constant: Because the FPPC doesn't allow one person to make a contribution for another person, that's a problem. Or be reimbursed for another person.

>> Harvey Leiderman: I don't see that happening.

>> Pete Constant: It can easily be contrived so that people can say that that is, to me I would never allow anyone to do that in my campaign even if it was unrelated to this. Because it could easily be seen as a reimbursed contribution in proper. But second of all the mayor being a part of the council that appoints all board members on here. Even the independently elected ones are appointed by the city council. I don't think it makes a difference for any of them. I would say no.

>> Harvey Leiderman: Actually this is a violation of the FCC rule that just went into effect for the last year that a manager cannot make crrgses to whoever appoints you to this board. Unless they live in the jurisdiction, in this case in the city, and they can give up I think \$340. So this would go over that. But --

>> Sean Kaldor: So two questions that I've heard people ask me that relate to the scenario so far. First of all is the meal thing. We've had board members go places and say hey there's a lunch whatever and there's this big

concern like you can't buy me a beer. What is the exact gift rule and travel rule as far as someone buying you a beer or buying you lunch?

>> Harvey Leiderman: Well, if I -- okay. I haven't read all the regulations in the city yet because you're bound by the City's regulations. I think it's \$50 --

>> Pete Constant: I believe it's either 50 or 25. I don't remember because I just put it at zero. But I think he's also talking about the widely attended event functions as well.

>> Sean Kaldor: I was talking about the specific -- because you will have situations where someone says let me buy you a beer and we're like oh no I'll buy my own. I believe I read someone here asked me that you can absolutely do that. If they're wanting to do business with the board whatever it is, doesn't matter what the relationship is if it was under I thought it was under 50 dollars and that's an entire year or whole part of the relationship but if someone one time wants to buy you something don't think you have to be totally flip about it.

>> Richard Santos: Leave it to two bucks.

>> Sean Kaldor: Every week or every month that's a whole different issue. That was one issue. Does this new rule apply to us as board members also or just investment managers?

>> Harvey Leiderman: No, this applies to registered SEC investment advisors and broker-dealers. So if you're registered with the SEC you may not make a contribution of this magnitude, not only to anybody running for the board that you're pitching, but to anybody who appoints you on this board whether it's the city council or mayor, anybody who has a role in doing that.

>> Sean Bill: So I've been in that, gone out with hedge fund buddies in San Francisco and names of guys that you know you would all recognize. And we had brokers at these difference who would want to pick up the tab. And it's a pretty fubby situation because I have had to have my section broken out and people are like well

what do we do with this? I say well, you know here's my hundred bucks you know and it's -- it's easy to take care of. You just have to bring some cash and you just break it out.

>> Harvey Leiderman: Cash is great. I'm also a form send filer, I'm sure I will be for the City of San José, am for half a dozen other pension funds. I write a check afterwards, if it is embarrassing at the dinner or something like that you just find out what it is and you write a check to whoever gets it. I think a lot of the scenario at the conferences and that sort of thing is where 12 money managers will take 50 people out to dinner and they'll split it up in ways so that no one manager is paying more than \$20 a head. Okay, even though your total bill for yourself may come to \$80 at least four people have chipped into that. So far, that's okay.

>> Damon Krytzer: Can I ask a more specific one? Because I didn't go to our consultant's conference because of the frustration over the fact that they were having a conference, but then we would have to split out, the only plan by the way we would have had to split out my portion of the food, that they were going to provide at the conference for all the attendees. What's the issue there? Our consultant, it's their client conference. And it's just -- it is what it is. It's food provided at the conference.

>> Harvey Leiderman: Anything like that, actually here's the best way really to handle that. Sometimes they provide transportation. Sometimes they provide accommodations, hotel, bell hop, whatever, cab to and from the airport and that sort of thing. What we have been putting in investment manager contracts on a regular basis is the provision that part of our fee, part of the fee they charge the system, includes the fees for those kind of conferences. So in essence, the pension plan is paying for that. They don't have to give it to you as a gift. You don't have to declare anything and they're happy to do that.

>> Pete Constant: Harvey isn't it different if they make the donation to the city or in this case the retirement board, and the retirement board sends a representative?

>> Harvey Leiderman: It's a --

>> Pete Constant: The way we handle it on the city side, like when I went to Korea with the Korean government they made an offer to the City of San José, the City of San José accepted did their appropriate paperwork and then sent me as their representative. If they would have offered me the trip to go I wouldn't have been able to take that. Just a fine line on following the money.

>> Harvey Leiderman: Yes, the FPPC's new guidelines on that essentially says if it's being given to the organization, to the pension fund, and the pension fund then designates you which is why you have on the agendas the -- you know the approval that certain people will go to different conferences and that sort of thing. Because it's essentially being given to the system, not to you personally. But it's a thicket. So let's see what happens as we go forward here. So after this lunch, the next board agenda is being prepared. We have our agenda setting. And staff says, where's Carmen, Carmen's not here but staff says what the heck you want to put on this Bolivian currency deal, you say don't worry about it, I've done all the due diligence, it's all fine, trust me on this one. Okay? So you guys are comfortable with having one board member do this due diligence aren't you?

>> Drew Lanza: Ask for his resignation. To resign, I'd resign. Now you cross the very bright line.

>> Harvey Leiderman: Whoa, somewhere between this slidesen and this slide 8 we crossed a bright line for Drew.

>> Drew Lanza: That you have to do out in the open and very transportly.

>> Harvey Leiderman: I thought you were supposed to influence the staff decision.

>> Drew Lanza: I think handing the business card and saying, this is an interesting person you need to talk to them, that's fine. That staff decision is probably going to get made out in the open but telling them, I want you to do X --

>> Harvey Leiderman: You agree Vince? Everybody think this is crossed a bright line? Let's see what happens. The day before the board meeting Ms. Rounds goes to her personal broker. I got a hot tip here. I want you to take me out of everything I'm in both feet into Bolivian -- that's publicly traded fund, Bolivian currency fund. I think it's going to really take off. You learn things in these meetings. You learn what gold is going to do. All they do is tell you what the market's going to do, right? Are you telling me that you can't go home and take advantage of what you're learning? What are you doing on this board?

>> Richard Santos: That's what you're here for.

>> Harvey Leiderman: Sean? If I learn that bonds are going to do horribly I might.

>> Pull my money out of bonds but I'm not influencing the bond market or driving the bond market.

>> Harvey Leiderman: Who knows, this huge fund, Bolivian fund. Okay, what's that.

>> We call that front-running.

>> Harvey Leiderman: You want to tell us what front-running is?

>> Vincent Sunzeri: Front-running is placing your bets before you authorize an investment or make an investment in that area. You've made the personal commitment first you front-run that money coming behind it. It's illegal.

>> Harvey Leiderman: We have problems with that, nobody is comfortable with personal profits. But what about things like knowing when N EPC or one of your investment managers coming in, are you telling me you consider investing with them off limits personally?

>> Damon Krytzer: Front-running you're saying?

>> Harvey Leiderman: How about front-running or back-running?

>> Damon Krytzer: Back-running the personal decision, if San José goes into an investment when their money's invested, it's public, I choose to go in, that can't close off the large cap value for it, I think that's fine.

>> Harvey Leiderman: Are you okay with that Drew? He's okay with it. This is actually a federal crime.

>> Drew Lanza: Other than that.

>> Harvey Leiderman: Other than that Mrs. Lincoln how did you like the show?

>> Drew Lanza: You can't say because San José is a sector I'm not going to invest in a sector.

>> Damon Krytzer: What's the question that you could do it with a stock too? If we bought half of the shares in Apple for San José and then we make that public and there's plenty of time for people in the public markets to disseminate that information then it's not material nonpublic anymore then any move's been moved right? I mean --

>> Drew Lanza: I wouldn't do it but I hear you.

>> Damon Krytzer: Do it or not, that's okay.

>> Sean Bill: Take the flip side. Let's say you got a great couple of funds you're in, a personal hedge fund or a public mutual fund like TCW, should we say that name shouldn't come on the San José portfolio because we already own it and we have already made a fair amount of money and we don't want to sell it.

>> Harvey Leiderman: That's a question for you.

>> Sean Bill: Is that a case where San José would potentially miss out on a great opportunity because we got there first?

>> Harvey Leiderman: What do you think?

>> Bettina Rounds: I think if we got there first and the consultants were advising to do that, I don't think that's -- we would have to do the whole thing to begin with, whatever that section thing is that we say what our investments are it's filed annually suspect it?

>> Harvey Leiderman: Well, wouldn't you like to know other board members, if we'll use TCW for example, if Sean Bill was in TCW personally and it was coming before this board for consideration, would you like to know that? Ahead of time? Would that influence your vote? Drew?

>> Drew Lanza: In a positive way hopefully.

>> Harvey Leiderman: You'd probably run from the investment, knowing Sean?

>> Drew Lanza: But if you didn't --

>> Harvey Leiderman: He's clearing half the room. You notice?

>> Drew Lanza: When Dick said he'd call you I'd have called you on that one too.

>> Harvey Leiderman: Okay, moving on. One of the board members who came to lunch then takes two other board members aside and says, here's what this agenda item is all about, this is a great deal, I want you to vote for it. Sean thinks this is a slam dunk a real big problem. What's the matter with that?

>> Sean Kaldor: Previous a group of four people, now you've exceeded your Brown Act and should be happening in public.

>> Harvey Leiderman: How about if the others don't know this meeting happened before lump?

>> Sean Kaldor: Either more or a serial meeting.

>> Harvey Leiderman: Everything got the serial meeting? It has nothing to do with Kellogg's. You can't meet in collectively or majority or in a serial way or you can't send things to your director and have him shoot them back out. That's called the hub and the spoke theory of communications. You can't take an issue that's coming up before the board and get a majority of the meeting talk about it. We will talk about e-mails at times because this is so hard to abide by, in the age of e-mails. It's just too easy to hit reply to all and to forward these things.

>> Damon Krytzer: I just have subtly a problem of, they should vote for it regardless whether or not it breaks the Brown Act as well.

>> Harvey Leiderman: You don't want to be able to talk to -- the Brown Act aside you don't want to be able to go to Vince?

>> Damon Krytzer: I think there's a difference. That's pretty direct.

>> Harvey Leiderman: What wouldn't be direct? Could you tell Vince for example, hey Vince this thing is coming up in the agenda, I think it's a good idea, I know these people?

>> Damon Krytzer: That's -- I have a problem with that too. Saying it's a good idea versus talking, I wouldn't have a problem so much if you sort of talked about material merits of something look, if we don't have those discussions, completely compliant to the Brown Act, we have minus July 11 working days to manage this plan. So there's you know, I think there's a middle ground but I guess the intent to influence to me becomes a big problem.

>> Harvey Leiderman: This is a terrific point he raises. You guys get together 11 times or maybe the investment committee maybe ten times or something like that. Do you really have the opportunity to explore these things? You know, and does that, then, mean that you have to sort of be able to talk to each other in between? That's a tough one. That's one we should think about. But it sounds like you're drawing a bit of line between the educational line and influence and trying to sell, is what I hear. Whether you're trying to sell a colleague on the board or whether you're trying to educate or whether you're trying to -- or somebody is coming in to try to educate or sell you. There's some distinction in your mind Damon between tell me what this is all about generally and tell me what you're all about specifically.

>> Damon Krytzer: Yeah, I mean that's a hard one to define. All I can know is its intent, it's supergray all around so maybe we'll come to a conclusion.

>> Harvey Leiderman: So we have the board meeting. Nine members are present and voting. One member objects and says, staff process wasn't followed here. You say you're dithering over technicalities here. You made an educated decision and not influenced by anything in particular?

>> Sean Kaldor: One loses a ton of money on the next slide.

>> Harvey Leiderman: No, actually what happens on the next slide, you call the client rep back, give her the good news. You fly off with her to New York, to see the sharks in the Stanley cup finals against the rangers, this is not a prediction. You have a porterhouse stake and a bottle of Shah tow Margaux, and say this isn't a problem.

>> I want to go!

>> Harvey Leiderman: You want to accept on the behalf of the whole board. If it wasn't a magnum I think we could do that. So this is conflicts of interest and if we have a few more minutes, Mr. Chair. I'd like to go into one more scenario with everybody. Now that you're comfortable with this. Because there's another -- another scenario

that may have a little bit of truth and a little bit of far fetched in it. So let's talk about that. And this is a government scenario. Oh, let's see. Mr. Santos. Mr. Santos, we'll pretend you're an appointed board member. Okay? Which you are, you got a call from the mayor, mayor wants you to come by, to chat. Are we okay with that so far? Are you okay with it? So far, no problems. Why should we stop there? The mayor says she wants to discuss the board's funding. She's very unhappy with the board's actions that you keep increasing the costs to the city. You okay so far?

>> Richard Santos: Uh-huh.

>> Harvey Leiderman: Sane, you okay with this conversation?

>> Sean Kaldor: I'm curious where it's going.

>> Harvey Leiderman: Well how about right here, mayor wants to talk to one of the mayor's appointees about funding the pension fund. What do you think Pete?

>> Pete Constant: I think the mayor has a right to express his opinion that he's not happy, but I think he doesn't have the right to tell people what he'd like them to do.

>> Harvey Leiderman: This particular mayor in the example is a woman.

>> Pete Constant: Yes, she, I meant.

>> Harvey Leiderman: There you go. Any resemblance between anyone in particular -- are you okay with them in the mayor's office? With nobody else present? Let's see where this goes. The mayor wants you to make a motion to move the assumed earnings rate back up to 8% and it comes up on the next agenda, how we doing Pete?

>> Pete Constant: You just tripped over the line.

>> Harvey Leiderman: The mayor's got a First Amendment right of free speech.

>> Pete Constant: That would be a point where I as a board member would say, thanks for your input but I need to get up and go. Because it's not appropriate for anyone to be telling the board what to do and what motions they should be making.

>> Harvey Leiderman: She's just expressing her desire. Damon this is a problem for you?

>> Damon Krytzer: Yes.

>> Harvey Leiderman: Has this gone past education into influence?

>> Damon Krytzer: I'd say so.

>> David Bacigalupi: Well the mayor's the one that appoints you too.

>> Harvey Leiderman: That's our Dave from Hawaii speaking. Mr. Bacigalupi we forgot you. I see your name tag is there but you're up there in spirit.

>> David Bacigalupi: I'm there in spirit trust me.

>> Harvey Leiderman: I haven't called you yet, thank you for reminding us you're here.

>> David Bacigalupi: I wouldn't have to worry, the mayor's not going to call me.

>> Harvey Leiderman: You'd be surprised, really, let's pretend you're an appointed board member, okay? Now put yourself in Dick's shoes here. You're in the mayor's office and the mayor says, hey Baci, I want you to move the assumed rate back up to 8%. You're killing us on our budget. You walk out?

>> David Bacigalupi: I think you tell the mayor, I think it was Pete or somebody said, the mayor's crossed the line. This is part of the -- your appointing authority and you say you know, you don't have a right to try and influence the people you appoint to the board that they're independent fiduciaries of the trust and then, to cover yourself you reported back to the board.

>> Harvey Leiderman: Would you.

>> Drew Lanza: I think what's really interesting about this is I know if the mayor said to me it's going to cripple the city if you lower that rate, that's apparently quite a right. Because the number of members of Cal PERS when asked they didn't lower the rate was, said we were told that it would do a lot of damage to the cities we were involved with. Which struck me having crossed a line but nevertheless they reported in the press of having said that.

>> Sean Kaldor: What's crossing the line? It's not just the mayor, any appointing authority. But the board of Cal PERS isn't appointed by the cities but if someone in the city said, don't do X, could they unappoint them?

>> Harvey Leiderman: We're moving the hypothetical into the real and back again. But didn't I just hear the assistant City Manager tell us, with reference to the OPEB, that we're looking at 30%, and it's like -- this is killing us?

>> Damon Krytzer: In a milk forel though.

>> David Bacigalupi: They said it to the board in public.

>> Harvey Leiderman: That's the difference, they can express their opinion but it's in public. You got a problem here that it's not in public with this example? (inaudible).

>> Drew Lanza: It's the making of the motion.

>> Harvey Leiderman: It's the making of the motion.

>> Drew Lanza: I think if the mayor were to say, you know, the rate you're having is crippling us, fair comment. I have a problem though, when trustees, whether it's Cal PERS or whatever say that's a good reason not to lower it that just strikes me as crossing the line.

>> Harvey Leiderman: How about Mr. Lanza that rate is crippling us, you know what to do? Is that better?

>> Drew Lanza: No. There's only one thing I can do. Either influence the members to bring up a motion, it's the same thing.

>> Harvey Leiderman: Well you're not putting your head in the sand about the city's finances are you in the effect of the assumed rate of return on the City's finances?

>> Drew Lanza: The cost after it talks about our fiduciary duty.

>> So what's wrong with the conversation with the mayor?

>> Drew Lanza: Not supposed to influence me about making a motion.

>> Damon Krytzer: This was an exact conversation we had with changing the rates.

>> Sean Kaldor: But something that could appealed to him. This wouldn't be that type of thing right?

>> Harvey Leiderman: Yeah, you send the bill to the city right? It's not like they can tell you, defined benefit plan you price it you tell them how much to pay. They can't say we're going to decide not to pay that much, right? You seem very uncomfortable with this Mr. Chairman.

>> Sean Kaldor: I'm trying to see where the line is, all city is appointing authority the issue if we don't do what we want us to do then they could use their appointing authority well if they asked us to do something and we either choose or not choose to do something, who's breaking the law here? I mean the fact that we heard it was that our bad or their bad? I'm not saying I should sit down and talk to councilmembers at all but I'm just wondering, what -- what issue are we creating?

>> Harvey Leiderman: What's the problem, let's talk to Sean Bill here. What's the problem, help him focus on what is the issue here?

>> Sean Bill: Well I think it's the influence question and it's the influencing of Drew's plan, when had he they ask you specifically to make a motion that's influencing the body, you know. If it's a conversation about you know we want to lower the discount rate to 7% because we think that's where the return is, by that time we have the other side of the table saying no it's too expensive we want to keep it at 8%, those are all legitimate conversations and they all have their place. You know it's when you get into the nitty-gritty of this is what we want you to bring forward.

>> Drew Lanza: This actually happened to me one time, when you serve on the board you have to do what you think is right and the people who put you on the board ordered you to do something that you don't think is right, you have to do what you think is right very clearly and that may mean, they pull you off the board, which did happen to me once. You have to do what you think is right otherwise you've broken your fiduciary duty.

>> Harvey Leiderman: Better said than I'm ever going to be able to say it. In a city in this state, this kind of thing actually took place this year. This past year. When an appointed board member refused to follow the instruction to

fix the assumed rate of return. At what the appointing authority wanted to fix, and that person was involuntarily resigned from that retirement board.

>> That was down in L.A. wasn't it?

>> Sean Kaldor: Doesn't know what you're talking about.

>> Harvey Leiderman: I'm not exactly aware. Vince has a question.

>> Vincent Sunzeri: What other conflicts come up that should be disclosed? Because we're talking about in my mind two worlds that are sort of colliding. In one instance we're talking on the investment side with potential conflicts of having conversations with money managers and influencing board decisions. We're talking about conversations with appointed members. And request to make motions. There might be other conflicts that could be out there that we don't know about. Sean used the example of what if I have money invested in TCW. Are there other conflicts that these trustees might have that should be disclosed that we're not aware of?

>> Harvey Leiderman: There's a question of disclosure. There's also a question of influence. And it comes back to something that Drew said. Which is: Exercising your own judgment. That thing I put up, I think the third bullet point about the prudent person rule. You can't be a prudent person if you are allowing your own personal interests to invade your thinking on behalf of the trust. If you're letting somebody else influence your thinking in a way that only affects you personally, and your own prospects, if you're an employ for example who sits on this board and your department head comes to you and leans on you and says I want you to do to do something in a certain way now you're not exercising your independent judgment. You're carrying the water for some other reason, for your own self personally, or for the mayor or you're carrying it for somebody else or for the people who work with you down in the firehouse, once you start carrying the water for somebody else then you're no longer acting as a prudent trustee. So there's a thousand things that would influence your judgment. And one of them is to try not to let that happen. But the other is going back to your point, disclosure. Seems to me that the -- this is a trust over money but this is also a trust among colleagues. And if any of you are exercising your judgment, for reasons other

than what is prudent, in managing the system administering the system, you owe it to yourselves to disclose that. You need to know if Bettina had a meeting with the mayor and the mayor leaned on Bettina to do something.

>> Bettina Rounds: I did not.

>> Harvey Leiderman: This is hypothetical, in our scenario you need to do that. The next thing that happened is the mayor says she's talked to all the other appointed members and they agree to move this up. Sean loves this. Ding ding ding, I know this violates everything known to man. Okay? But why should the mayor stop there? She's also spoken with the two active elective members and they too are on board because otherwise I'll have them reassigned to desk jobs and you know I can do that.

>> Drew Lanza: Now I call you because I think somebody has broken the law.

>> Harvey Leiderman: But once again, it's this influence which is coloring judgment that you would otherwise be able to exercise independently. And that's the issue. And you need to know among yourselves if this is going on and that can be very uncomfortable. Whether it's in the investment side or whether it's in the political side. The judgment that has to be made here is a collective judgment. And you can't make that unless you all come in here and say, I'm going to use my own head on this. I can't tell you I'm going to do the right thing but I'm going to educate myself. We're going to have a level playing field. We're all going to know what's going on, we'll all talk to the investment manager in a public forum, at the same time. That's why we do this stuff in public or we're not going to do it at all. Vince.

>> Vincent Sunzeri: I'm very sympathetic to our union workers here that are on the board. Because at the conferences I've attended they talk about the two-hat dilemma. And my sense is, for us appointed individuals, I don't feel that two-hat dilemma. Because I'm not playing on the same baseball team, per se, versus the union members that have to go in the dugout every baseball game, and that could be a lot of pressure. How do they

manage -- what advice do you give them when that two-hat dilemma is constantly coming up? Because I don't know how they deal with that.

>> Harvey Leiderman: We have to do things like this, we have to go back to the first line, let's talk about fiduciary duties again. Dick.

>> Richard Santos: I'm (inaudible) union retiree and Police and Fire retiree and all that conflict of interest, or influences and I feel the same way. Vince or Sean or Damon, you're tied to outside people politicians, so no one's exempt and I actually get tired of hearing that. It on me. Because we all know we got appointed in fact when I got there Pete got up and said I think he's a straight up guy, I support him, that was it. So that's the way it goes. I know him well and there's philosophies I don't agree with and philosophies I do. We're there well, if I have something on my mind I talk about it and I share it with him. (inaudible).

>> Sean Bill: It's how you navigate it, that's how this openness stuff clears that stuff out. We all have conflicts.

>> Vincent Sunzeri: Not making a personal attack or indicating that I think that that takes place at all on this board. I'm just saying it happens in general they talked about it the two-hat dilemma at these conditions and I'm sympathetic to it and I just wonder how do they deal with that?

>> Harvey Leiderman: It's a very difficult thing to do. It really is. And here's what compounds that. Your loyalty is to the members and beneficiaries of this fund today and tomorrow. People who aren't even in this system yet. This isn't a closed fund for just certain people. So how do you make judgments that are both in the short term, long term, medium term best interest? Because even among the members, current active members in the system, future members and current retirees, there are all kinds of different interests. Retirees don't have -- you know when the city comes in and says, we can't balance our budget. We're going to be laying people off. Therefore I want you to keep the assumed rate of interest high. Or don't drop it to where people are selling you it's got to be at 7.2 or something, that's to preserve -- the equation that they're giving you is, if you cost us more we're going to lay people off. And they're current members and we're making contributions on them and we can't do that. That's

a very different interest than the retirees. Retirees don't need that job. The retirees need the assurance that the fund is secure, current retirees. But the current employees are going to be future retirees, soon, how do you reconcile that conflict, that's all of your difficulty to do. That's two hats, really three hats coming into this thing whether you're an appointed member or elected member. So these things are incredibly difficult to do and they are not difficult to do when everybody is making money. Nobody talks about volatility when the market's going up.

>> Bettina Rounds: Harvey I thought today we actually saw examples of Dave and the two of you dealing with a disability that was very difficult for all of us to deal with, but that you all could have felt, you know, could have felt the two hats. The three of you were the ones that actually took the stand on, this is no K, we need more information. We can't make the tie where with the exception of Damon's questions we were all silent as you pointed out because we were more conflicted in that example of what to do than the three of you who actually theoretically could have been more influenced by being brothers.

>> Richard Santos: And I appreciate that. Because later on there will always be some remark. I'm only able to stand up and say no, I did the right thing. Your silence will do because I was speaking for y'all. Because in your discussions you have said this before but you also looked towards us because we were the uniformed people and if I and Sean and Dave don't do that, we lose your confidence too. Credibility means doing a favor for somebody, again it's a system. Again I really believe that we will fix the healthy issues, Sean and I have had long discussions about this, after this ballot stuff is way so we can start doing constructive business and working with Dr. Das and others to get effective health benefits and hoping these things don't arise as they have in the past.

>> Sean Kaldor: Just to address it really quick, you mentioned the multiple hats. That's case, every decision I have to make, you talk about multiple conflicts. I know there are active employees that say the retirees are making more than I am. The unfunded liability you're just driving up that cost, osh a disability, a person who knew that, I can't believe he did that thing some you don't know what you're doing, giving away money oto these people. No matter what I do there are groups of people who are not going to be happy with me. If a group says lowering a discount or raising a discount is going to help me, I just have to the retire eds don't care what the benefit is they want it there forever. That plan needs to be there for them 40 years from now. So I really have to

weigh all of that stuff and the hats are there but I think we all wear the hats, all thinking about the decisions we have to make.

>> Drew Lanza: I think the core problem is there's three actors on the stage, the participants, government and the taxpayers. The taxpayers are only sometimes here and at our own peril we forget that because sometimes the taxpayers are not represented by the government depending where we are in the cycle. To seasonal extent, all the fiduciaries we know what fiscal we have to pay the same substantiation to.

>> In fiduciary world you don't owe a fiduciary responsibility to taxpayers.

>> Drew Lanza: No, but if we smack them we're going to pay for it.

>> David Bacigalupi: We have one other thing too that happens, I think Sean mentioned this, there's people that don't agree with what you decide on. It seems like they never remember the good things you did for the plan. It's just every year, every decision you make you lose a few more over one issue. It's just the cost of doing business. You've got to do what's right.

>> Harvey Leiderman: So let me leave you with the final words here. Ask yourself when you are making decisions, are you acting independently? Are you acting only for the benefit of this system and members? If you have a personal financial interest in something, at least disclose it. Are you acting prudently? And this is as important as everything else. Should my colleagues trust me and trust my independent judgment and I'll leave you with this. We're all in this thing together. Don't be the little pecker on the front of the boat. [ Laughter ] thanks very much, Mr. Chairman.

>> Sean Kaldor: Can we put that on the cover of our new board trustee packet? All right, thank you, Harvey. That was a grade session. Hopefully a series of several more on the key issues we've asked you to identify. How do I follow that? Okay.

>> Damon Krytzer: Let's just take a break.

>> Sean Kaldor: Few more items, then closed session. So item 3.2. Discussion and action regarding revised resolution 3762 setting city and employee contribution rates and amounts for fire members to be effective June 24th, 2012, correcting a footnote typographical error on actuarial assumed payroll no effect on contribution rates or amounts from previous resolution. Does that pretty much describe it? I'll accept the motion.

>> Drew Lanza: Go ahead. Dick's making a motion to accept the change.

>> Vincent Sunzeri: Second.

>> Sean Kaldor: We have a motion and second. Discussion on the motion?

>> Drew Lanza: Double check and who prepared these numbers?

>> The resolutions were prepared by retirement services reviewed by Cheiron.

>> Drew Lanza: Thanks.

>> Sean Kaldor: Any further discussion? Seeing further, I'll take a vows. Sean Kaldor. Aye. Dick Santos. Yes. David Bacigalupi. Sean Bill. Damon Krytzer. Drew Lanza. Elizabeth Rounds. Vince Sunzeri. All approved none denied the motion passes unanimously. Thank you. Item 3.4. Update on payroll audit, FLSA and overtime payment issues. This is supposed to be easy.

>> So last week retirement services attended a meeting between the City's finance department and other city representatives and local 230 to discuss the FLSA correction for the overcontributions into the retirement plan for nonpensionable FLSA. At that meeting about the city advised they were planning on doing the corrections for active members on May 18th. I believe there's a communication that's being drafted. As of yesterday I didn't have

a copy of it so I don't have it to distribute, I apologize. As soon as I receive it I'll put it on a board agenda communication item. Retirement services has contacted Reed Smith to go over some of the details and the impacts of FLSA in regards to legally can we offset where do things work and kind of go through the next steps. So as of now, the correction file for active members will come over on May 18th and retirement services will begin the process to determine where can we legally go back and work through. There will be retirement issues that we will work through.

>> Sean Kaldor: And do we have the number, the fire for the retirees?

>> The file for the retirees and actives I understand are coming over on May 18th.

>> Sean Kaldor: So everyone understands basically people were making contributions on income they were receiving that was not pensionable. So we had to go to those current employees and say here's the money back that you paid for pension contributions because that isn't pensionable. And the plan owes the city back for that money because the city had paid it to us, we don't actually pay it back, it's a credit.

>> There are things that we need to work out to as far as if the plan has put out any money and has nothing to return to the city because of errors. Those are things we work out with legal so I caution using that portion until we determine those pieces.

>> Sean Kaldor: There are people who are retired where their pension checks were calculated on this extra money, wasn't supposed to be pensional. We have a statute of limitations and all this money needs to be balanced out. I appreciate you guys continuing to chase this down.

>> Drew Lanza: So this is really important. So when this is all over, we need you to write us up a 75 or six page treatise on why this took forever from the city's side. Because if the ballot measure passes we're going to turn every knob on every wall and that means we're going to be making lots of errors going forward. If it takes forever to fix errors based on the ballot measure we're dead. So what I've kind of heard in the past this is really a

problem with the city. As we go forward with the new ordinances we have to fix this too. We're bound to get a lot of paychecks wrong. If it takes that long to correct them, if I were one of the participants in this plan I would just go nuts. Fair? Or tell me what you think.

>> Well, there's definitely when the first -- when this FLSA issue was actually brought forward by the former chair of Police and Fire. But in addition to that, there was already an agreement set up with the plan's external auditors to come in and review the transmittal of pensionable earnings over to the plan, my understanding is this hasn't been done --

>> Russell Crosby: It was important to know this was the first. That was something I wanted when I came in here is normal a trust fund audits plan sponsor making sure we are getting all what we should and it was in the right form. Guess what? It had never been audit id, never been checked, two or three years worth of issues that had to be worked through the whole system. It's about time for the trust fund to do another audit of this. It needs to be a periodic thing, Harvey shaking his head. Something the trust fund should do on a regular basis to assure that what cost across the transom is real and accurate.

>> Drew Lanza: It would be frustrating if this happened a lot after the ballot measure right?

>> Pieces to consider, this first review that was done, actually there was still some pieces to it that still need to be reviewed from the retirement perspective that we just couldn't get the final report out to the board. There were pieces of it that just needed that much nor delving into and resources, and constrained resources on city services side and retirement side, you can have as many auditors as you need but if you don't have the information to actually audit and work through then you run into the bottleneck of continuously having the audit process that never completes. While you do need to do some sort of audit you have to take into consideration what resources you have.

>> Drew Lanza: I'll sit down with you and at a level where we can get actionable change. When this comes up in February of 2013 like we know it will if the ballot measure passes, we know what happens here, we have the

people in place, we have the auditor in place to do it and we can -- this is the kind of thing our board should set, we will fix these things in 120 days or 90 days and when we don't little fire alarms will go off. As you point out Sean we are their fiduciaries and we can fix our side of it certainly and maybe with some influence and Pete's help we can fix it on the city's side, fair comment?

>> That's fair.

>> Sean Kaldor: Okay, good, thank you very much for the ongoing work, we'll get an update next month is that the plan?

>> Yes, I wanted the board to know for the second FLSA, we have that too. We will have both FLSA pieces and will continue from there.

>> Sean Kaldor: Tom, are you on the line?

>> Yes I am,.

>> Sean Kaldor: We'll start with 3.5, discussion and action on governance policies developed by Cortex.

>> Gash, Mr. Chairman, this is Tom Ianucci participating by telephone. You have four governance policy before you in your package. The board chair charter, the audit committee charter. The policy regarding roles and vendor selection, and the board education policy. The board has reviewed these policies at least once I believe. And the joined ad hoc governance committee has also reviewed them several times. I'll just draw your attention to a few outstanding issues. If we begin with the board chair charter, I'll just draw your attention to paragraph 1. There were a few different ideas discussed in terms of how to appoint the board chair. And I apologize, I'm not quite sure exactly where we landed. This is the language that we had at this point and I'm just want to be sure that we are clear. The board chair would be elected at the last regular meeting of the calendar year. And at that meeting the board would seek nominations for the position from among its members and at that meeting would also elect

one of those nominees to serve as chair to serve as the next regular or special board meeting. This would happen essentially president end of the calendar year and would take effect at the beginning of the next calendar year. I just wanted to again make sure the board, this is what the board had in mind. And that is really I believe the only real discussion point with respect to the board chair's charter.

>> Sean Kaldor: Any discussion or questions on that? Okay. Go on to -- no one's having any you input, audit committee charter.

>> The board has discussed this a few times and I won't review it in any detail. I don't believe there are any outstanding issues. This has been reviewed by your staff. By counsel. Of course by ourselves and by the joint ad hoc governance committee. So there not being any outstanding issues that I'm aware of I would just open it up to questions.

>> Sean Bill: Tom on point numb 2, how did we rieb at three board members? The only reason I wonder on that is because of the Brown Act, no two people could ever communicate.

>> I'm sorry, I couldn't hear that very well.

>> Sean Bill: This is Sean. On point number 2 of the introduction there you have the audit committee will consist of 3 board members. And my only question there is, does that create challenges for that committee with the Brown Act in teems of you know you could never speak to another member of that committee?

>> Sean Kaldor: If two people talk then sudden you oak to a majority of the committee as opposed to 4.

>> This would be a standing committee which would already be subject to Brown Act requirements. Is.

>> Sean Bill: Right. But wouldn't you be violating the Brown Act if let's say Sean Kaldor and Dick Santos venue of the committee meeting isn't it a Brown Act violation?

>> Sean Kaldor: Harvey?

>> Harvey Leiderman: Yes, I'm trying to see what authority the audit committee has, if it has specific audit authority or only recommendation authority.

>> At least one action would be paragraph 9D we're suggesting that the committee would be able to select accountants or other specialists as necessary.

>> Harvey Leiderman: Yes, Mr. Bill would be correct, if a majority of the committee were to talk outside an open committee meeting about something that's pending before the committee, and the committee's gomped by the Brown Act they would be a majority of the committee, that's right.

>> Sean Kaldor: So this committee primarily does things on a kind of annual cycle rather than special events, work with the City Auditor, review the annual financial statements. Deal with any specialght investigations that come up?

>> Harvey Leiderman: Well, it seems to have an ongoing responsibility of accounting policies and reporting practices and reviewing claims so it sounds like it's an ongoing process.

>> Russell Crosby: Sean, would you be more comfortable with four rather than three?

>> Sean Bill: From a functional standpoint of having the committee it's hard to function if you can never communicate at all. Would an alternate be an add to that count as a fourth or --

>> Russell Crosby: Just add a fourth. I think we often forget that you've got that extra two seats over here and this is designed for both Federated and you guys. So if you want a fourth on yours that makes sense you can do that. You can't do that in Federated. You couldn't have four. (inaudible) for a joint standing or not?

>> Does this knead to be a joint?

>> Sean Kaldor: We are auditing our own CAFR.

>> This was designed to be your own committee.

>> Sean Kaldor: Does anyone have concerns about changing this to 4?

>> Drew Lanza: Or does it make it easier so they can't do any action -- what did you say Harvey what's the distinction?

>> Harvey Leiderman: Well, if they can only recommend to the board to do things, there would be no action that would be affected by a Brown Act issue. But I think that defeats the purpose of the committee.

>> Drew Lanza: How do you think that defeats the purpose of the committee?

>> Harvey Leiderman: Because you want them -- everything within this charter that your audit committee would be dealing with including with the external auditor you don't want to have to have them come back to a board meeting to, before they can do anything. So it seems to me it's a lot easier just put four people on this on this committee.

>> Drew Lanza: You know -- committee complexity is the exponential factor of the -- we've just made it twice as hard to schedule meetings. That's my own concern.

>> Sean Bill: And I'm not firm, I just brit up as a technical question. Doesn't matter to me, if it's three or four. Function's easier but maybe --

>> Sean Kaldor: Four would allow us to do it to preschedule bimonthly meetings whatever we need, if someone can't attend on a day the three could still proceed and the machine moves along. Any concerns with changing it to 74? Seeing none Tom if you could change that to four.

>> Okay, great.

>> Harvey Leiderman: Mr. Chair, if you are taking comments I do have some,.

>> Sean Kaldor: Middle East.

>> Harvey Leiderman: I'd like to put in after review and comments, I'd prefer it say review and respond to findings or comments. That frequently happens. Put in the words review and respond to. Over on the second page item 9B review on an annual basis insurance coverage for the plan. I think it would be helpful to add and its covered ensured. Not only for the plan itself but for each one of you.

>> Sean Kaldor: Tom did you get both of those changes?

>> Yes I did.

>> Sean Kaldor: Any concern from any of you? I think those add value.

>> Richard Santos: And Harvey pays for it. [ Laughter ]

>> Sean Kaldor: All right, vendor selection.

>> Okay. That begins on page 4, couple -- one correction. Paragraph 5, makes reference to itself, that should really read in the third line, meet the criteria in paragraph 4 above. I apologize. The only other outstanding issue, I think the board needs to discuss, would be in the table itself, table 1 on page 5. Towards the bottom of the table

we have a row for HR consultants on director-related projects. So that what we have in mind there are, instances where the board would need a human resource or an executive search firm to help search for the director, that would probably be the most likely occasion when the board would need an HR consultant for the director. And it's not something we haven't -- I don't believe we've resolved it, just given the governance structure the board doesn't have direct authority to hire the director. So we've left a few to be determined in that column. And I guess the question is would the board like to address that today, or perhaps leave it, and until the day comes when this becomes an issue. And determine at that point how the authorities would be allocated in terms of selecting that particular type of consultant. And on a related issue, I believe there used to be a row, and somewhere in the process it got dropped, there used to be a row for describes roles and responsibilities for hiring HR consultants for positions below the director. And I noticed open your agenda today that in fact you've dealt with just such a situation. You've I think directed or made a decision to hire a firm to help with the recruitment of an investment officer and the assistant director. And I believe you made a decision that the director would be allowed to, would have the authority to appoint or select that firm. And I guess the question is would the board like to see that reflected in this table?

>> Sean Kaldor: I guess we're now talking about a -- exactly, we're now talking about having a personnel committee so that will be one of our last things to you would be to revive that position for the next meeting. The line you have in there now, the HR consultant the due diligence would be done by staff, interview candidates probably by staff and then finalists recommend and appoint would be all for board for director level. For anything below director level it's going to be staff, are we separating staff from the director? Or is just the director considered staff?

>> Well, staff below the director.

>> Sean Kaldor: So for an HR consultant to find positions below the position of director, it would be staff doing due diligence, staff interviewing candidates, the finalists and recommending -- I think that should be the director doing that, do I need to say director or do we just say staff?

>> I think we should say director.

>> Sean Kaldor: So director, director, appoint and terminate would be the board. So he still got to come to us to use the HR consultant but basically use the consultant. Does anybody have any thoughts on --

>> My understanding what you decided earlier today was you delegated to the director the authority to select and appoint the search firm.

>> Sean Kaldor: Our talking about appoint terminate line?

>> Yes.

>> Sean Kaldor: That's right, we approved the budget and gave the staff -- you're correct then that would be our intention, staff. And the HR consultant with the personnel committee we might have them dealing with some of that stuff instead of the board but for right now that's the right way to do it.

>> Okay so I can update this table to reflect that, I won't include the personnel committee until it's established. Is that correct?

>> Sean Kaldor: Yes, we'll talk about that in the last discussion with you today.

>> Okay. So with that, that was the only outstanding issue I believe. On this policy.

>> Sean Kaldor: Any other comments or feedback on the vendor selection? And so for investment managers, that's still coming to the board. Okay. Okay.

>> Through the investment committee, that's correct.

>> Sean Kaldor: Board education policy.

>> Board education policy begins on page 6 and once again a minor error on page 7, paragraph 7A, makes reference to paragraph 2, that should read, paragraph 3. Again I apologize. There are no outstanding issues for discussion. Again, the board has discussed this a few times but again, today is another opportunity to address any other questions that board members may have.

>> Sean Kaldor: Any feedback? Harvey.

>> Harvey Leiderman: Just a couple of quick ones on item 3, I would put between I and J probably that we add disabilities to that list of objectives. And then item 5, last sentence of that, it's on page 8. It says board members reporting back to the board from an educational program they attended. I'd like to say the purpose of the report is to share information, and help board members identify programs. Part of what you want to do is when a board member goes to an educational program, it's nice to clue people in on the synopsis. Two more things on item 4 in the appendix, actuarial principles, disabilities and benefit administration. Thank you, Mr. Chairman.

>> Sean Kaldor: Tom, did you get those additions?

>> Harvey I didn't hear, F?

>> Harvey Leiderman: F would be actuarial principles.

>> Actuarial principles disabilities and benefit administration?

>> Harvey Leiderman: Correct.

>> Okay, I got it.

>> Sean Kaldor: Any other feedback on that? Now Tom, you continue to do strong work on carrying us through all these. For next month I'd ask that the investment committee policy come forward, and I would ask you to ensure the investment committee has a chance to go through that at one of their meetings coming up before it comes back to the board.

>> Okay.

>> Sean Kaldor: As well the personnel committee. And maybe can you get some further direction from Russell from what we're discussing here today and what the outcomes are out of this meeting.

>> Okay, great.

>> Damon Krytzer: We're going to see the investment policy statement at the next investment committee, so that could come back to the board on the following.

>> Yes the edits have been made. So that should come back.

>> Sean Kaldor: The last action item, how many policies are there to come forward still?

>> Oh four or five.

>> Sean Kaldor: Do those two and maybe another one and we'll do the last chunk, see how long they are and see if we can get this off our list.

>> Okay.

>> Sean Kaldor: We just established a policy for an audit committee. Should we then appoint an audit committee? We're going to have some things coming out of the state audit that we'll need a response to, as well

we just talked about the FLSA issue and ensuring we had an ongoing audit going to stay ahead of these things. This is a new function for us at the board level to be that involved in an audit process.

>> Sean Bill: Would I have an interest in that if I could step off the governance as an alternate, not to get overcommitted, kind of interesting stuff.

>> Sean Kaldor: Anyone interested in the audit committee? You are crazy. Sean Bill and -- we're getting rid of the short term -- (inaudible).

>> Sean Kaldor: Baci you interested in doing this?

>> David Bacigalupi: You can put me on there.

>> Sean Kaldor: The personnel committee was Kaldor rounds and Lanza. We've gotten rid of the short term dismel committee, the audit committee, bills, Baci, anyone interested? I'll step into that I guess. We just need one more.

>> Richard Santos: Those folks have the room out there? I don't think if we're out of place or they are. Maybe some of our staff.

>> Sean Kaldor: Veronica would you mind checking? Bill Kaldor Lanza and Bacigalupi for the audit committee. We'll pull you off of this and I'm going to go over it to make sure one more time. All right, good. Tom, did you have anything else for us?

>> No, that would do it.

>> Sean Kaldor: Great, thank you very much, appreciate your help.

>> You're most welcome. Have a good day everybody. Bye bye.

>> Sean Kaldor: Item 3.6 update from Councilmember Constant.

>> Harvey Leiderman: Mr. Chair, are you going to take action to adopt the charters and policies?

>> Sean Kaldor: Yeah, so let me do two motions. I'll make a motion to accept the policies as redrafted. And to initiate the audit committee with the members of, somebody? Kaldor, Bacigalupi, bills and Lanza.

>> Richard Santos: Second.

>> Sean Kaldor: We have a motion and second. Any discussion on the motion? All in favor? Starting with Kaldor aye, Santos, yes. Bacigalupi, yes, Bill, yes, Krytzer, Lanza rounds suns, all are in favor and thank you for that, 3.6 update if councilmember Pete Constant.

>> Pete Constant: There's only one update you may have heard this already but on Tuesday the city council heard an action to impose the last best and final offers, on the nonpolice and Fire unions. Which would have included the terms of a second tier pension system, or a new tier pension system for new hires and issues surrounding the lowest cost health plan. That motion deadlocked at a five-five vote and not sure where that's going from here but when it changes I will update you. Other than that no other new news.

>> Sean Kaldor: If I can question you on it, if that was imposed was there a timing for because change to health care would have affected Police and Fire members.

>> Pete Constant: So had it been imposed the changes on second tier would have been I believe July 1st but the changes on health care would have been January 1st I believe. Because the health plan contracts are on a calendar year, not on a fiscal year.

>> Sean Kaldor: July 1 implementation --

>> Sean Kaldor: It was only the nonpolice and Fire unions as far as the second tier. The lowest cost plan would have had implications but it would have been effective January 1.

>> Sean Kaldor: So it would have been January 1 for all police officer retirees right?

>> Pete Constant: Yes.

>> Sean Kaldor: So we have to be doing some kind of opt-in or annual enrollment for all these retirees before --

>> Pete Constant: The way it was laid out is any changes would have gone through the regular open enrollment period which is I believe October or November.

>> Russell Crosby: It would open in November and we would implement in January.

>> Sean Kaldor: Okay, thank you. All right. Any questions any further discussion? Seeing none 3.7, update on vacant trustee position. anybody? I'm just thrown off by these people standing outside staring at us.

>> Pete Constant: I think I can just tell you that there was a -- they were looking to avoid the vote since there was only one candidate, just get the person appointed but that couldn't happen because of the policies and procedures so it was going out for the vote. It hasn't come to the council yet for the results. Once it does it will go out in the next available council meeting so it can be handled quickly.

>> Sean Kaldor: So we don't know about the timing. Will we have that person for June or August?

>> Donna Busse: Can't remember the deadline, may something was the vote.

>> Sean Kaldor: So we could have them by June, that's all I'm alonging for, thank you. Let's -- let me see.

>> David Bacigalupi: Mr. Chair.

>> Sean Kaldor: Yes.

>> David Bacigalupi: I have a commitment that I'm going to have to terminate the phone contact.

>> Sean Kaldor: Okay. So you're dropping out of the meeting?

>> David Bacigalupi: Yes, I'm dropping out of the meeting.

>> Sean Kaldor: Okay, Baci thank you very much.

>> Richard Santos: What, is surf up?

>> David Bacigalupi: That's cold from my firefighter buddy.

>> Sean Kaldor: Firefighters talk about wearing multiple hats!

>> David Bacigalupi: I tell you Thank you gentlemen.

>> Take care Baci.

>> Sean Kaldor: I want to make sure because we're going to go into closed session we're going to lose a bunch of people. I tend not to want to bounce around but what do we need?

>> Russell Crosby: 6.1 the date is not correct. May 25th is the next meeting and then after that June 13th and it will be on the joint committee with Federated, every second Wednesday after that. And here comes Vince for his report.

>> Sean Kaldor: Okay so --

>> Richard Santos: Where are we at?

>> Sean Kaldor: Here's what we'll do. We'll do item 5 and 51, all of item 6 then closed session and I promise next month do not bounce around the calendar to schedule as much as we have. So item 5.1 this is a notification, of Mario P. Stefanini, police officer, retired April 1st, 1974, passed away March 18th, 2012, with survivorship benefits to that Stefanini, spouse. Ask for a moment of silence in honor of his service. [ Moment of silence ] thank you very much, I appreciate it.

>> Drew Lanza: Started serving during World War II.

>> Sean Kaldor: Item 6, 6.one, investment committee, next meetings will be may twif, 12 and June 252012 report from the chair.

>> Vincent Sunzeri: We actually had another lengthy investment committee meeting but very, very productive investment committee meeting we received from Cortex a draft of the investment policy statement. And went through that with the fine tooth comb. Some good revisions were made. We all agreed upon it. We had input from staff, NEPC and the investment committee. And we'll see that back at our next board meeting. So I'm really pleased with that. It was a fine document, that initially was put in front of us despite the fact that we had to make some revision. So core tell did a really nice job on that. We discussed with Cortex their capital market assumptions which was a little bit dated begin the fact that that's put together early in the year. But they were just pretty much bringing the committee up to speed with their thoughts. So that was nice to get an update on, or at least have the whole committee be on the same playing field with NEPC in terms of how they're looking at the

world. Both from expectations for various asset classes, expectations for returns and specifically where there might be some targeted investment opportunities. Then we went through the work plan and not only did we go through the work plan but we also walked through staff members that would be accountability for working with NEPC on the various asset classes, so we have a clear organizational structure of who's going to be accountable for what. There was a concern of the capacity of staff to be able to move at the pace we're trying to move at the investment committee and NEPC would like to see us move at. A couple of the investment officers that are responsible for some of the asset classes whether it's opportunistic credit or looking at the equity asset classes actually came up and commented on their confidence and their ability to move this forward. I think we'll be on track. What we are going to do however is in June we are holding two meetings for the investment committee to be able to tackle both receiving and reviewing the ALM from NEPC and then getting into the investment structure and start to filter down how we're going to begin investing in the various asset classes. A real challenge is for July, we also had quite a bit on the docket for July and there isn't an investment committee meeting for July. We worked around trying to see if we could fit a date in with everyone's schedule and that was fairly challenging. So at this point I'm not sure we are going to be able to fit something in but we figured we could wait until we complete that last meeting in June which will be the 28th. And see if we have the capacity to squeeze something onto -- on the calendar. And then as far as investment results, they gave us a flash report, a flash report was for the end of February. And they actually didn't have the numbers in the flash report for March but were able to verbally share with us that for our plan, on a quarter to date basis through the end of March it is up 6.7%. On a fiscal year-to-date basis it's up 2%. Kind of note fiscal year to date leaves us another quarter to catch up to our rate of six.7%. Clearly we're trailing that. And the one-year number is up 2.7%. It's kind of nice to have that data which we requested to get a little more frequently from them. The one-year number is 2.7%. Let's see. Then one other piece we just had a handout that was a discussion regarding outsourced asset management analysis that had been put together. We had probably four or five at least different outsource managers. And had an opportunity to seek collectively some of that data pulled together on that report. The investment committee had indicated that we appreciate the information, but it's not our intention at this point to consider outsourcing either all of the plan or a percentage of this plan at this point in time. We think it's proung to gather that data. When we shift back, it may actually be when we get past our June meetings is we'll start doing collective meetings again or joint meetings with the Federated group. And we've staggered our meetings so that they will meet on the front end, we will meet

jointly to cover collectively topics that for example hedge funds would be appropriate for both committees to review, and discuss. And if we want to sit in on presentations on outsourcing or other matters both boards will be there and then the Police and Fire will take the back end of the meeting to cover their topics. Any questions on the investment committee? Look like we're heading in the right direction, smoothly.

>> Sean Kaldor: Thank you for that report. Item 6 B, minutes of the investment committee meeting. Which we will file B file . 6.2, ad hoc governance committee Cortex phase II.

>> Richard Santos: We had it today 2-4.

>> Russell Crosby: Could not on the agenda.

>> Richard Santos: Through the chair, whether we get two people three get together and let's do something, we are going to share it with the board no matter what, those members of the board can hear about it anyway. You can add to it. It's about time to get business done. I've got a lot of committee meetings and I cancel to make these things and people can't do it. I got the calendar here, let's pick a date and get this things moving. Spending a lot of time on --

>> Russell Crosby: What is the date --

>> (inaudible).

>> Richard Santos: Is that what everybody's saying now?

>> Russell Crosby: Yes.

>> Richard Santos: May 18th at what time?

>> Can everybody make it Friday may 18th?

>> Richard Santos: What the?

>> One oo'clock to 2:00.

>> Richard Santos: That I can make.

>> Sean Kaldor: Santos good, rounds? (inaudible).

>> Sean Kaldor: We'll get this going, yeah yeah. Drew?

>> Drew Lanza: Yep I can do it.

>> Sean Kaldor: And me.

>> Richard Santos: Meet in the retirement building correct?

>> Sean Kaldor: Yes.

>> Drew Lanza: Can I ask you a blunt question, have people been slow when you get your e-mails out? Chair of the committee I would suggest that if somebody can't get back within say 24 or 48 hours let's bounce them off the committee.

>> Sean Kaldor: So what we'll do appreciate your direction.

>> Drew Lanza: If you are on a private board and you took more than 24 hours to return a request like that you'd get your ass chewed.

>> Sean Kaldor: We have a series set up.

>> Richard Santos: Thank you.

>> Sean Kaldor: And you said 1:00?

>> Richard Santos: Yes, you having lunch there Sean?

>> Sean Kaldor: Okay. Item 6.3, ad hoc committee short term solutions, so we have a report. And the report is this. We met twice now with the City Manager's office specifically deputy City Manager Alex Gurza and staff. On April 2nd, they relaid that the assistant director position is in the budget starting in July. There is no specific Department of Retirement services job description. So they are looking to work with us in figuring out exactly what that job description should be. This is someone who reports to the director. So again I don't want to get too detailed about getting into the middle of these other ranks but in terms of succession planning this is identified to us as an opportunity of someone else available if someone falls out of the ranks. It's important succession planning. This is something the employment committee can help on is coming up with that vision. In terms of recruiting they have already relaid that they are ready and willing to use recruiters, we have brought that proposal forward. Russell has made that propose for us, for both the investment officer position and that assistant director position. On April 2nd they said the salary survey was almost done. I heard today from Alex that it should be done today and we have have it very, very shortly. We talked a little bit about different things going on in the department and again about recruiters salary survey succession planning and then staff feedback was the last issue that we've been very clear about how we're working with Alex under the current model, assuming no change, what do we do for 60, 90 days, there's never any changes, how is this board to work with the City Manager's office, so the last action item, last discussion was that, it's very possible for us to get feedback on staff to Russell for the purpose of him doing evaluations, but we should have a process, instead of just one or two people, we should agree with it as a board. And it is possible for us to give feedback to Russell, but they're going

to talk to the city attorney's office to make sure how that's done doesn't violate rules and understandings with the city. Questions, comments? All right. Having addressed that, let's go to closed session.

>> Russell Crosby: Consent calendar so we can -- thank you.

>> Sean Kaldor: Okay. I'll get this figured out yet.

>> Richard Santos: Motion to approve the consent calendar.

>> Sean Kaldor: We have a motion to approve the consent calendar. I'm going to request that item 7.5 A the list of committees be pulled off just to make sure we run through that one more time. Anything else removed from the consent calendar? Seeing a motion and second, all those in favor, Kaldor aye, Santos, Bacigalupi who is absent, bill, Krytzer, Lanza rounds Sunzeri, motion passes unanimously. Among the members still present. One second to get caught up, 7.5A. So the corrections to this is that the ad hoc committee Department of Retirement services short term solutions goes away. Also that Sean Bill is no longer on the ad hoc governance committee. And that we have established an audit committee with Sean Bill, David Bacigalupi, Sean Kaldor and we have established afternoon personnel committee with Bettina Rounds and.

>> Vincent Sunzeri: You have a full plate here. I think almost every committee you are chairing or are on. I would love to be on the governance committee, Cortex phase 2 how that evolves. I don't know if it's possible to shift to being an alternate to actually being on the committee.

>> Sean Kaldor: For that one we are kicking off and carrying on with the work going forward, I'd like to stay involved. If you want to do the audit committee you're welcome to it.

>> Drew Lanza: Nice try, Sean!

>> Vincent Sunzeri: No thank you sir.

>> Sean Bill: The governance committee doesn't have that long.

>> Sean Kaldor: So that's an ad hoc one that's a six month one. I'm hoping that has a conclusion. The personnel ad hoc may likely be a long term. The audit could also be a long term one. But I think we'll get a few months into this and be able to sit down and look at what we're doing and reevaluate on each of the committees going forward and involvement. Any others?

>> Pete Constant: Sean I just have a quick question for Harvey. When I look at the ad hoc governance committee how do you prevent a serial meeting when you have more than a majority of the board if you have four members talking one month and one's absent the next month and a fifth member joins in the conversation then the next month someone else is gone and a sixth member joins in on the conversation? Wouldn't it make more sense to not have more than four including alternates? As a preventative measure?

>> Harvey Leiderman: Well, I'd like to say that it's an ad hoc committee and so it's not governed by the Brown Act.

>> Pete Constant: But I think the City's sunshine ordinance recognizes, just may be something to check out.

>> Harvey Leiderman: I'll have to check out the sunshine ordinance.

>> Sean Kaldor: We do have an investment committee which, the investment committee is no longer ad hoc, right? That's a standing committee. So if you can follow up with that. With us on that.

>> Harvey Leiderman: Yes, I'd be glad to.

>> Sean Kaldor: I see the point absolutely.

>> Vincent Sunzeri: Who do you have chair the personnel committee?

>> Sean Kaldor: Who wants to chair it?

>> Drew.

>> She said quickly.

>> Drew Lanza: Yes, I'd be happy to.

>> Damon Krytzer: Didn't sound like that was a question.

>> Drew Lanza: Quicker on the trigger than I am.

>> Sean Kaldor: And on that same sense, the audit committee, not so funny now?

>> Bettina Rounds: I have a question I may be going backwards but it is the travel and all, because I just wanted to ask Russell, you've got an awful lot of your staff going out sort of at the same time, in June and July. And does that -- is that a problem with what's coming up on the June ballot and any of this stuff? I just needed to raise that as an issue and also --

>> Russell Crosby: Most of what you're doing is the investment staff doing due diligence and it's to get the hedge funds across the line. More than anything that's what's going on.

>> Bettina Rounds: And then the others?

>> Russell Crosby: Like Veronica going to the Cal PERS investment round table-d.

>> Bettina Rounds: It's the investment going overseas.

>> Russell Crosby: The board wanted them involved in the due diligence. Board of Administrators I raised the question given the timing.

>> Russell Crosby: Good question.

>> Sean Kaldor: Is this going to be op going every month series --

>> Russell Crosby: We've tried lay out what's going to be involved to get the hedge funds across the line. That's why you've got may, June, July. So on.

>> Sean Kaldor: Looking forward, okay. So with that being done, I'll take a motion on item 5A.

>> Richard Santos: Move.

>> Sean Kaldor: Motion to accept, is there a second? Motion and second. Any discussion seeing none all those in favor Kaldor aye, Santos, Bacigalupi, not here, bill, Krytzer, Lanza, rounds cp Sunzeri. Motion passes unanimously. No one's objected. Item 8, you have sftd attached 8.1 education programs and courses 8.2 conferences and seminars, 8.3 research papers and articles and 8.4, the Cal APRS training. We'll do the last two big items here from the board are there any proposed agenda items?

>> Damon Krytzer: What's did we just give up on electronic board packets? Wouldn't that solve the e-mail thing? That just fell off the agenda?

>> Donna Busse: We're moving on the contracting. It got moved from the city attorney's office to Harvey's office and they're moving on it. They've reviewed it and sent back questions and we're meeting with them to answer questions. It was kind of in a limbo during the transition.

>> Russell Crosby: And the issue and the concern is the health information. How do you get it onto your machine how do we pull it off and I think that's what the Reed Smith's real issue what they're really focused on is around the health related information.

>> Damon Krytzer: Is that worked out or is there not a great solution?

>> Russell Crosby: It is more or less worked out but they need to focus on it and make sure they're comfortable with what the workout is.

>> Damon Krytzer: Thank you.

>> Sean Kaldor: Okay any other proposed items?

>> Richard Santos: Yes Mr. Chair? I know I discussed Dr. Das coming back and y'all said wait until after the election. So let's head that way before I can ask questions, asked about the vacant position y'all talked about that. Who takes actual men's here? Does Russell take actual minutes when we take action steps do you write them down or does someone on the staff do it?

>> Russell Crosby: No I'm catching that. Rth the chair should reread, the action items. I work in an agency that you have them all day but there might be five action items and it refreshes my memory before we leave what we cover. We're taking action on this this this, there's only five or six things we're taking action on. I'd like them to be read before we adjourn. Whatever your pleasure is.

>> Sean Kaldor: You can excise the things we all need to remember walking out of here. I also have the action item to discuss the SRBR formula which we'll wait and see what happens with the ballot measure and decided we'd put that on the agenda Dr. Das and then a discussion of another audit of city transmittals that we need to pick up. Public comments thank you Jim you're reliable I appreciate and -- your membership needs to know how

much time it takes for you to come here and prepare for these meetings and listen attentively and I appreciate at a. With that, we will adjourn to closed session. Which I will now read in. 3.8, closed session conference with legal counsel litigation pursuant to government code section 45956.9 (a). Paul Mulholand, James Unland and Mary Follenweider, plaintiffs versus Russell Crosby, Michael Moehle, City of San José, and does 1 through 10 defendants, the board of directors of the San José Police and Fire retirement board and the board of directors of the City of San José Federated city employees retirement system, necessary parties in interest. We'll adjourn to the other room.