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>> Mayor Reed: Good morning we have a quorum, I'd like to get started with the labor update part of our agenda. We will then adjourn into closed session we'll be back in here at 1:30 for the rest of the open session agenda so to start the morning I don't know who's going to take the update. Gina.

>> Gina Donnelly: Good morning, mayor and members of the city council Gina Donnelly deputy director Employee Relations. And as we do every week a reminder that all the documents we will be discussing this morning are available on the employee relations Website and can be accessed online. Our first update today has to do with contract negotiations. A memorandum of agreement negotiations, as you know, there are four bargaining units with expired contracts. MEF and CEO both have expired contracts and have elected to continue negotiations with the city in an effort to achieve a successor contract. During our last negotiation meeting on September 21st, MEF and CEO gave the city several changes to their proposed contract. It's important to note that none of these proposals are related to retirement reform. We are holding separate negotiations on retirement issues, and the proposed ballot measure with both MEF and CEO. And all of those proposals are in front of you this morning. Next moving on to sick leave payout negotiations. We have reached out to all of the bargaining units and requested to exercise the reopeners that we have with all of the closed contracts. ALP was the first to respond. We were able to meet with them on September provide the City's initial proposal and our next meeting is on the 28th. And we have shown you this chart before. Showing all the proposals we have received related to retirement reform to date. There have been no changes since the last time you saw this. We have not received any additional proposals regarding retirement reform and we have not received any proposals to date regarding the previous or revised draft ballot measure. And that concludes our presentation this morning.

>> Mayor Reed: All right, we're going to adjourn into closed session for the rest of the closed session agenda. We'll be back here at 1:30.

>> Mayor Reed: (gavel strike) Good afternoon, I'd like to call the San José city council meeting to order. We're going to start our meeting with the invocation. Vice Mayor Nguyen will introduce the invocators.

>> Councilmember Nguyen: I think it's Councilmember Herrera.

>> Councilmember Herrera: Thank you, Vice Mayor.

>> Mayor Reed: I'm sorry.

>> Councilmember Herrera: Councilmember Herrera. Thank you Mayor Reed and Vice Mayor. We have today the Ocala middle school with us, they've been hear a limb while they got to have their lunch and tour around the City Hall. We are happy to have them in their beautiful purple shirts. This ensemble you see is part of a 90 piece band that regularly performance at festivals and community events throughout the school year. They perform at great America at a music in the park seshz at the end of each school year and I'm very proud to say that this Saturday they will be performing at day in the park at Lake Cunningham, this Saturday. Noly Magasino has served as the school band leader in the past eight years. In fact in April 2010 the band earned a rating of superior at a California music educators I want to thank Noly Magdasino and each member of the Ocala band, the pride they have in their school, I'm so pleased they are able to perform for us today. Ocala's band motto is where music is made and excellence is achieved. Lets go Ocala cougars, this is the Ocala band. ∂∂ ∂∂ ∂∂ [applause]

>> Mayor Reed: Thank you. Before you leave the stage we'll do the pledge of allegiance. That way everybody can join us. So please stand for the pledge. [ pledge of allegiance ]

>> Mayor Reed: Thank you, Ocala middle school, we appreciate you joining us today. First item of business would be the orders of the day. I have a couple of changes to the printed agenda. We need to take items 3.5 and 3.sen together. They're both dealing with the retirement boards and the they just got separated. 11B there's a recommendation to drop this item. I'd like to ask some questions about processing. So I don't want to drop it until at least this evening when we have a chance to ask some questions. Any other changes to the printed

agenda? Motion is to approve the orders of the day as amended. All in favor, opposed, none opposed, that's approved. Closed session report City Attorney.

>> City Attorney Doyle: Mayor the council did meet in closed session this morning. There's no report.

>> Mayor Reed: We'll now take up the ceremonial items. I'd like to start by inviting Councilmember Constant the members of the housing association and the housing industry foundation to join me at the podium . Today were commending the housing industry foundation for their efforts to help individuals and families remain or turn to stable housing and assist with special housing programs and renovations in Santa Clara and San Mateo counties. Councilmember Constant has some additional details.

>> Councilmember Constant: Thank you, mayor. Today with us to receive the commendation are Joshua Howard from the California apartment association tricounty and the housing industry foundation board member. Debbie Wade the executive director of the housing industry foundation. Meadow ware from the housing and the housing industry foundation president-elect and Kristin -- Kirsten carr from California apartment association tricounty. The housing industry foundation is a nonprofit charity founded in June of 1989. The foundation is an industry based organization where all of its support come from local companies and individuals. Apartment owners, other related businesses. The mission of the foundation is to help people either remain in stable housing or help with special housing projects in San Mateo and Santa Clara Counties. Whether someone falls ill, loses their job or a member of their family passes away, the foundation bheefs that people shouldn't lose their homes 10,000 households overcome a house housing crisis through the emergency housing grants. And just last year alone the housing industry foundation made 298 grants totaling \$256,000. Which helped keep 420 adults and nearly 450 children away from homelessness. The foundation also helps shelters and nonprofit housing providers in Santa Clara and San Mateo counties in kind donations in fact La year they completed four renovation projects valued at about 93 ,000 dollars by investing approximately 34,000 in cash and about 60,000 of in kind donations. We're lucky as a community both in our county and San Mateo county, especially these financial times we find ourselves in, that has a housing industry foundation for all their efforts and

their service to our community. Over the last two decades since their founding in 1989. Mayor, if you could present the commendation. [applause]

>> Hair, Councilmember Constant and members of the council. On behalf of the the HIS board of directors, let me thank you for the commendation. As Councilmember Constant said in this tough economy and with high unemployment and families working hard for shelter for their families, HIF is happy to help rental housing has commitment to the community that runs deep for the past 25 years and beyond. Councilmember Constant spoke so well about the impact the organization has had in both San Mateo and Santa Clara County, but I want to take just a moment and talk about the impact HIF has had here in San José. In the past five years HIF has helped almost 700 local families. 700 households who were having a tough time paying their rent, making their mortgage payment or being able to qualify for a new home. With over 600,000 dollars of rental assistance. Also in the past year, we've completed rehabilitation projects for San José, those three rehabilitation projects in San José cost over \$50,000 to complete but HIF was able to do it for \$10,000 in cash and leveraging in-kind contributions from our boards and our contributors of over \$35,000. We look forward to serving this community for another 23 years, and we thank you for your continued support and recognition. Thank you.

>> Mayor Reed: Gather for a photo real quick. Good enough, thank you.

>> Mayor Reed: I'd like to invite Councilmember Campos and the H.A.C.E. and H.A.C.E. board members to join me add the podium. Today we are commending H.A.C.E, in recognition and appreciation of their 30 years of service and commitment to the city of San José.

>> Councilmember Campos: Thank you, mayor. Good afternoon. Today I want to acknowledge an organization that has been around since 1973 here in the City of San José. The Hispanic Association of City Employees, was formed in response to affirmative action related issues directly impacting Latino employees in the City of San José. H.A.C.E. is an organization that has evolved into engaging with the City's Latino workforce, striving for recruitment of qualified Hispanic Latino employees in all facets of city employees. What is also impressive of H.A.C.E. is the H.A.C.E. scholarship program. They have distributed over \$30,000 four year or advanced college

degree. Along with promoting higher education, H.A.C.E. also promotes Latino heritage and culture through assisting in events such as the most recent Mexican Independence Day flag raising ceremony and in various Cinco de Mayo celebrations. Lastly, H.A.C.E. acts as a service organization to the Latino community by supporting scholarships in partnership with Los Bomberos which permits firefighters from Latin American countries to attend firefighting training here in the City of San José. With that, Mayor Reed please present a commendation to Teresa Ramos president of the Hispanic Association of City Employees. [applause]

>> Thank you, honorable mayor, Councilmember Campos And city council. As current president of H.A.C.E, I am proud to accept this recognition. And I'm very thankful not only to the organization H.A.C.E, but the city, city council, and the administration, who have been very supportive of this organization in the 38 years of existence. I would also like to take this opportunity to acknowledge the past and current H.A.C.E. board. Many of the members who have either retired and moved on, some who have come, and are still with us, and a new joining members. Especially gratitude goes out to councilmember Xavier Campos for taking on the leadership and our support of H.A.C.E. and we are also welcoming other councilmembers to join our group. Thank you very much. [applause]

>> Mayor Reed: Next item is the consent calendar. I have some requests from the milk to speak on the consent calendar. Councilmember Herrera.

>> Councilmember Herrera: I have a travel report 2.5.

>> Mayor Reed: Okay. Councilmember Rocha.

>> Councilmember Rocha: I'd like to pull 2.2 and 2.14 on 2.2 if I could, real simply just ask the City Clerk to note my no vote on the final readout of those ordinances. Otherwise I don't need the council to fully discuss them.

>> Mayor Reed: Okay with the City Clerk, all right, Councilmember Constant.

>> Councilmember Constant: I'll also be making a report under 2.5.

>> Mayor Reed: I've got one more. I have a motion to approve but I have one more item that I want to pull. As soon as I figure out the number that is 2.11 McDonald hall. All right we have a motion to approve the balance. So we have pulled 2.5, 2.11 and 2.14. If anybody wants to speak on those we'll take those up in a minute. Other items on the consent calendar, Ross Signorino. And David Wall. Want to speak on other items on the consent calendar.

>> Ross Signorino: Thank you, mayor, members of the council. I wanted to speak on this subject of medical marijuana. And not to be pompous here and not to be insulting to you in any way. But I want to know just I haven't heard any real numbers outside of how many legal marijuana dispensary medical marijuana dispensary open in the city as opposed to what we have right now. And I am just wondering do you know how many in this patients and coming in from the outside are going to want medical marijuana from these dispensaries and then you're talking about something that's a lot of people, we don't know yet, I wonder if you know, I haven't heard any numbers. I was thinking too, you want to cultivate the marijuana right on location? I just wonder if you have any idea how large of a crop this has to be to maintain this kind of a program that you're thinking that would be safe and so on. And then of course there's always the case of law enforcement, how would they be involved in this? This is something that has to be considered. I don't like for our police department to be handing out there and say well this is something you got to take care of. No, it has to be thought out now, here before, right at this council. That's why you're here. And I think too at the same time, start looking at numbers! How many people are going to go to these dispensaries? Like to hear some numbers on all this. Thank you.

>> Mayor Reed: David Wall.

>> David Wall: Good afternoon, Your Honors. This has to do with commendation to our City Clerk for noting an error out on the Rules Committee report of September 7th which I thank Councilmember Oliverio for his trying to protect Public Safety around schools. And lo and behold today San José Mercury News letters to the editor, a speed limit reduction is common sense letter by Mr. Robert allard, also applauds Councilmember Oliverio. And of

late, Councilmember Constant and member Oliverio have child in for protecting public safety with reference to seizing cars at sobriety check points for people who do not have drivers licenses. Good job gentlemen thank you very much.

>> Mayor Reed: Michael Hoveland.

>> Good afternoon, ladies and gentlemen. Speaking about the medical marijuana. I heard some very disparaging comments from a councilmember this past week who said we can come down here and we can bitch all we want about it but why waste our time? Get some popcorn, enjoy the show because the council's made up its mind. I'm an American along with everyone here and you're telling us our voice doesn't matter? The sad part is that from attending many of these council meetings I'm beginning to believe this. Mr. Mayor, more importantly cared about leaving this city in a fiscally sound state when you leave office. So why are you so against this industry that has raised literally millions for the city in less than a year? And no disrespect to the city staff and their hard work but they're clueless on this industry. This was shown last meeting when they were asked how many patients were in San José and their response was a little over a thousand or followed by we have no idea. I hope you listen to this. We at metics collect Ivers and 100 in San José. There's five plus doctors in San José been averaging over 200 patients a day for seven days a week for the last year. Add up the numbers and I think you begin to realize that this number of patients in San José is about the same amount of votes that got the mayor elected. Thank you.

>> Mayor Reed: That concludes the testimony on the consent calendar. We have a motion to approve the balance of the calendar. Other than those that have been pulled. All in favor? Opposed? None opposed, noting that Councilmember Rocha's no vote on 2B as he requested. That concludes most of the consent calendar. We're going to come back and take up 2.5, city council travel reports. Councilmember Herrera. Constant and I have a report as well.

>> Councilmember Herrera: Thank you, mayor. I wanted to report I attended the league of cities annual conference last week in San Francisco and its annual business meeting on Friday, September 23rd. As the city's

voting delegate I attended the annual business meeting where we voted to support the following resolutions and they were passed. A resolution supporting alternative methods of public meeting requirements, as additional ways to inform the public about upcoming meetings in the past we've had to use only newspapers so this is going to expand the ability for us to use other means and possibly lower cost. Raising public awareness about the imminent health and safety concerns for bullied children. This resolution will encourage cities to promote antibullying campaigning to allow the public to read all pending legislation with enough time to understand it and communicate their concerns to their legislators. Passed a resolution calling on the legislature to fully fund and social funding needs. So the idea is here if they are going to mandate us to state government will mandate us to do more on the local side in terms of probation and utilizing our jails that we have the money to be able to do that. There was one other resolution that failed and that was the resolution calling for commending the city of Bell for improving -- improving their -- for doing better, and many people felt that that was what they should have been doing all along and it failed. While we're happy they're improving they need a longer period of time before they get any acknowledgment from the league. Other thing I want to report on is very happy to say that last year I led on starting a women's caucus as part of the league of cities. The women's cause of action becomes part of several other diversity caucus at the league the LGBT caucus and who am I leaving out? And also the women's caucus. So we're very excited as the newest caucus. The idea of this caucus is first of all it is a bipartisan or nonpartisan kind of opportunity for women throughout the state, elected officials to join. We are going to support policy positions, take positions on those policies that we feel have women's interests, and issues that should be promoted. We're going to be present at legislative sessions in Sacramento, and we will be participating in those lobbying trips and making sure that issues that are particularly of importance to women are communicated to the league through that process. We're also going to support scholarships. So that young women who are interested in leadership and elected office will have those opportunities to be mentored. So we're very excited and I want to report that we had some city folks come up for the reception Thursday evening, Betsy Shotwell was there, Deb Figone Don Rocha stopped by councilmember Don Rocha and very happy to have them all present. We have 50 members strong. We expect to do a lot of great things and that concludes my report. And I -- do I need to -- so I'll make a motion to -- do you do one motion for the whole thing?

>> Mayor Reed: We have a couple of more comments. Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. I also wanted to report my attendance at that time league of California cities, public safety committee. I participated in the meeting and our committee made recommendations to the full board on the actions Councilmember Herrera just outlined so I won't bore you with the details of those.

>> Mayor Reed: Have a brief report on my trip last week to Washington, D.C. I was part city business and part Silicon Valley leadership group items although there are a great deal of overlap in our agendas. I had a couple of meetings of note. I met with Jonathan silver who is the administrator of the Department of Energy loan guarantee program. This is the third or fourth time I've met with Mr. Silver. And due to the controversy over the sloind loan guaranty which went poorly, there is a great deal of interest in this program, and over the three or four thiems I've met with Mr. Silver and his staff has always been we will not talk about any individual company or project. We talked about process, and that was the case this time as well. Because we have several San José companies that are in the -- in line for Department of Energy loan guarantees of hundreds of millions of dollars of guarantees. And probably \$1 billion worth of private sector financing going into several companies in San José so it's of real interest for us to get the money into San José, creating jobs and being spent in San José. But I think there's a great risk that the DOE is not going to be able to process the paperwork in time. And there is no funding for the next fiscal year. Because there is no budget for next fiscal year. Another problem. But nevertheless, we do have companies that have been in line for a long time and we're hopeful that that money will get released. We also met with the minority staff director of the transportation and infrastructure committee to discuss legislation regarding surface transportation bill in particular, how the metropolitan planning organizations, like MTC, are governed. We had meetings with the deputy chief of staff in the office of undersecretary of commerce, regarding U.S. patent and trademark office which we would like to have one in San José along with many, many other cities in the country. Then we met with president's council of economic advisors to discuss the president's jobs bill and one of the key issues of the leadership group is to try to get the president to include something along repatriation of foreign earnings because there's a lot of profits that have been mate overseas. That could be brought back into this country under the right circumstances giving the economy a boost and that would be huge for Silicon Valley because we have Silicon Valley companies that have tens of billions of dollars overseas that they can't bring back without a steep tax. It would be nice to have them spend some of that money here in the valley. With that I think

that completes the trip reports. I didn't have any request from anybody else. Item 2.5, don't know if we need a motion on this. Nothing to approve. Next item on the consent calendar which we pulled was 2.11 item regarding McDonald hall. I asked to have that pulled I just wanted to make a couple of comments on it. Most people know that Cesar Chavez is very well connected to the City of San José but all the history is not known and the importance of McDonald hall in the history of Cesar Chavez is not well-known we're in the process of trying to correct that as part of an effort of national Cesar Chavez recognition and the McDonald hall special rks is part of that that's why I have asked this to get onto the agenda. The Santa Clara County has retained a consult to help, the Department of Of interior has retained a consultant as well. I hope we will have a free ride but the heavy lifting will be done by others as they put together consultant reports. I have one request to speak on this Sal Alvarez.

>> Thank you, mayor my name is deacon Sal Alvarez. Having same vein as 40 acres burrys and then 26 day fast in Phoenix, at Santa Rita national monument. AR 16 denying and senator Alquist co-authored it on the senate side and it passed 38 to nothing. Strong bipartisan support, the California bishops conference has endorsed it, this is a very serious initiative that the City of San José in pape with Santa Clara County and our legislative delegation has taken to actually recognize where the farm worker movement started here in San José. And at Guadalupe church which is now McDonald hall. I also want to acknowledge Councilmember Liccardo's support of the trail that was acknowledged by the entire council, and this is -- this is the next step that we're taking, which is as the mayor said is long overdue. Thank you.

>> Mayor Reed: Thank you. That concludes the public testimony. Need a motion on this.

>> Move approval.

>> Mayor Reed: The motion is to approve. All in favor, opposed, none opposed, that's approved. Last item from the consent calendar, is 2.14. Councilmember Rocha you wanted to pull that.

>> Councilmember Rocha: Yes, mayor I'd like to move approval of the memorandum as presented by myself Councilmember Campos and Oliverio.

>> Mayor Reed: I'm not going to revolving door ordinance is not something we should be doing now. We've only had three requests, we can do them on a case-by-case basis after we've done a few and then we can decide whether or not we will have a blanket waiver. I'm not going to support the motion. I think the recommendation out of the Rules Committee deals adequately with the experiences of the one employee that asked us to waive this way and I don't think we need to make a rule governing the entire city. Vice Mayor Nguyen.

>> Councilmember Nguyen: The venue to do that would be to go through the rules committee .

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. I agree and I'd like to make a substitute motion to move the recommendation of the Rules Committee meeting from the 23rd of August and the 21st of September.

>> Mayor Reed: We have a substitute motion to move the Rules Committee recommendation on that. Councilmember Rocha.

>> Councilmember Rocha: Yes, I'm fine going ahead and voting, I'll speak after.

>> Mayor Reed: Okay, Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I supported Councilmember Rocha in signing onto the motion again the distinction, clear distinction with the Rules Committee recommendation which I think in most cases is fine, the involuntary versus voluntary separation, distinction that can be made without having to do that on a case-by-case basis, treats employees which painfully had to make over the last couple of years of due layoffs that we never had to do before. I think we are in a unique situation than we have been in the past and I think that -- and I won't support the current motion that's on the table. However, if it fails, then certainly we'll support the memo I sent on to Councilmember Rocha.

>> Mayor Reed: City Attorney has a question.

>> City Attorney Doyle: I just want to -- the question I have and I haven't had a lot of chance to really digest this but the different hypotheticals come up. When you talk about involuntary termination, if I'm a councilmember and I've termed out, served my eight years, so I leave I don't leave voluntarily. My staff doesn't leave voluntarily. Yet a broad range of exemption for involuntary termination would seem to cover those folks as well. I just want to make sure that when we talk about this we talk about what's the real intent and maybe if this motion comes back we can have that conversation.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: Is there a specific classification for those instances that you just laid out that would be a clean and easy term that you can insert?

>> City Attorney Doyle: I'm looking for the policy regulation, Councilmember Rocha the way the revolving door works it covers public officials and appointees and designated employees people who filed a form 700, a fairly limited universe, yes we could make those exceptions. I want to make sure that is covered as far as the intention of where we go with this, I don't want to create a loophole, that was my point.

>> Councilmember Rocha: I'm assuming we can vote on the substitute if that fails we can come back and talk to you about clarifying. So again mayor I'm comfortable moving forward with the vote and then I'll speak after.

>> Mayor Reed: Councilmember Chu. Councilmember Oliverio.

>> Councilmember Oliverio: You want to speak Councilmember Chu?

>> Councilmember Chu: No.

>> Councilmember Oliverio: Thank you, mayor. Councilmember Chu you okay?

>> Councilmember Chu: Fine.

>> Mayor Reed: We apparently have a ghost voting problem here, lights keep coming on when Councilmember Chu is just watching it and little interesting thing. So wave when you want to speak Councilmember Chu, we'll go back to the old fashioned way. And others are going off. So if I'm not recognizing you, I've got a good excuse. I have a good excuse other than I'm not paying attention. I think Councilmember Oliverio wanted to speak.

>> Councilmember Oliverio: Yes mayor the reason I signed on to the memo is because I believe if you are in the unfortunate incident of being laid off by the city, I should not hold that against you in seeking employment. Noncompete agreements, if you are so laid off it's really not enforceable. If you have chosen to leave this certainly would not be covered and should we have the opportunity to vote on the original motion, I would want to make sure it's specific to people laid off through no fault of their own or dealing with terms of political office. But what I'm afraid of doing, if we do them continuously one at a time, I'm a frayed there's going to be a for lack of better word someone that a collective group may not care for and therefore that person is isolated when in the end they're in the same groupings of layoffs, that's my concern trying to be fair to all versus making one-off.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: I'm very much sympathetic to the memorandum that was drafted by the three councilmembers. And I recall raising this about a year ago or more. And I recall having conversations internally here about a various parade of horrors that would result. What I think might be helpful is look this is a more lengthy conversation we want to make about brown Act we should be drafting a policy when only thing before us is an issue with regard to a single employee. I do agree though that this is very ripe for consideration and I would be very open to the direction that is suggested here. But I'm not crazy about trying to fashion this on the dais

because I'm guessing there are lots of exceptions we need to think about and how we would craft this accordingly. I think there's some middle ground here and I just ask if the maker of the motion would be open allowing the existing motion to go forward with a setting of a hearing before the appropriate committee, I'm assuming it would go before Rules where various presentations on what this would look like. I don't think we have had the time to look at these various options and figure what exactly would flow. So that's a request to the maker of the motion.

>> Mayor Reed: Which I think is Councilmember Constant. Especially a request to move the motion and refer this to rules so that we can work on trying to figure out what the details might be of a policy.

>> Councilmember Rocha: In the interim how would an individual employee who was looking to move forward on employment be dealt with? Thank you very much for the direction but in some cases the immediate employment might be very important to them.

>> Councilmember Liccardo: If I could weigh in. What we have now is the existing policy which is an individual employee applies I believe to the clerk. Then goes to the rules committee.

>> Mayor Reed: Actually, it's simpler than that. You just send a letter to the rules committee. Goes on the rules committee agenda we'll deal with it and it will come to a council meeting. A couple of weeks, very simple process.

>> Councilmember Rocha: Excuse me I meant the employee that is in front of us not a future employee.

>> Councilmember Liccardo: The maker of the motion to approve with regard to Ms. Ramirez, and let the entire poll is, before we take a look at the maker of that motion.

>> Mayor Reed: That's the motion. Councilmember Herrera.

>> Councilmember Herrera: Yeah, I like Councilmember Liccardo's additions. I do -- I share Councilmember Oliverio's thoughts about this. I think when folks are laid off, through no fault of their own, they haven't been terminated, they should have a -- they should be treated the same. And I'm afraid if we do have individuals, I think there's a chance that even though they might be the same in terms of their situation of being laid off they might have separate consideration. I do think as a group they should be treated the same so I support the -- actually the first motion but I like the idea that there might be some exceptions. And I did have a request with a City Attorney. Do you see any other exceptions at this point? Are you anticipating there might be things we haven't thought about to put into a policy that we formalize?

>> City Attorney Doyle: This policy has been dwop developed, preexists me, was discussed by the blue ribbon task forces where it was revisited clearly it is a policy issue. I think there's ways to handle if it's like late off termination is or separation is and so you know, I think it's a good idea if it goes to Rules that we do vet it and then bring it back to council.

>> Councilmember Herrera: So I'm going to support -- I think I'm getting what I think I'm supporting by this, I do agree with comr's memo and hoping that the end result out of that will be that.

>> Mayor Reed: Comsh.

>> If I would that return to council for approval or would the rules be the final resting place so to spikes?

>> A result would have to come back to council for approval.

>> If the council decides to come backs for no change?

>> City Attorney Doyle: We'll take it up on the dais then.

>> Councilmember Rocha: Is that part of your intent that it be returned --

>> Councilmember Constant: That would be my motion.

>> Mayor Reed: Given the state of the speaker system, does anybody want to speak before public testimony?

>> City Attorney Doyle: I'd like to speak after public testimony.

>> Mayor Reed: David Wall.

>> David Wall: Council is to ensure equal opportunity and equal treatment under the law. That's number one and that's one reason why this whole motion business should be killed outright. Is second mistake and this is a material mistake is that the city has failed or Ms. Ramirez has failed materially to prove and I will quote from the August 19th, 2011 letter from our honorable City Clerk, at this time, it is not clear who Ms. RAM rest' clientsdz will be, what specific services she will provide to them and whether such work is in the City's interests, so often so forth. It doesn't say nobody on this dais has not done their job, because there should be demonstrable treatment under the law in this respect. with other commentaries about involuntary separation of service from councilmembers, staff, what have you, these people all knew what they were getting into, along with the people that have these employment contracts. It is behoove of this council to start doing your legislative jobs in leaven employees and people have the right to work or what have you. This is in congruence with the level of education that sits before me, it's offensive and needs to be changed. I hope this issue is killed an until this changes thank you.

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

>> Councilmember Kalra: What's the timing? I understand, going to go back to Rules so that Rules can craft an appropriate exception given the circumstances that we've been under and we expect probably to see more of these coming forward to take into account the concerns that I think all of us or many of us share. And then when can we expect it oto come back to us given the protocol at rules which I'm not familiar with.

>> Mayor Reed: This will be taken care of a week from tomorrow at Rules Committee and then we will figure there's work that's already been done. And I would anticipate a couple of weeks before it's back to the city council with a recommendation for a change or a recommendation for no change or whatever it is that Rules Committee has done. I wouldn't anticipate that we have to hold a bunch of hearings or anything like that. Just try to sort it out so we can make a reasoned decision to consider reasoned alternatives. Anybody else? Councilmember Liccardo.

>> Councilmember Liccardo: I'd ask for direction for Rules to consider circumstances under which employees are hired under a grant for a fixed period of time. We recognize the General Fund problems that we are all experiencing, undoubtedly are going to be relying on grant hiring, and it would be helpful to figure out what exactly we do in that particular circumstance.

>> Councilmember Constant: I think Rules should consider let the mayor know so we could have the broadest discussion possible.

>> Mayor Reed: All right. I think we're done on this. On the motion which is a substitute motion by Councilmember Constant as modified per our discussion, all in favor? Opposed? None opposed, okay, that's going to Rules Committee. But the motion did include the approval of the waiver for Ms. Ramirez. I think that concludes the consent calendar. Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I just want to put on the record earlier it was my fault when we voted on scebt. I informed Dennis, he wanted me to make sure I put on the record, register a no vote on 2.2B establishment of the regulations on the medical marijuana collectives, my objections are on the record many times before.

>> Mayor Reed: All right, the City Clerk has that. 3.1, a report of the City Manager.

>> City Manager Figone: An award by our housing department while we noted this in my last week's weekly report I did want to again highlight it here because of the significance of being the first recipient. Last Wednesday, San José was announced as the first recipient of the Robert C. Larson workforce housing public policy award and Leslye Corsiglia was in Washington, D.C, to receive the award on behalf of the city. This award recognizes an exemplary state or local government for policies that provide ongoing and sustainable support for workforce housing. In recognizing the City's housing department the urban land institute cited a multitude of programs initiated by the city including partnerships with private and nonprofit partners to create new construction of affordable housing as well as our single and multifamily dwelling rehab programs and our home buyers assistance program. The award made special note of the high cost of housing in the Silicon Valley and the fact that the City's policies have facilitated the creation of more than 20,000 housing units with more than half of those affordable to workforce households. As you know the San José city council has a long history of advancing strong policies, supporting safe and affordable housing in our community, and that's why I wanted to call this to your attention since it is also recognition of the progressive housing policies passed by this and previous councils over the years and that concludes my report.

>> Mayor Reed: Next item is 3.4, agreement with Magellan health services for the employee assistance program, critical incident stress management and substance abuse treatment. We have a motion to approve. All in favor? Opposed, none opposed, that's approved. Next item is 3.5 and 3.7 which we've combined. They're both on the same topic that's an ordinance and some changes to policy 0-36 regarding the role of our nonvoting member of the retirement boards and some other matters. I'd like to just take us back to talk about where this started. I'm not even sure when it started but it was a long time ago with the recommendation of Cortex with regard to our governance of retirement systems. After those changes were made of course at our request we spent quite a bit of time debating and arguing about how they should be implemented and then the council February 9th, of 2010, over a year ago, considered how to implement the recommendations. And there was a memorandum authored by myself, Councilmember Constant, Liccardo and Herrera, with recommendations on highway to implement llts of the Cortex report. Those recommendations as a result of negotiations and deliberation debating arguing however you want to characterize it, recommendation D which is to add a city council liaison as a nonvoting member to each of the retirement boards. That was in response to the interests of

some people of having councilmembers continue to serve as members of the boards. But in recognition of one of the concerns that Cortex expressed in their report, that -- let me just quote Cortex. Both retirement boards are required to have a councilmember serving on them. When acting in their fiduciary capacity as retirement board members these individuals inevitably must decide on matters in which the interest of the retirement system and those of the city conflict. So you have an ordinance in front of you today to deal with that issue. So our nonvoting board member is not a fiduciary. And doesn't decide. So we don't -- we've solved the problem of having that conflict. But there was another element of the Cortex report. And they note that it is important that the city with the support of a designated department within the city become highly knowledgeable of this important issue in order to understand the importance of the city finances one of the things that we were trying to do is to make sure that we were highly knowledgeable and having this nonvoting board member would ensure that somebody was very well engaged very well trained and highly knowledgeable and would have direct communications to the council. And so that's how this sort of unusual but not unprecedented action was taken. And I say not unprecedented because we have nonvoting board members and voting board members of other boards like the arena authority, sports authority and what used to be the convention and visitors board so it wasn't without precedent. It's just a little bit different. So what you have in front of you today is the ordinance drafted by the City Attorney to implement this. And then a recommendation from councilmembers constant, Herrera and myself to modify our council policy zero-36 which is the council liaison policy to make clear that the nonvoting member is not some kind of a superboard member, but is expected to regularly attend and actively participate and the training of the board or the commission. And that they don't have any greater authority than any other board member, just in case the committee members are not expected to defer to them. that is the recommendation on changing the policy, we have heard comments about some of the retirement boards about their concerns and issues over the last few months but I think that's a reasonable implementation that achieves our objectives, implements the Cortex report and the final comment is that it works. We've been doing this about six months now, Councilmember Constant has served in that role as nonvoting member. I think while there were some issues early on, where we didn't understand exactly what the responsibilities were but I think now that everybody understands it the retirement boards are comfortable with it and I guess I should ask Councilmember Constant if he's gotten any feedback from the retirement boards about this nonvoting member.

>> Councilmember Constant: Thank you, mayor. As you mentioned in the beginning there were some contentious periods with a lot of unknowing of how the relationship would, could or should work between the councilmember designated to represent the council and the retirement boards. The retirement boards have both had considerable amount of discussion on this topic. Some of the things that came up that caused conflicts was the actions of chairs to not recognize and not have the councilmember be able to participate in the discussion. Even over the objections of some of the other board members. Discussions on whether or not the retirement board should allow for the training to be available to the councilmember assigned to the retirement boards. In the most recent conversations, while neither board was able to give any specific direction on what they would like to see the role called, or you know the official title of the person, both boards made it very clear and each individually asked me to bring to the council their clear opinion that they would like to see unfettered, unrestrained communication back and forth between the councilmember and the board members during these discussions. They found several times where they felt that they needed to have the input from the council designee which obviously as you mentioned was me to provide answers to them and direction and also to help them to locate and obtain resources for their decision making. And so that was the message that they sent back, both of them that they wanted to make sure that there was clear and thorough discussion between the member and the trustees.

>> Mayor Reed: Thank you. And I want to thank you for your regular reports to this council under our standing agenda item. That's been helpful. I feel much more informed about the in real time about what the boards are thinking about than ever before and that's I think work quite well. Vice Mayor Nguyen.

>> Councilmember Nguyen: Thank you, mayor Reed. I think you explicitly expressed a lot of the things that I wanted to say but I also wanted to thank the Police and Fire retirement board for its letter concerning this issue. I hear the concerns raised 50 chairman of the board regarding the possible confusion between nonvoting member versus council liaison. I believe the language in the ordinance is very know non voting member. We have heard this issue back in March and several of my colleagues include myself have expressed that the board of administration of the Federated employees retirement system and Police and Fire retirement board are two very significant boards because they deal with retirement systems that unlike any other boards or commissions in our

city with a lot of the boards and commissions in our city, we staff often attend meetings on behalf of the councilmembers. But with the Police and Fire and Federated boards we expect the councilmember in this case Councilmember Constant to attend this meeting, and like the mayor said I really appreciate Councilmember Constant giving us an update, regular update, when he attended these meetings. Now as far as the language of the definition that's being written in the ordinance before us, again, it explicitly clarifies the role of the nonvoting member. There shouldn't be any confusion or misinterpretation of the role or duties of the nonvoting member of these two boards. For that reason I'd like to make a motion to approve both items 3.5 and 3.7.

>> Mayor Reed: Okay we have a motion to approve 3.5 and 7 c's, that's the ordinance, the change to the policy, the appointment of Councilmember Herrera as the alternate nonvoting member, and those are the items, Councilmember Chu. Still not working. Okay. Councilmember Kalra. Councilmember Chu is going to want to talk, one of these times. And then his light won't be working.

>> Councilmember Kalra: Yeah, so I have obviously a memo that I put in on this item. And rather than putting it in as a substitute motion I'll kind of do the opposite of what we did last time and discuss the memo in contrast to what's on the floor and then see how the vote goes and go from there. But I think that currently the memo -- I have an objection to the memo on the floor based on the authority and the language that's been given to the council. We went through a very long process and accomplished a lot in the form of our retirement boards and if court's actual report was used serial as the base of the decision making that was made in order to bring more decision making and expertise to the board which all of us agreed to during the shift. As noted in the memo I submitted the concern from Cortex was originally the governance models we had did not ensure the retirement boards would be free of conflicts of interest and be best interests of the members and beneficiaries, that also, it was important when acting in the fiduciary capacity that the councilmembers inevitably must decide on matters in which to interest the retirement system around those of the city conflict. Clearly there's a difference between a nonvoting member and the voting member in the ability of the hard vote. Allowing the full participation even of a nonvoting minute of the city council has the great risk of undue influence and the whole purpose of following the Cortex recommendations when it came to taking the councilmembers off was to take away the influence from the council on these independent matters. And I do reference a quote from Mayor Reed, it's only because I agreed

with what he said. I want to reiterate that one of the major objectives was to get the councilmembers out of the of untenable serving two masters. Are you a board member or a councilmember on any one day? As the councilmember indicated there may be great value for resources and decision making the liaison relationship allows for that. The liaison relationship specifically says the council is there to help advise when their advice is requested. Also, there's city staff if it's just for the purpose of providing information. But the way it's written, it's written that they will actively participate in deliberations and training of the board or commission. And actively participating is a major issue and I guess gets us back into the conflict again we're trying to create a procedure and a process here that when we're all off the council we can still trust in around rely on. And I do not believe that this is a system that is much different than what Cortex, the exception is obviously the voting. The full participation again it blurs those lines. The board members are going to be unduly influences of influenced by those councilmembers that are there at the meetings. And you know especially, especially given the fact that we don't want the council to be able to influence the decisions of this independent board. And each of us are different. We have 11 different opinions. If there is a question asked or resource being requested is that council liaison going to give the answer of the council or the majority of the council or their answer? That's a major problem. As councilmembers come in and out we don't know what that individual councilmember is going to say to any given question. That liaison works for any other cortex has given us as a great danger works the best the letter from the retirement boards, expressly notes all of these problems with the current setup that we're basically going back on the creation of this independent board and if you ask away are our checks and balances well it's the appointment of four of those board members and the ability to appoint those four board members and discussion our City Manager's office is very heavily involved with retirement services and that allows for the free flow of information so I think I'm going to vote no on the motion on the table if the current motion fails then I'll certainly put up my memo. Because I feel my memo is more reflective of the independence that Cortex report demanded of all of us.

>> Mayor Reed: I believe the signaling system for request to speak is now operational. Councilmember Chu, no I'm just kidding. Councilmember Liccardo, I'm not going to tell what you the fix was but it's been fixed.

>> Councilmember Liccardo: It was my fault. They put district 4 too close to District 3 on the screen. Just had a question for Councilmember Kalra. Just to be very clear, that this isn't just a question of terminology, if this was a

liaison position but council were to require full participation or allow for full participation, that is, the board would have to accommodate the liaison being heard, would you continue to object on the ground that the liaison should not be vocal at the meetings?

>> Councilmember Kalra: I would continue to object as far as active participation, that they're basically treated as otherwise a member of the board in terms of the dialogue and so on. I think liaison has been traditionally defined and used as far as liaisons to all the other commissions I think is the more appropriate. And frankly I think all of of us we didn't really talk a lot about this when we first went through, we had to revisit it. We had different opinions bought it wasn't fully vetted, we were focused on all the other heavy lifting we did. That's why I go back to the traditional council liaison rules. It doesn't mean that a councilmember that's liaison, you know, can't provide information, but liaisons typically are there again to help, to help facilitate communication between council and the commission and if there's specific information requested of or questions asked of then they help facilitate getting that information.

>> Councilmember Liccardo: How do they allow participation if the chair is not allowing them to be heard?

>> Councilmember Kalra: It's information provided upon the request of the board.

>> Councilmember Liccardo: I guess that's why I'm concerned. I recognize that there's a fundamental difference of view here but it seems to me fa that if we believe the liaison is going to have any value in communicating to the board then there has to be at least a right to be heard to provide that information. If we have a situation where the care simply doesn't want to accommodate that and it seems to me I'd be very open to you know keeping the language and liaison, in the language of a liaison, but at the very least we've got to ensure that the voice is heard. Because while individual fiduciaries on the board may have a unique responsibility to the beneficiaries, it is clear that the unfunded liabilities that result from board decisions are wholly borne by the taxpayers and by the city. And for the city not to have a voice I think would be a huge mistake and we have a responsibility in creating the rules in which this board is created under which this board is going to operate. So it seems to me at the very minimum we need to ensure a city voice can be heard. I sit on I know you do and others sit on a lot of regional

boards and I sit on the MTC, I sit on ABAG and VTA and we have ex officio members and we have for instance the MTC level we've got a HUD representative and a representative from CalTrans. They are allowed to speak in fact the chair is required to recognize them like any other member and in fact we listen to the input because we know it's valuable but I think everybody knows exactly who's voting who is not. Who you need to persuade and who you don't in order to get a favorable vote and certainly there is a big distinction between those who have the ability to vote on an item and those who don't. And I would expect that this board would operate similarly. So I could certainly be persuaded to change the language but I really think we've got to be able to have a mandatory participation.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. I wanted to emphasize this one thing. After the chair of the Police and Fire board was presented to the council it was after that, that the boards had their full discussion about what the role of the councilmember should be. Not the other way around as one might expect. I just wanted to reemphasize that it was the unanimous opinion of both of the boards that they wanted full and active participation and communication from the councilmember. They were very clear on that and then also emphasizing that the Cortex report did not indicate that it was trying to remove all conflicts. In fact that's evident by the fact that they kept retirees and active employees on the board. There are many conflicts. What they were really looking at was the fiduciary conflict and that was the distinct that the mayor pointed out. So I just wanted to point those two things out.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I think it's -- I think it's very, very important that we do have someone who, whether we call it a liaison or a nonvoting member, we have that person at the board meetings being able to both represent and be able to convey the city's concerns to the board and as well take back those concerns to us. And I do think that the nonvoting party is critical, the fact that we can no longer vote. I sat on the Police and Fire retirement board and personally struggled that knowing something that we were voting on might

adversely affect the city, having a very tough time separating myself from the tough when you sit on the board and you are wearing the board hat which I certainly did my best to always make sure that I was representing the board but in the back of your mind you got to be concerned about what does this mean for the city, too? So I think it is very good that we are no longer voting members on the board but I think it's really important that we have the ability to speak. And I think if changing the name to liaison would help convey that that -- that we are nonvoting members more than to call us members, I don't have a problem with that, in terms of that semantic. But I do think we have to be able to speak. I also sit on VTA and like Sam and others in here, we do have members that don't vote. But they are able to communicate and I could foresee a situation where that, if we don't -- if that's not explicitly determined, that we might not be able to speak on those boards and that would be a problem. So I think there are differing folks that are at any one time members of these boards. And might have different opinions as to whether or not a councilmember representing the city council would be able to speak or not. So I think we do have to have that in there, but we obviously should not be voting. I think that's the main thing.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: Thank you, mayor. Can I ask a point of process and maybe you had explained it initially and if you did I'm sorry in why the two items were combined and heard at the same time?

>> Mayor Reed: Just because it's both, it is the same issue they should have been combined, it is a quirk of how we put the agenda together.

>> Councilmember Rocha: Okay so my --

>> Mayor Reed: But they can certainly be separated for voting purposes.

>> Councilmember Rocha: No, not necessary, just curious. In terms of full participation, I pose this to my colleague who used it or the City Attorney or whomever. There's plenty of text here about what that means. But in

your mind when you say the boards conveyed their interest in having full participation what does that mean if you don't mind?

>> Councilmember Constant: It was their statement, I'm just relaying it, but they had quite a discussion. Several board members commented on how valuable they thought the input was, other board members, particularly the independent, outside board members, said they felt that the discussion should include the councilmember liaison that they had found value in it both for solicited and unsolicited comments. And the chairs of each of the boards had also made comments of a similar nature.

>> Councilmember Rocha: Might I ask then why there was no formal letter submitted supporting the action today? Or was there, and I missed it in all the paperwork?

>> Councilmember Constant: Both boards specifically directed me to bring their comments when this came to the council. And I didn't get a vote obviously so that's the action that they took.

>> Councilmember Rocha: Okay, yes. I guess I'm a bit confused because the last time we discussed this item there was some significant opinions presented by some folks and I thought pretty strong and they didn't mince any words about the process and how the interaction was going. So for me to move forward with the direction today in my mind unless I read it incorrectly it really kind of dismisses their concerns and I'm not sure it addresses it. I'm taking from what you're saying and telling me what the discussion was but not having any impact from those folks, to me I'm a little bit surprised, that's my only fault for not reaching out and finding out why there's no comment. I'm not comfortable dismissing those concerns that were raised because for us to move forward and not address them head on, Councilmember Kalra's memo to me was very compelling so I won't be supporting the action, thank you.

>> Mayor Reed: Let me speak to that a little bit, the language in recommending policy direct respond directly to their concerns. We're not dismissing their concerns, we are responding to them. The other thing is we have had six months of practice. In practice this has proven to be not as big a problem for people to talk about it and work

through it and then the ordinance also addresses some of the issues. So I think we are responding to the concerns maybe we're not -- you know hitting 100% of them but we are attempting to respond to it and there's I have no requests to speak today. So we have away we have.

>> Councilmember Rocha: Thank you.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. And you know I understand Sam and Pete's points are well taken. And my concern sngt so much and my sense so much that you have councilmembers that are not able to speak. I think they're going to speak and you don't know what they are going to say. I think that has the blurring of the lines. And if policy was on certain issues, for example if I was there as liaison, if something was asked of me and something was said in conflict with what I knew was correct, I'd speak up, on the majorities of the council's position was not what my position was. It allows for too much leeway at some point we're creating a policy, five, ten years from now, not a reflection of Councilmember Constant or Councilmember Herrera, we've heard nothing to the contrary guess was a glowing meeting where everyone was satisfied with the direction we're heading. But you know the detail to which the letter of April 18th states the concerns. And where we are today I think those concerns are not adequately addressed. So again I agree that the city should have input and oversight, I think we do, I think official positions of the city to the retirement boards, at any given time, and then of course having city staff there as well provides us plenty of opportunity to make sure that the retirement boards are fully aware of what their actions, what the consequences of their actions are, on the city budget and the tax taxpayer.

>> Mayor Reed: Thank you. We have no public cards, no public testimony. We have a motion to approve made by Vice Mayor Nguyen that is both 3.5 and 3.7, which are one and the same thing. On the motion, all in favor, opposed, count opposed one two three opposed, four five opposed so that was Kalra, Chu, Campos Pyle and Rocha opposed, so it passes on a 6-5 motion. We'll move back to 3.6. The ethics update. As you may recall we have periodic ethics updates on topical questions so councilmembers are not the last to know about something that is happening around the state or someplace else.

>> City Attorney Doyle: Mr. Mayor I'll kick this off and turn it over to Lisa Herrick to give a presentation. As you may or may not know Lisa's been very active in training her staff, as part of the council assistants Academy or program. We thought that a -- the issue of gifts and revisiting this issue is timely, these things come up all the time and issues around travel and all other types of gifts come up and there are distinctions between state law and city law. So with that I'm going to let Lisa take you into that -- she has a number of hypotheticals which I think are very helpful.

>> Lisa Herrick: Thank you, good afternoon mayor and council. We did last discuss gifts in September of 2009. So it's a couple of years ago but it always bears a little -- a refresher is always helpful. We are guided by the state regulations in the political reform act as well as our own municipal code chapter 12.08 has the gift ordinance in contained in chapter 12.08. And I will just note that the elections commission had some interest in looking at some of the provisions of title 12, and has done a little bit of a review with staff's assistance. You may also recall that actually, in the prioritization there was a gift ordinance issue that didn't make its way up to anyone's top 3 or 4 but it was some that was trailing from 2005. And so we are actually looking at this. We can always do better when we write things and live with them for some time. So we may be talking about gifts in the future. But let me tell you what we've got for now. So the state regulations are relatively straightforward. If you add up of course all the regulations on top of it. The state wants you to disclose any gift you get that has a value of \$50 or more. You get up to gifts totaling 420, either from a single, either a gift that is valued at \$420 or in the aggregate from the same source reaches the A of \$420, those are prohibited, and then if, for some reason, inadvertently, you accept that amount, then you would be disqualified from making any decisions that might come before the council from that donor or from that source. And that \$420 amount, you recall that is adjusted from time to time based on cost of adjustments. Our city regulations are more strict. We generally permit gifts unless they fall within certain restrictions, the ones we use more often although there are more. If the value of the gift is 50 or less, under 50 dollars, that could mean better clarification because technically you could accept a gift that's 49.99. Once it hits frin then civics cultural or community functions and that's from the sponsor of the event. When we say sponsor we mean the entity that's hosting the event, putting on the event. It's distinguished from somebody who is simply a financial sponsor. We also have a exception to an exception any regular supporting

event an entities is going to give you tickets to a regularly scheduled sporting events. There are rules of funs I fundraisers we're going to talk about that really soon. Reciprocal gifts, gifts of hospitality, someone invites you into your home, invites you into their home, gives you dinner, wine, that's all fine. And then authorized travel. We'll talk about the travel in more detail as well. And then finally if you get a gift and it doesn't fit within the exceptions and it's \$50 or more you can always solve the problem by giving the gift back within 30 days, or also, make a donation to charitable organization without getting any sort of tax benefit for doing so. So fund raisers. The way our gift ordinances exception on admission from sponsors of the event works is, we typically say, you may get two tickets to a cultural event, and that is something that, if the value is over \$50, you report it on the form 700 but it's okay to accept. Fund raisers are different, because typically, a fund raisers, we're going to talk about nonprofits and political fund raisers. Those are it's an admission from the sponsor of the event, they're inviting you to come to their fund raiser but the valuation is different and what you can accept is dict. For a nonprofit that is not a 501(c)3 you can accept one ticket that would be for personal use and the value is I've short-handed it the amount of the meal. The way the regulation reads is basically the face value of the ticket reduced by the amount of the donation and typically that sorts out to be about the value of the meal and that within if the value is more than \$50 you would report that to the form 700. For the 501(c)3 organization you may receive one single ticket and the value is zero but you have got to still keep track of it so if you attend a fund raiser from -- several fund raisers over the course of the calendar year, from the same entity, you want to make sure that then that value of the ticket isn't going to get up to \$420. Because otherwise, that gets you into a bit of trouble. In terms of course the prohibition of accepting gifts with the value of more than \$420. Political fund raisers is totally different. You can accept a single ticket the value is zero and there's no limit. The value of any ticket is going to be zero and it doesn't have to be reported on the form send because it's not \$50 or more. So a few exercises here just to sort of -- I've been trying to give a little context as we move along but it always helps to put some facts to the law. So if the tech museum invites you to the gala reception, physical value of the tickets is \$125 can you accept it? You can and you can accept the two tickets and you can report the tickets of \$250 on the form 700. What if a law firm which has sponsored two tables for the event invites you, can you accept them no they are just a financial sponsor they are not actually the tech museum. Okay, San José State University offers you a custom tickets to a not ballgame valued at \$25, can you accept one ticket? This is actually a trick question because the value is under \$50 so you always want to look at what the value of the ticket first is and then find out whether or not there is any other

exceptions if the value is over 50. You couldn't accept two tickets, that is \$50. One ticket yes, two tickets no. If your good college friend works for a developer, takes you to Acadia, you took her to subway for her birthday, is this a reciprocal gift? Probably not. You take her to lunch once a month and then you get did Arcadia lunch. This isn't something that is going to be -- the chamber of commerce political action committee invites to you a fund raiser for the PAC, can you accept the ticket? You can, a single ticket and the value is going to be zero. Now travel, travel is something that sort of makes our head explode. Typically there are -- I mean there are other exceptions for travel in the FEPC regulations you are either going to be traveling in connection with a speech or panel within the U.S. It is generally related to a governmental purpose and then you are permitted too accept payment for the actual transportation, the cost of getting there and back. And then the lodging and meals for the day before. Can day or days of the speech or panel and then the day immediately following your presentation. If you're not speaking on a speech or participating in a panel, you can still accept a gift of travel, it's not quite as limited, needs to be related to -- in terms of the scope, for example, the cost of transportation, you could have a week at a hotel and meals, but it's got to be related to some governmental purpose. And then the payment is who you can accept it from. Is more narrow and that's basically any governmental agency whether it's domestic or foreign, a public or private educational institution or a nonprofit organization. It's not just any profit, it's got to have that 501(c)3 tax exempt status or something other coming from a foreign nonprofit organization. We've got 501 crrchghts 4s, trade organizations, political PACs for example that are maybe nonprofit, depending on the work that they do but you really need that charitable 501(c)3. So let's run through how that works. If you want to go speak on a panel in San Diego about urban transportation, the conference organizer ask a frayed organization has offered to pay for air fair hotel and meals. Can you accept this gift of travel? You ask. The limitations would be you can accept the actual cost of transportation getting there and back. The hotel stay for the day before, the day or days that you're participating of, and then the day right after. For a hotel and meals. Now what if the conference is in Toronto instead, the FEPC reg actually requires that the travel exception has to be for speaking on a speech or panel is within the United States. You can't accept that if the conference were out of the United States. And if you weren't speaking on the panel you couldn't have the trade organization pay for that either. But if the California Department of Transportation is going to pay, that's a governmental agency you can accept that and it then frankly doajt matter if you speak on the panel or not. You can teached the conference. Councilmember Campos.

>> Councilmember Campos: What if it's the government of capped or the city of Toronto?

>> Lisa Herrick: Fine, you could attend that.

>> Mayor Reed: You've piqued our interest. Councilmember Liccardo.

>> Councilmember Liccardo: What if it was governmental purpose on that travel if we're hustling airlines to try to get flights to San José or get business clearly it's an economic focus. Is that -- but is that reasonably related to governmental purpose?

>> Lisa Herrick: I think it's related to the pinch of the city and the sustainability of the city the economic health of the city. I think it's something that we would interpret as appropriately related.

>> City Attorney Doyle: I'd agree if they are coming into SJC and not out of SFO.

>> Councilmember Liccardo: What if we have to go out of SFO to get there?

>> City Attorney Doyle: That's fine but we own the airport.

>> Councilmember Liccardo: That's true whether you're domestic or international where you're traveling if it's a legislative purpose?

>> Lisa Herrick: Correct, correct, right. You can travel internationally. If the payment is coming from a governmental agency, 501(c)3 or an educational institution. If it's a speech that exception is limited to travel whip the U.S.

>> Councilmember Liccardo: Okay, I think I should probably take this off line because it's going to get way too involved. Thank you.

>> Mayor Reed: Unfortunately this is going to get too complicated. Councilmember Constant.

>> Councilmember Constant: .

>> Lisa Herrick: You are not subject to the 420 limits it's reportable but you are not limited to the 420 so thanks for reminding me about that.

>> Councilmember Constant: I just wanted to ask one more thing. So what about when you serve on another board and that board sends you on travel that's not reportable because that's your official job at the particular time.

>> Lisa Herrick: That's correct, that would be an exception, right. The way the FEPC regs read is it's basically, that would be travel that's in connection with another business, trade or profession, so some bona fide purpose your travel that's also accepted and it is also not -- it is reportable on a form 700, I'm sorry it's not reportable and not subject to the gift limitation.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Would it depends on who paid for it though, as far as being reportable, based on for example if it was another board and it was paid by -- who would be -- would you be allowed for it to be paid by in order for it not to be reported?

>> Lisa Herrick: It's -- so if the board is paying for it that's fine. If you have a -- your own consulting business and your business, it's a business expense, some of those in some instances, depending on where the payment comes from it may be treated as income but we can talk about that on a case-by-case basis.

>> Councilmember Herrera: And then I had another question. On any of these where you're traveling overseas or within the United States, is there any preclusion then, is there any restrictions on voting on items related to whoever paid for you in terms of our city council responsibility?

>> Lisa Herrick: Surely.

>> Councilmember Herrera: Could you outline that because I've heard that's the case.

>> Lisa Herrick: That's another clarification to make. Obviously if you received a gift of trouble, you may not be prohibited from accepting the gift, you can go over \$420. But if you participating in a decision when that donor comes before the city council. And for how long? I understand a year, two years?

>> Lisa Herrick: 12 months from the receipt of the gift.

>> Councilmember Herrera: Maybe you could give an example so we all understand how that would work.

>> Lisa Herrick: All right, if a councilmember goes to, let's talk about trying to get business, goes to Japan and tries to get a Japanese airline try to do some flights out of San José and the -- a city in Japan pays for that. So that's okay. Because you're traveling. There's a governmental purpose, it's international travel and you're not participating in a spiex or pant but a governmental agency is paying for it, if that government came before the city for whatever, wanted to become a sister city or entered into an MOU of the city, that happened within 12 months of your trip to Japan you wouldn't be able to participate in that decision. You would recuse yourself.

>> Councilmember Herrera: Whoever paid for it. It wouldn't have been Japan airlines it would be whoever paid for it?

>> Lisa Herrick: That's correct, it would be the donor of the gift. Who other topics and then I'm out of your hair. Gifts to the city and gifts from the city. We talk about these because the rules changed in the past couple of

years maybe two and a half years. Still an analysis that goes along with that but different than we used to do. So we can -- the city can acknowledge a gift to the city even where a person is receiving a benefit. Now I'll give an example in a minute, a couple of examples in a minute. Where the donor has no control as to where the gift -- how the gift is going to be used, the gift is for official business and then it's reported within 30 days on the form 801. Because for example sometimes you know an individual gets some benefit. We're talking about reporting it on the form 700. The state doesn't care where the gift gets reported, it just whether it's reported on the 801 the form 700 needs to be reported somewhere. But how we can -- where it should be reported. We'll talk about. So I'm going to give you an example. These you know holidays are coming up. We get candy boxes. So let's say, I don't know, for whatever reason I get a terrific \$75 box of see's candy nuts and chews dark chocolate in case anyone's interested, and it's addressed to me. And it's addressed to me so the donor gave a gift to me. We used to just put it into the break room and say everyone get your favorite nut or chew. I can say this isn't a gift to me, I don't have to report it, it's got a value of over \$50, but I don't have to report it, it's a gift to the city. This doesn't work anymore. The donor said this is for me Lisa Herrick and the chocolate may be good for morale but it's not official business. We can't do that anymore. A better example of where we use gifts to the city is sort of this travel stuff that we've been talking about. So a conference sponsor says City Manager I want you to send someone to my conference and we're going to sponsor their admission and pay for their travel and you decide. And it's something related to the business. And an individual's getting a personal benefit because they're going on a trip. Their travel is being paid for and what have you. Then the city can accept the gift, report it on the form 801 and the employee chosen by the City Manager or her designee then goes on the trip. And so that's really, the gifts to the city more narrow class of gifts, just I mean largely we're not getting -- we don't very often get gifts where the donor doesn't really tell us where they -- how they want it to be used but it happens from time to time. Finally, gifts from the city. We know about in fact, well, actually, this in fact doesn't relate to this. But I'll tell what you my thought process was. So a couple of years ago we amended policy 9-11 and that does relate to how we distribute tickets or passes that the city gets. That basically relates to how city gets tickets in one or three ways. We are either the owner or the sponsor of that particular event. We got tickets and the third party said I don't care how you distribute it or we purchased or received tickets by some contractual terms. The city can distribute these tickets for a ceremonial occasion, welcoming some dignitaries, economic development or recognition. And then those get reported on the form 802. This is another example. If I go to the the box at an arena for an employee

recognition event it is a gift to me but I don't have to report it on my form 700, it's going to be reported on the 802. One or the other, state doesn't care, wants it to be reported. What I was trying to figure out is whether an analysis on the rock 'n' roll half marathon is going to apply as it turns out we didn't get those packages because we were the owner or sponsor of a facility or event or we didn't purchase them or receive them pursuant to any terms with the rock 'n' roll marathon. You'll get something written up that basically says what the value is how you report it you can accept it because it is admission from the sponsor of the event and how to report it and you'll put that on your form 700. That's where I had that ah-ha moment that didn't exactly fit here. Councilmember Campos.

>> Councilmember Campos: What about -- you know how the San José giants, they'll give tickets to orchard supply so people can randomly grab them. Could they be done at events or general comunities can take tickets as they will?

>> Lisa Herrick: Yes, they're saying Weaver letting people in for free and there isn't any -- what we're really trying to get to, what the gift analysis really gets at are city employees or officials receiving something this the general public couldn't get by virtue of their position? That's really what we're trying to analyze and manage and report.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Since you mentioned the rock 'n' roll half marathon, I know this comes up in various contexts where we have sporting events downtown and I've learned the hard way about the rules around sporting events. But the question I have is, is there any distinction between being a spectator or participant in a sporting event? In other words if the gift is entrance as a participant in a sporting event is that valued the same way as a ticket to the arena or any other sporting event?

>> We define gift as where you're getting something and not providing anything of value in return. I don't want to comment on your athletic ability for your event but probably there is some consideration in the participation of the event. So I think the analysis would be that it's not a gift.

>> Councilmember Liccardo: Okay.

>> Lisa Herrick: Again let's talk more about it on a case-by-case basis.

>> Mayor Reed: So if San José state needed another blocking dummy and they invited me to attend, to be said blocking dummy I would not be given a gift I would be getting beaten but it wouldn't be a gift? Lfer I think that's a fair analysis we define getting something as nothing of comparable value.

>> Mayor Reed: Getting something for nothing, all right.

>> Lisa Herrick: All right what we are basically trying to say it all boils down to, can you accept the gift? Do you need to report it on your form 700, if you do, what is the value? I didn't even talk about the family gift reporting form but we've got it there. Basically you report gifts that you wouldn't otherwise be able to accept. And same analysis. It gets reported and then you just determine what the value is. All right all right? Thank you.

>> Mayor Reed: All right, just a reminder to everybody to call the city attorney's office if you're not sure, because it's often impossible or the sure.

>> City Attorney Doyle: And I'd add the City Clerk because he's very well versed in all these issues as well.

>> Mayor Reed: Yes, we have one request to speak on this item before we move on, Mr. Wall.

>> David Wall: One thing first of all I want to make a statement. I don't imply suggest or infer any wrongdoing by anyone or any person here whatever living or dead. But let's talk about bribery of a municipal official. What is the price of glory? Is glory a gift? It can be. But let's look at a city that entices or goes after a baseball team. Local officials have a clear present ministerial duty to have an election on the issue. They defer the issue because the commissioner of baseball says hey I want you to wait for my blue ribbon committee to react and if they see in your

favor I'll give you money to help offset a special election. Undue influence by another party. That negates a clear today we saw another issue concerning the revolving door policy. In other words what you have is a series of events that act as a constructive bribe. Things that are set in motion but the actual bribe is not consummated until some point in time yet to be determined, and the value given, for the service is also yet to be determined. However, glory amongst politicians, okay? That is a tangible asset. And so I'll leave you with just the thought, of whenever you substitute convenience and or expediency to the law you give license to injustice. And I would like to see the attorneys rule on the gift of glory. Thank you.

>> Mayor Reed: That concludes the public testimony on this item, there is no action to be taken. Our work on 3.6 is concluded. Thanks for the update. Need to return to the consent calendar. If I might because I understand Councilmember Campos wants to reflect a no vote on item 2.2B is that correct Councilmember Campos?

>> Councilmember Campos: That's correct, I'd like to reflect a no vote on number 2.2B for reasons I've stated previously. Thank you.

>> Mayor Reed: City Clerk, thank you. We have had items that needed to be heard no sooner than 3:00, 3.8, appointment to the Police and Fire board of administration and before we take up the habitat conservation plan, I'd like to take up 4.2, actions related to the Union Pacific railroad, and multifamily housing funds because we have some folks here so that would put the habitat conservation plan just a little bit later before we convene the joint city-agency board. So 3.8, appointment to the police officer department board of administration. Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. We have in our packet a recommendation from the Rules and Open Government committee to appoint libbed Bettina rounds ms. Rounds has been interviewed multiple times by the city council and both of the retirement boards I believe. And she has a very unique set of skills that was apparent in her application and her response to interviews as well as her questionnaire. And we feel in discussions with some of the independent board members, and myself, we feel that she is an appropriate person so I would like to move that recommendation forward.

>> Second.

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

>> Councilmember Kalra: Why don't we just reinterviewing for the position?

>> Mayor Reed: Well, the recommendation of the Rules Committee is that we avoid that process since we went through it and had a good field of excellent candidates that we've been taking from, before we go through the process again. So there was a pool.

>> Councilmember Kalra: No, I understand as far as efficiency. I don't remember, frankly I don't remember the individual here, I remember generally her, but I don't remember answers to questions, I don't remember what the vote count was. I mean we're just -- you know so I don't understand -- I don't know what -- was she the one that received the most votes, without getting selected? Or was -- I just don't know and would like to understand why we're shortcutting the process just on the recommendation of one individual being put forward for a very important board.

>> Mayor Reed: We're shortcutting the process so we don't have to go through it again because it took so many hours.

>> Councilmember Kalra: I understand that, I just wanted to know why this person was selected other than Councilmember Constant's praise of her, which I respectfully take in as part of the comments.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Yes, I can expand on that a little bit. Elizabeth has particular experience in the field of human relations and employee relations. The retirement boards, particularly the Police and Fire retirement

board, deals with a significant number of issues that are directly related to HR, and employee relates type issues. It was based on that and her answers in those areas in the previous interviews that I felt that she would be a good fit. Additionally, the retirement board is all male, and this is a highly qualified female candidate that I think would provide an additional viewpoint to the board. I can tell you that the other board, the Federated board which has the benefit of having both genders represented, has a very balanced discussion and I just think in total, given her skill set, the attributes she has in her job and her life that being coupled with investment experience it fits very well for that particular position.

>> Councilmember Kalra: If you can maybe inform me if there's any reason why Mr. Flareman dropped resigned?

>> Councilmember Constant: Yes, Mr. Flareman resigned from the board because he took a job from a company that would be selling investment funds to the State of California and that falls within the conflict of interest code and the deposit code .

>> Councilmember Kalra: I agree that we should certainly add diversity and certainly more women to the board. Although it's efficient I think this board is too important for us to not go through a full interview process when someone steps off just like we do with the Planning Commission as inconvenient as it can be at times.

>> Councilmember Constant: I might just remind you this is exactly what we did with the last appointment is the last person had been interviewed several times.

>> Councilmember Kalra: Which one? I'm not trying to be difficult.

>> Councilmember Constant: It was -- I'm drawing a blank on his name. He serves on the Federated board.

>> Dennis Hawkins: Mr. Constant, was that Dirks?

>> Councilmember Constant: No it was Drew Lanza.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: I don't think we should miss an opportunity to appoint someone with as good a background as this candidate has. I do remember interviewing her, the women candidates tend to stand out, there's usually not as many of them. The one thing I wanted to say is that all of the candidates, I remember us saying when we interviewed for these boards, we commented on what a great pool of candidates we had, any one of them could be appointed. I think one of the reasons she was appointed on her initial round is she did have this human resource background and she did have investment background but her investment background was combined with the human resource and some of the people we focused on initially we wanted to be only strong on the investment side and so I think we really zeroed in on this that had even more investment experience. But I think as Pete's pointed out, the boards really do need this human resource perspective too. So I think it's really appropriate now to look at this background, as providing something the board actually does really need and some of these issues that they face. So I would encourage my colleagues to support this appointment.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: Thank you, mayor. A good point raised by Councilmember Kalra and thank you for bringing it to my attention. I guess what I'm looking for is, the application I guess of the individual. And that wasn't provided in the packet.

>> Councilmember Constant: Is that directed to me?

>> Councilmember Rocha: Whomever I guess put the packet together or the documents.

>> Councilmember Constant: This came from the Rules Committee. The applicant's on file at the Clerk's office and the links to the videos both the multiple ones at the council and the retirement boards are available online.

>> Councilmember Rocha: And I'm not disputing anybody's qualifications or whether or not this was debated. I think just for my benefit and again you can put this on me for not doing my due diligence, but I think having the milks as part of the packet would help with some of the concerns and at least help me with having made the right decision. I personally would like to see a deferral, I don't I don't want to go through this every single time either, I support a little streamlining, since we have especially gone through some of the interviews. That would be helpful.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Could I offer a suggestion? I'm also uncomfortable with the process we don't have a resume application and maybe just the minutes something reflecting the vote might be helpful and you know I hesitate to make this suggestion because I know that Ms. Rounds has been convenient patient in waiting for us here and I don't want to subject anyone, I assume she's waiting in the audience I may be mistaken.

>> Councilmember Constant: I don't know, we'll have to ask the clerk.

>> Councilmember Liccardo: If anything it evidences the fact that I don't remember this among many others. While I'm almost certainly going to affirm the recommendations of the Rules Committee I'm uncomfortable doing it without having any clear sense or grounding of whatever it is we just did and I appreciate the fact we could look all this up by video, it's just when you are looking at a binder of materials that's not in there you spend a lot more time doing.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. My recommendation is upon the reforms of the retirement board which you propose and the council strongly supported we have an incredible candidate pool, a candidate pool we never saw before when it came to losing \$1 billion. With that said I remember having to choose and try to pick and

prioritize the top candidates out of the great pool. I remember this person, I would have been fine with them then and I would be fine with them now, today.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: . yeah, I just wanted to add that I don't want New England to do anything they're not comfortable with but it is somewhat time-sensitive. The position has been empty and had I quite frankly had I known that there was a concern about the materials either when it went to Rules or when this packet came out I would have made sure that we had it all. This is the first I'm hearing of it. I just assumed people would either recall or have the information. I do think this is time sensitive. The Police and Fire board meets next month, I mean next week for this month. They have been very, very concerned about getting the position filled in a timely manner.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: I don't know whether this suggestion is helpful or not. I know we have a evening meeting too. There is time to distribute the information. I think having the application is absolutely valid. I do have a copy of it, I think my colleagues should have it as well. I would be supportive of the notion of getting them this tirl and having voted on this issue a little bit later I would offer that as a friendly -- I can't remember do we have a motion? A friendly amendment.

>> Councilmember Constant: I don't have a problem continuing this discussion this evening.

>> Councilmember Herrera: That's what I'm suggesting, give the people a chance to read it, and they can continue to defer it, or maybe we can get a decision this evening if that's possible.

>> Councilmember Constant: So I'll go ahead and just request that we continue this, we can just take it later in the agenda. I don't think it takes anything beyond that and ask the City Clerk if there's any way you can have

someone just e-mail that application and questionnaire out so it will be waiting for everyone when they get out of this meeting?

>> Dennis Hawkins: We'll be happy to do that.

>> Mayor Reed: Okay, so I'll take that as a --

>> Councilmember Herrera: To defer it or whatever.

>> Mayor Reed: Motion to defer at least to the evening, so not in the next half hour or so, so we have a motion to defer this to the evening. On the motion, all in favor, opposed, none opposed, right? We'll come back to that this evening.

>> Councilmember Herrera: I'm learning. You guys are teaching me.

>> Mayor Reed: Item 4.2 then would be the next matter, we're going to come back to the habitat conservation plan 4.2 are actions related to the purchase and sale agreement with Union Pacific railroad for the three creeks trail development.

>> Councilmember Oliverio: I don't know if , we pes a lot of which are in the audience right now that make today happen as well as our funding appearance the Santa Clara County parks department, Santa Clara County open space authority, Santa Clara Valley Water District and the state of California, as well as the countless city staff who have worked to get us here today especially Monica Cavanaugh and Yves Zsutty and with that we're here to answer any questions.

>> Councilmember Oliverio: Thank you, mayor. Thank you Matt cano. I too several times, trails take decades, and this is evidence of them. And so I do want to thank Matt your work Nancy Kline Yves Zsutty, Albert Balagso, Julie Edmonds mares, and save our trails for being the organization to really help push this through, specifically to

Larry Aimes who have been a fervent supporter of trails this entire time, unbeknowns planning Joe Horwedel, Laurel, I also want to thank recession. This land was zoned for housing. Without housing this land was going to be gone inability to act with the recession we were able to stop this from going forward. And we're here today and as Matt said we took money from a variety of sources, as well as money from the district 6 construction and conveyance fund. And this is something the council has voafted unanimously before back in September 28th, 2007 to we voted on that unanimously, it's taken two years, we had to go through again the recession of them not building housing and then being amicable to doing the deal which I think is really great. So with that said I'd like to make a motion to approve the staff recommendation.

>> Second.

>> Mayor Reed: Motion to approve.

>> Councilmember Oliverio: And I did have one more question mayor.

>> Mayor Reed: All right.

>> Councilmember Oliverio: Who in the audience will be speaking for save our trails today? And could that person come down really quickly? So I know as we are in a mire of problems of maintaining facilities in San José we look to our partners to help us in that capacity. And I know save our trails in the past has spoken to entering in an agreement to help maintain the trail in this capacity of litter pickup and weed abatement. We don't have an potential agreement signed today but save our trails would the organization be agreeable to continuing that agreement?

>> We are three creeks trail.

>> Councilmember Oliverio: Fantastic, thank you so much.

>> Mayor Reed: Since you're here would you like to speak?

>> Yes would I. Good afternoon, mayor and councilmembers, my name is Tiese McMan. Today I'm here to simply say thank you. On behalf of save our trails and future generations, could those residents that are here today to support save our trails and the three creeks trail please quietly raise your hands? Thank you very much.

>> Mayor Reed: Thank you. I have some other requests to speak. Councilmember Liccardo, do you want to -- do you have a question before we do that?

>> Councilmember Liccardo: Oh, that's fine I'm happy to go with public comment first.

>> Mayor Reed: Okay, Larry Aimes, Bruce Tishman, David dearborne.

>> Hi, Larry Aimes. I just had to sneak away from work today to come down here to say thank you, for voting to buy this right-of-way. You're creating a mile of right-of-way and getting eight acres of open space. This will be a wonderful amenity for entire region. Also want to thank the Santa Clara County Department of Parks and recreation, the Santa Clara County open space authority, Water District who's putting money for the train trestle and the state of California providing support and funding. I want to thank Tiesha McMann and Bruce when others became discouraged. Thank also the Guadalupe river conservancy, bridge over their tracks. I also timely want to thank the city staff for their dedication for this long process in dealing with the railroads and the various regulatory agencies and also for their envision for identifying this opportunity in the first place back in 2000 when they wrote the Greenprint. This is a major milestone but I also wand to remind everybody that more than half the thing is still to go. You have my support and gratitude and thank you very much.

>> Mayor Reed: Bruce Tishman, David dearborne Heather learner.

>> Mr. Mayor, meshes of the council, good afternoon, first, Blanca Alvarado a long time supporter of the three creeks trail both as a member of this city council and the Board of Supervisors has asked me to convey her

personal thanks and her inability to be here to herself this is project is a recession fighter. It's already generated a \$2 million contract creating local jobs for the cleanup of the western alignment and that is virtually finished now. I want to say, how much I admire personally, the skill, and the thoroughness of the staff report. It just leaps out from that staff report that your staff has gone the extra mile to make sure that this challenging project will happen, they've considered every contingency and covered every one. It was heartwarming to have read that. Finally I want to share with you some words about leadership that were spoken half a century ago upon the adoption of the wilderness act. Those recess 98 in the you resonate adopting this expenditure in challenging times. Spoken by Clinton Anderson senator from New Mexico who was one of the sponsors of the bill where he used the word wilderness I'll use the word open space to make it more topic at. Open space is anchor to the windward, it is proof we are a rich nation, tending our resources as we should and not of people in despair, desperately searching each nook and cranny of our land for another barrel of oil, blade of grass or tank of water. You are foresighted in taking this action as this particular trail in the future becomes the green commute-route for San José citizens future generations will thank you. As I do. Thank you.

>> Mayor Reed: Time is up. David dearborne Heather learner David Wall.

>> Good afternoon. Thank you for letting me speak. I'm here to thank not only you, the council, and everybody that's been mentioned, but thank you on behalf of many of us who will be getting older and using that, and that will be our form of entertainment and transportation. And for the generations, the 400,000 that are coming that you're generating the 2040 plan for. This city will be much better and much more valuable for what you've done. Thank you.

>> Mayor Reed: Heather learner, David Wall.

>> Good afternoon. I'm Heather learner, executive director of happy hollow foundation. The foundation apples role is to progress the park keep it growing thriving moving forward. This trail links a key area of San José directly to happy hollow park and zoo but it's not just about happy hollow. Happy hollow is a regional destination and that plays into the greater area as a whole and I want that to be noted here. The other thing I wanted to thank you for

for approving all this is the greater vision of having destination access points and I think there is so much talk about obesity and programs and so much awareness but really if we just build the infrastructure and allow people to take that into healthy lifestyles I think you did a good job on there one. Thank you so much and I encourage you to continue with this vision and acquisition and development of the eastern alignment. Thank you.

>> Mayor Reed: . David Wall is our last speaker.

>> David Wall: I particularly am very grateful to Councilmember Oliverio for this project. I would also like to state that there should be no residential housing in this city at all. We need more trails. And open spaces. But I am concerned about the use of three funds. Specifically fund 391, fund 384 and fund 375. I'd like to hear a discussion about whether these funds could be used to maintain current parks, or whether this money's going to be siphoned off for this project and other city parks are going to fail. Also, the railroad has been getting away with murder ever since they've been created. And at what point in time could a city use eminent domain on a railroad property? Railroads have been doing this to citizens, for a couple hundred years. Why would -- should we give them \$6 million? Why not just give them a dollar and blow them a kiss? I'm serious here. Why can't you eminent domain a railroad property? I mean they've done it. I think the reverse should be true and that \$6 million we could put back into all sorts of things this city needs. That's my opinion. Thank you.

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

>> Councilmember Liccardo: Thank you. I'd like to second David's suggestion but I think U.S. Congress feels otherwise unfortunately. I know we have lots of challenges in dealing with railroads. So I really want to congratulate Councilmember Oliverio and Matt and Yves and the whole team that worked on this. This is extraordinary, getting this far. I think you're almost over the goal line. I know you got to build the trail now but this is really fantastic and any acquisition of rail line is really to be commended. I also want to congratulate the community. I know Ti McMann and Larry Aimes and everybody else who chipped in plenty of dough certainly benefits lots in the district including Pierluigi so I am grateful. I did have a question though about the remediation cost and I recognize that \$2 million has already gone into this effort and Matt as I understand it we are hoping that

DTSC will give its blessing and at that point there would be or Nancy whoever would like to take it. Thanks. At that point we're really taking it as-is and hoping that DTSC with the clean bill of health will have -- that that decision will really reflect what's in the ground, that is, we're not going to be facing subsequent cleanup with the discovery of something under the soil. And I know we always get concerned if there's an industrial or railroad use because you can be certain there's something under that soil. So the question is how confident that we are that DTSC is going to give us a decision that we can really rely on, rather than facing a year or two from now a decision that will cost us millions of dollars of additional remediation?

>> Councilmember, Nancy Kline, economic development. DTSC as one of the speakers noted has just completed and we have not yet received the no further action letter so our staff and ESD will be carefully looking at that letter. We believe based on the monitoring that we've been doing and coordination with DTSC staff that we can take that risk. But as noted in conjunction with the attorney's office, because of the power of the railroads, we do accept the land as-is and so we do have a heightened level of a potential liability. But again after fully assessing this and knowing that what we'll be doing is capping in effect with trail, staff is recommending move forward at this time.

>> Councilmember Liccardo: Okay, are we independently testing it?

>> There has been independent tests that have gone forward and to give you the specific information I would have to follow up with Nap Fukuda to get that information.

>> Councilmember Liccardo: I appreciate there's lot of time going into this and I don't want anyone to spin their wheels. My question is, after DTSC turns clean bill of health do we have any independent assurance that what we're getting is.

>> Close prior to the end of November we'll look over data and have the ability and that is the intent to go onsite and sample behind the DTSC crew.

>> Councilmember Liccardo: Great, that's what I wanted to hear. Congratulations on removing a billboard. I know that's a accomplishment whf you can take out a billboard in a neighborhood.

>> Don't jinx it.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, it's nice to have you here on a good day to be able to congratulate us as a community and certainly want to congratulate Councilmember Oliverio. I know when we have these projects, especially in our district, it seems like time grounds to a halt where we can go to actually move forward. Certainly also thank former councilmember Yeager, who has been an ardent supporter of trails throughout our region and finally thank staff. I agree with the community and it looks like the community really was able to observe staff at our best. And so Matt, Yves and everyone that worked on this, as well as you know just being able to work with Union Pacific alone is a feat and to be able to get to this point with the restrictions we have and all the federal restrictions and the ability for them to kind of drag their feet and to finally get here is really a big deal. And this trail although from the outside looking at it might not look like a very long disarns is a critical piece in particular the connectivity of those two trails is huge and I look forward as we all do to continuing to work on our trail system.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I just want to add, it also has very my knowledge impact on the General Fund. We get open space, I think it's only \$6,000 impact this year and when it gets done \$40,000, that's much less than we would be look at if we have a fully maintains public park. I want to add my congratulations to Councilmember Oliverio but all of the community and everybody that's been working on this for many years. It's really a very proud moment to get to vote on something like this where we are going to have something that we make a difference for generations. It's a good day.

>> Mayor Reed: To me this looks like one of our fastest moving trail projects. There have been others that are around a lot longer, they are all tough, there are no easy ones left. We have done all the easy ones. I'm glad to see this progress. It is not easy to deal with railroads in particular. All these trail projects are tough but it's good to move one along. I think we're done, unless other councilmembers have questions or comments, we have a motion to approve on the motion, all in favor, opposed, none opposed, that's approved. [applause] Item 4.3 are actions related to the issuance of tax exempt multifamily housing revenue note for the first and Rosemary family apartments. I want to note that in preparation for this meeting my staff did have conversations with John than imame of ROEM.

>> Councilmember Liccardo: Mayor I would also like to make the same disclosure.

>> Mayor Reed: Councilmember Campos..

>> Councilmember Campos: Likewise.

>> Mayor Reed: I have one request to speak from the public Mr. Wall.

>> David Wall: Island like to read a few things into the record. The rental restrictions for the project will remain for a period of 55 years and conform to the City's rental affordability requirements. On February the 20th, 2009, the developer used \$6,300,000 in loan proceeds to acquire the site. On June 24th, 2011, the council adopted resolution number 75932, approving the conversion, the acquisition loan, to a construction permanent loan for the project. The city must be the issuer of tax exempt multifamily housing revenue bonds for the purpose of lending the bond proceeds to this project. The note will be structured as a fixed rate obligation, and the principal amount of \$30,700,000. Note proceeds will fund a portion of the total project cost. Which are estimated to be \$52,856,567. You only get about \$77,000 a year to monitor the restrictions set forth in the covenants. This is another horrible deal. The Rosemary garden neighborhood could virtually be destroyed by this project. Specifically, you don't have code enforcement people, you don't have police, you don't have fire. And

you're hoisting this type of project on a neighborhood. 55 years of condemnation to property values and other investments for this project. I wouldn't support it in a heartbeat.

>> Mayor Reed: That concludes the public comment. Councilmember Constant.

>> Councilmember Constant: Just want to disclose, I think I had a conversation on this issue, I don't remember the details but I think I did.

>> Mayor Reed: We have a motion to approve. All in favor, opposed, none opposed, that is approved. Come back now to item 4.1, our habitat conservation plan. This is a return visit from last week. We had some questions that staff was going to take some time to answer. And as I understand it, the plan still is today, we'll have this conversation but we're not taking action, that you're still contemplating action in October is that correct?

>> Joe Horwedel: That's correct, Mr. Mayor, October 18th is the date that we would be coming back to the city council. At the last meeting, Mr. Mayor you had asked some questions about the costs for specific projects. I'm still trying to find the slides that we used for the April -- or the March 3rd study session. I've got some of the numbers from that meeting. But I was going to come back with a staff report for the March 18th or get the dates correct, the October 18th date with the particulars on it. There is an analysis in the financial report that Will Dennon and associates prepared, it's a link to the staff report that we used last week, that we used the cost of development survey and it has three prototypes in there and it looked at how those projects a single family detached project of 50 units, a town house of 96 units and an industrial project of 100,000. In those the habitat plan looking at the total permit load for each of those projects, for San José, was in the range of .3%. So it totaled up to, for the residential project, the habitat fee was \$1800 or \$1900 because it was just the nitrogen fee. For the town house project, that the fees totaled out to about \$72,000 because it did include coverage, essentially loss of open space as well as the nitrogen fee on a permit load for that project of approximately a half million dollars. So again it was .004% increase in the fees. So it does have some amount of increase. The consultant in there reviewed in looking at the three cities concluded that it was a very minimal but it is one that still is something different than, say, Sunnyvale or Santa Clara. And there were the same results on the industrial. I'll come back on

October 18th with a more complete answer to that question. Today I did want to go through and have the council have an opportunity to hear from Kay goody with the U.S. fish and wildlife service. Kay has been really taking I would say the challenge we put back on the plan about regulatory assistance and assurance. I think it would be appropriate to hear from Kay.

>> Mayor Reed: Thank you for joining us.

>> Thank you for joining me. It's been very encouraging. I've had multiple discussions with the corps of engineers in the San Francisco district who are interested in developing a regional permit, on this plan. In fact we have a meeting next week with the partners to discuss how to proceed. And we have gone -- the wildlife agencies have met with them a couple of sometimes going over and catching them up with the plan. The interesting part about the process is that at the end of the day, it also, because of them issuing potentially a regional permit for the plan areas, they would also get in essence authorization from national marine and fisheries, because before they could issue a permit, they would have to get their clearance from national marine and fisheries service to make sure they are on board with a process. Panned as of last week, I had I had talked to the regional board and explained to them what the concerns that people felt that the regional board was an important player and needed to be a participant, and they're interested in working with us, I'm scheduling a meeting to catch them up on what is in the plan similar to what we did with the corps of engineers so that it doesn't waste your staff time and you're the people that have been working on the plan. For us to brief them in what's going on as it relates to biological issues. And then they would like to start meeting with the partners on how they would also develop a streamline approach. They're not sure if they could do, you know and I'm not speaking for either agency, they are not necessarily sure whether they could do a programmatic but a streamline process so it would provide a template of how to move the process through on a quick and expeditious process. It is very streamlined and why they are very encouraged why it is encouraging is because they are liking the fact that we're talking to them early. But after the draft is out and before the final, which is different than what is going on in some of the other planning processes.

>> Mayor Reed: Thank you, well that's good news, it's great to hear that they're interested. Obviously nobody can speak for them until they have made their decision but you seem to be making some progress because those are some important agencies that would be very helpful if they were engaged with us early.

>> Joe Horwedel: Mr. Mayor I was also going to note that we received a letter that also came in this morning or last night from tripoint development that they are building a project in San José in Evergreen a 38 unit project that needed permits from the U.S. fish and wildlife, army corps of engineers, U.S. fish and wildlife and the regional board and they were talking about the time and expense to go through the process as it exists today. And their sense that having the HCP would have been very beneficial to them of being able to move through that process faster. It was a project that had very minimal wet land type issue. I was actually kind of surprised that we ended up having a wet land issue with that project but in the end they had that, required the approvals from those three agencies beyond our normal approvals. And it's those types of projects that really do get caught in the process, that is really time consuming expensive for the developers.

>> Mayor Reed: One of the things you mentioned last week Joe in terms of the cost is you had done some work about a prototypical bridge, and what it might mean, since we're directly interested in bridges among other things.

>> Joe Horwedel: Right.

>> Mayor Reed: Have you done further work on that? Is that going to be part of your report?

>> Joe Horwedel: We did some polling about the different agencies and how long things normally took to permits. And I think staff was being optimistic but I'll take it at face value that to do a normal bridge process was about a two-year process of going through each of the regulatory agencies and obtaining those licenses the cost of mitigation that was brought into that project still trying to track that piece of it down. But it is one that it's at least that two-year time frame to move forward on any sort of bridge project.

>> Mayor Reed: Well I'd been personally interested in the King Road bridge over Penitencia creek for a lot more than two years.

>> Joe Horwedel: We're going at least eight years on that one.

>> Mayor Reed: We're not anywhere done yet are we?

>> Joe Horwedel: No.

>> Mayor Reed: That's what I thought unfortunately. But I do remember it, we even have the money, or had the money. Having the money is not the formula for getting a project done. I think it's important we have the cost of development issue but we also have the cost to the city issue, both cost and benefits I think it's important to weigh what the private development might have but also our own view for our projects is an important factor. Any other questions, at this point I have some requests from the public to speak and I'll take that now. Roland LeBrun, David Wall, Aaron McDaniel.

>> Mayor Reed, members of the council, habitat plan is like high speed rail, it can be a beautiful thing if it's done right. We all know how PDO/PIO works and beautiful for the parks and trails. But the stlaich HCP is a very different version of PDO/PIO. In the first line in front of you you can see how the county is contributing to the initial HCP reserve with over 12 thousand acres of existing parks. Or approximately 25% of the entire county park system. Please remember that half of these parks were paid for by San José property taxpayers who voted for parks and recreation, not mitigation for nonpark impacts in other parts of the county. In the next slide, you can see how the county's \$47 million fee obligation would be covered entirely by the park fund with \$san José taxpayers money that was supposed to be used for parks and trails such as the three creeks five wounds and bay trails. This is not just unethical it is illegal and in case you haven't heard the HCP died in the county chambers just over an hour ago thanks to the leadership of supervisor Cortese and Shirakawa. Thank you.

>> Mayor Reed: David Wall.

>> David Wall: Today's Mercury News, editorial, county is basically not even journalism. Whoever wrote this is basically an assassin of the truth. Traitors to the journalistic trade and exits a corporate heart sewer hookup moratorium would do to eliminate the cost of the habitat plan. Almost in its entirety. Saving over \$660 million. Which you do not have. You don't have support services for any more housing. You don't even have water. And above all, this is a decision that you're making for 50 years. We've seen what happens with your decision making over the past 13 years. With reference to a city on the teetering on the verge of bankruptcy. So why should you endeavor with this project? Let's talk about nine par out at the plant because right underneath this editorial is an op Ed piece, the CEQA California environmental quality act. At 9 par, did you first bulldoze pristine habitat for federally controlled species, clapper rail, harvest field mouse a bunch of other vegetation and then do CEQA after the clear cutting event happened? I think inquire should be made and not only that we haven't had any discussion on how many garbage trucks per day will have to deposit nitrogen emissions, to feed that zero-waste anaerobic digester project. So there's a lot of hypocrisy, a lot of corruption with this habitat plan I vote against it.

>> Mayor Reed: Aaron Marshall, Dennis Martin.

>> Dear mayor and members of the council, my name is erine McDaniel I'm from Green Belt Alliance project quosht for south Santa Clara County. I'm also speaking here today on habitat cervetion now, dedicated to supporting the adoption of the Santa Clara Valley habitat conservation plan and the national community conservation plan including Green Belt Alliance, the Loma Prieta chapter of the Sierra Club, the conservancy. And the need for biologically successful plan can be achieved. This plan is our county's opportunity to protect 45,000 acres of open space in Santa Clara County through a comprehensive integrated framework. The plan encourages building in the right places by curbing building endangered species. Those areas are primary located on ranch lands park superior alternative to case-by-case mitigation efforts but not only is this a one stop shop wholesale price. The revised plan determining factor in the financial feasibility for most developments. Nor is it likely to put planned partners at a competitive disadvantage. The recently updated framework has been revised to meet the partner's specific needs and it is our county's opportunity to create a long term conservation strategy for important

habitat. The newly proposed reduced plan still meets the needs of our community well we urge you to vote continued funding. Thank you.

>> Mayor Reed: Dennis Martin our last speaker.

>> Good afternoon, mayor and council I'm Dennis marnt, with Naop Silicon Valley the commercial remits development foundation I want to let you Mo that the board of Naop slofni has considered the plan we are tracking it very closely and at this time we are asking that you send this plan back to the planners for the project for further work. While we are heartened by the direction that the revisions appear to be taking, we certainly have not seen a final plan and no outreach has been done to us or to the chamber of commerce coalition that we put together earlier this year regarding any revisions. So we encourage you to ask for a better bargain. You know, I appreciate the letter of support that was submitted, but frankly, the overwhelming number of business and development farming land owning and ranching interests are against the HCP. And the reason is because we know that it's going to be a significant cost to business going on. 50 years of fees. And so we feel that it's incumbent upon you to the other agencies to strike the best possible deal that you you can. And right now, you haven't done it. So we need you to go back, send this plan back, and keep working on it, because there is a benefit, I think we can all see some light at the end of the tunnel, but this plan doesn't do it. Land acquisition costs, nonland acquisition costs, no nitrogen deposition fee, better outreach to the business and development community. We ask that you direct your staff to take a look at these things as it moves forward and we'll be back to talk again. Thank you.

>> Mayor Reed: That concludes the public testimony. I had a couple of questions. I'm going to go back to the not so hypothetical bridge issue. We know it takes fish and wildlife but army corps, the regional water quality control board. The national marine fisheries service engaged in this and we want to do a bridge who else is out there that is going to be yet another hoop we have to jump through or is that kind of the collection of people that have an interest in those kinds of project?

>> Joe Horwedel: I think that is the list of the usual suspects. So that's part of the question, I've been pushing back out into the development community so if we can go through and reach an agreement with those five agencies who else do I need to be dealing with? And I haven't heard any of their names come back. But that is part of the conversation is making sure that you know, we have accounted for all, all the ones we would normally be needing and I think bridges are the most important ones for us to be dealing with. Both auto and ped-bike bridge.

>> Mayor Reed: So hypothetically if we get all of those agencies engaged in some kind of a joint effort, I don't know exactly what to call it because they are all independent agencies and they are going to do what they are going to do but if we get them all engaged, do you anticipate if we want to do a bridge we go one place?

>> Joe Horwedel: That would be a desired outcome. That is part of what we need to figure out of whether we could truly be able to do that. With fish and wildlife and fish and game as part of the HCP that is part of what's built into the HCP and then how the national marine fisheries fits in which is equivalent to the fish and wildlife service you need to talk about some of the logistics. The regional board is the most question about how that decision permitting process would work and I think at a minimum what we should be pushing for is a certainty about that the regional board even if they will still issue their own permit that there is an agreement that they will use the decisions of the army corps of engineers and the HCP as the basis for mitigation so that we don't have a second level of mitigation that gets loaded in on top. That's the fear that I keep hearing from the development community is we'll agree to this and then the outlier will want to then put one more on top of that. And so our goal is to get rid of the one more on top and let's just negotiate at once.

>> Mayor Reed: Okay, I think those would be very helpful if we could achieve those, and we are not talking about the final plan here. We're not there yet.

>> Joe Horwedel: Correct.

>> Mayor Reed: So we have some time to work with these agencies to try to get them into some relationship.

>> Joe Horwedel: So responding to some of the questions that daytime up and to answer your question, Mr. Mayor, the -- on October 18th, the question we'll be asking the council is should we invest in proceeding to the time plan? And that does have a budgetary imlimtion of about \$100,000. And so it is one we should not take lightly both for that direct cost and you know moving forward. The final decision assuming we go past October 18th and say do the final plan, about a year from now we would be in front of the city council and each of the other agencies saying, adopt the plan just like we're getting ready to do with our general plan is that is the final adoption and each agency would go and adopt the resolution saying that this is now the law in our community. And so it is a two-step process. We have done outreach and the comment that was made about that the revisions have not been distributed, we have not produced an underlined strikeout of the plan. That's one of the questions, to go through and do that does require us to pay the consultant to take all the work that we've done in this framework that was attached to the packet to bring that back into the plan and make all of those changes. We've been talking through with -- out into the different public groups about these changes. That's where they came from was to answer these questions. But there is not a document that says here are the set of revisions. That would be the next step to go back out and circulate that.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Joe, thank you. I'd certainly like to move forward. My question is, what happens as was suggested by Mr. LeBrun, county is not with us, other jurisdictions are not with us. What happens if we show up at the dance there's nobody to dance with?

>> Joe Horwedel: So as I understand it and Ken Shriver can correct me. The county board did vote 3-5 to move forward with the plan.

>> Councilmember Liccardo: 3 to 5?

>> Joe Horwedel: 3 to two, 3 of 5. There was a separate item dealing with the budgetary of the item taking all the money that supposedly each of us would agree to move forward and go forward and update the agreements and supposedly there is a provision in county law that says they needed to take a four-fifth vote, four out of five and they had three out of five and that's one of the things we're talking about, I don't know if there's any more that Ken wanted to add to that.

>> Thank you. My name is Ken Schreiber I'm a Santa Clara County on behalf of the six partners include the City of San José. County board this afternoon after discussion this morning, approved the framework on a vote of 3 to 2 votes approved proceeding with preparation of the final plan. Authorization of engaging the Army Corps of Engineers and I would say now also the regional water quality control board since that information arrived literally after the staff report was in process was coming out, proceeding with the wet land permits and preparing the final plan. And moving this all forward, as the management team has recommended. As Joe indicated there was one vote that needed four votes it was to accept money from the other partners. That failed on a vote of 3-2. The county executive informed the board that there would be alternatives investigated to that fact, to how to handle the contracts. The first discussion of that is an already scheduled management team meeting this coming Friday. The deputy county executive noted that one time it would be to have another one of the partners take over responsibility for approving the contracts. All of our contracts end December 31st. There is going to have to be an action in any event. We'll talk about that on Friday. I think staff from the county standpoint certainly indicated reasonable competence that this if one of the partners says no, then we're going to have to back up and figure out what that means and whether the process can move forward at all.

>> Councilmember Liccardo: Ken while you're at the mic, I know the fiscal question is going to come up in every jurisdiction and I asked a variation of this question last time around, wanted to see if there's any way of getting there. Is there any means by which we can boot-strap the cost of individual jurisdictions to go forward and place that into the actual plan expenses that are then compensated to the individual cities and jurisdictions?

>> There is a provision in the plan that there will be a plan preparation fee, and it will take 50 years and from a legal standpoint you can't shorten the permit term. But over 50 years part of the permit fees would include a small

amount for reimbursing each of the local partners for their plan preparation cost through preparation to final adoption.

>> Councilmember Liccardo: There's no way to front-load that hmm, front load that reimbursement back to the city?

>> People with law degrees have told me no.

>> Councilmember Liccardo: Understood, I won't argue with that. In any event I do look forward to approving our moving forward. I think it's an important priority environmentally as well as for economic development.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: Thank you mayor. Couple of questions I'm going to follow up on one that my colleague just asked about the other jurisdictions if they do drop out I don't know if we got a clear sense of what that means to the plan going forward and what that means to us.

>> Joe Horwedel: I think if Morgan hill or Gilroy drops out it is not catastrophic. We had built the plan without them, it would take some work but not catastrophic. I think if the Water District or the county dropped out of it or if we dropped out of it I think it is catastrophic for the plan.

>> Councilmember Rocha: Is there some point in the process once you adopt it that's the only point that we enter in that?

>> Joe Horwedel: Trying to think how to answer that.

>> Councilmember Rocha: And I'm trying to get a sense of when if these other partners choose to step out, financial contributions, I mean what happens to all that?

>> Joe Horwedel: Yeah, the MOU that we all operate under to prepare the plan allows any one of us to essentially vote ourselves out, say it's no longer a benefit to us. And it doesn't -- there's not like a penalty to go through and step out of the plan.

>> Councilmember Rocha: So I guess at final adoption that's when we commit to this and then after that effect and you probably can't see your crystal ball, entering into that plan then, what if a year later you decide to step out and again that would leave everybody hanging.

>> Joe Horwedel: That may be a good question for Kay to answer. But I think we would have the ability to step out. I think the question is, it's kind of like one of those, you do it once, you don't get to step back in three years later. Sort of thing. It's one of those irreversible declarations.

>> Councilmember Rocha: Okay.

>> The way the plans are structured you can, any partner, any participant in the implementing aid, can pull out at any point. But you would have to catch up to whatever mitigation or compensation, you know you'd have to catch up so that there's not a deficit in essence when you move out. And then you would have to reevaluate if the plan, what you can in fact keep the plan going so would you have to modify the plan to make sure the conservation and the permit still held.

>> Councilmember Rocha: Okay Kind of brings me to one of the questions I have and I'm going to jump over to that one which is as this has been described this is in a sense streamlining or reducing the fees for developers then whether it's an infill or another property. So if I'm trying to understand then, if that the case and my notes I had here, that if we're putting less money into permitting review, mitigation, under this plan, in a sense it almost sounds to me like we're shorting our review, our mitigation, if we were to stay out of it. It almost sounds like we're doing less than more. How can we reduce the cost of that yet doing more review as has been described and more?

>> Joe Horwedel: Let me kind of compare it two ways. There's the world as it exists today. And the amount of review and cost that it takes to move say the bridge project forward. Does take an extensive amount of staff time both from our side to go through and process it forward as well as the resource agencies. And because it is a one of a kind every one of those is a new negotiation every time while there's some basic tenants for 1 acre or 1 aacre or four acres to one, it is an individual negotiation. So it is time consuming. Total length of time in comparison to ours. We made a lot of time making sure that the plan was focused on the legislative objectives, requirements of doing one of these plans. And our -- the reason to do one of these plans is you get rid of that every time you do a project you start over and renegotiate from day 1. And you get rid of the escalating requirement that goes along with it, that what we require today or what resource agency requires today and what they are going to require four years from now is going to be dramatically different. So with this plan in doing white you do one it's kind of like a development agreement. And you're doing a development agreement around endangered species that says every time you have a wet land here's what you need to do and that will not change over the term, 50 years term. We've essentially negotiated that as part of this deal. If you are a developer that has wet land like the letter that we saw today, the city would be the permitting agency to deal with that wet land as it related to the army corps and with the U.S. fish and wildlife services. Ultimately we're trying to figure out how the regional board would fit into that. Ultimately we are doing the CEQA process and say, it's got a half acre of wet land in it. It's not significant and we can mitigate and fill it and find that elsewhere. Instead of a developer finding a wet land somewhere else, we will have taken care of it and say, we'd rather have five acres of wet land here, that you get one person maintaining it, implementing entity. And that you create better habitat by spending less time because you planned ahead and said, this is where that habitat is going to go and it connects with other habitats and you actually get the benefit of how the wetlands that benefit from other species below rather than a wet land in a parking lot which is what you normally get one by one. So I think we save money, you save time and money because you've prenegotiated what the land is value of the land, and you go through and know where the mitigation is going to happen, you've free negotiated who is going to be responsible for Water District doing it fred developer doing it, there's consistency and certainty which then makes the regulatory agencies a lot more relaxed about how they issue that permit. They still have to meet their statutory requirements but they don't have to worry about all the things that can go wrong because we've already figured that all out with this. That's the way I would explain why

it's more cost effective, time effective way to do this. There are statutes in the law so my staff spends a lot of time chasing after the wet land that didn't get put in properly. Or the mitigation that died five years later. Those are all hidden cost and that this goes through and just says there's a structured diligence, I don't have to send code enforcement to do it or planning officer go chase after it, it's taken care of.

>> Councilmember Rocha: Okay, you had mentioned the general plan update. How do the two match together? I think I'd asked that last meeting or the meeting before, would you explain answer that?

>> Joe Horwedel: Yes we are going to be replacing bridges building new bridges, we're going to have to build sewer lines we're going to need water in the city. All of that infrastructure are things that make a city work. And normally that's the City's responsibility to go chase that infrastructure. And so part of what we're tricious to do is make sure that if we go forward with the HCP that the city had a those assurances to say the gold card to set out, we've negotiated the HCP, we're doing everything that's supposed to be happening here. Help us go through and build our plan. Those conversations with Kay would have been, how do we get all those agencies lined up? When it's time to do the pipeline project or bridge project all the agencies are green lighted for us as opposed to yellows and reds, the normal way. I think the benefit of getting those agencies involved early on is to say here's how our plan is, how does the HCP deal with that? Our HCP proposal does approach our proposed general plan. We made sure those matched up.

>> Councilmember Rocha: In any of those documents will there be a reference to the other document requiring conformance to one or the other?

>> Joe Horwedel: The general plan acknowledges that we've been working on an HCP. We haven't said it's mandatory to have an HCP. We can't force the council to require it but we've built in that there's -- you know there's burrowing owls and nitrogen we are going to have to Do deal with without the HCP. The plant master planning process I think will benefit from the HCP but that's one of the things we're working on right now if we are going to do the HCP it makes the plant master plan happen as expeditiously as possible. recognized our urban services boundary, recognizes that development within urban service boundaries is the right place to go rather

than outside the urban service boundaries. South Alameda reserve as covered activity of activities, meaning poops build in those areas, we will have to deal separately with endangered species in those areas. So we've tried to match what is in the draft general plan those major policy decisions.

>> Councilmember Rocha: Okay, thank you. Clearly you've considered a lot of different factors involved in this and thank you for your work on it. Let me jump back to the last point you made about the urban reserve and how that plays into this. In the plan if we do consider those reserves they are not going to be covered by it?

>> Joe Horwedel: That's correct.

>> Councilmember Rocha: And was that our preference?

>> That was a decision we brought back to the city council, I think it was about a year ago, as a part of should we have it in or out of the plan in the HCP plan. And as a part of going through the valuation of valuation process, in trying to reduce the cost of the HCP that was one of the things that we finally took out end or beginning of this year as we were doing the framework, kind of balancing cost and what was covered activities. So it's one that the task force had said, for the general plan, no development in south Alameda and mid Coyote. The council, we brought that decision before the council on the general plan and has several times don't include it into the plan. So we carried that forward as part of the HCP.

>> Councilmember Rocha: Thank you very much.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. And I think some of Councilmember Rocha's questions and some of your answers Joe indicating how this plan has really been scaled down and not necessarily in a way that everybody's been comfortable with. But I think that the goal certainly has long been -- although it's certainly been a main focus, appropriately, the environmental impacts of any future development in these areas that have

sensitive habitats and beyond I think that we need to strike a balance and so I think that we've gone to a place where we're getting to that balance where you know I think that you sense you get to a balance sometimes and you hear both sides kind of not happy necessarily where the project is, what the plan is. I think that we've made concessions on both sides of it and I think it's going to be important for is to come back, we come back October 26th, is that right?

>> Joe Horwedel: October 18th.

>> Councilmember Kalra: October 18th. If it's -- I'll leave this up to staff and certainly there could be a recommendation from staff to the Rules Committee at some point. But I believe the next HCP meeting is on the 20th. So I don't know Ken if you needed to know from San José by the 20th that's why we're coming back the 18th is that right Joe?

>> Joe Horwedel: That's correct.

>> Councilmember Kalra: Okay, in that case since there's not another HCP meeting until we make a decision then an updated staff report basically on I think that there are appropriate questions on what happened with the county today, and what impact that has going forward. But I appreciate some of the analysis done, and I think that again, as has been expressed buy few folks here as far as the fiscal analysis, but I think Joe as you indicated, that some of the certainty that's created by having a plan really is cost effective to the regulatory agencies and to the local governments but I also think those in the development community going forward and certainly those in the environmental community sow to have some certainty as to how certain lands are going to be treated going forward. And I think really that's ultimately the goal is to kind of is to streamline the regulations of a number of different bureaucracies into one format where it can all be digested and the costs are all out in the open there aren't hidden costs, a lot of the development costs would be otherwise hidden costs where a developer or land owner might not automatically consider. But wile this may raise some eyebrows, the reality is there's certainty and may treatment line a result. I do think this is a plan that we need to do, like future generations, in terms of being able to preserve and protect the habitat. If we are going to develop develop those lands, in the way the mitigation

has some consistency and something that we can all be certain at least as much as possible, that the habitat and protection of the habitat is taken into account.

>> Mayor Reed: Any other questions? We're not taking action today.

>> Joe Horwedel: That's correct.

>> Mayor Reed: That's just a --

>> Joe Horwedel: So for the 18th staff will be bringing back the answers to a couple of questions that were raised certainly around the impact of the county's decision on the contracting we'll be talking about that Friday. And council has the benefit of all that before the meeting.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: So just to confirm the county's decision was to affirm or deny this?

>> Joe Horwedel: It was a 3-2 vote was to move forward with the preparation of the final plan. So that question we'll be asking the council on the 18th. Was 5-0 to support the framework, the revisions to the plan itself. But it was a 3-2 vote to accept the funds from all the local agencies and they're required to have a 4-vote supermajority as we understood it. So that's what we need to understand is if the county can't muster the fourth vote to accept appliance from each of the local partners, to administer the contract that really means that one of the other local partners would need to step in as the contracting authority with the consultants to prepare the normal plan. And we did benefit of the county's purchasing process to let them do the RFP process, that is not something I would be looking forward to adopt.

>> Mayor Reed: Well perhaps the county's planning on paying for the rest of it themselves. They can do that on a 3-2 vote, right? That could be the plan.

>> Councilmember Herrera: Could they pay for us too?

>> Joe Horwedel: There we go.

>> Councilmember Herrera: That remains something we need to figure out.

>> Joe Horwedel: Figure out.

>> Councilmember Herrera: I've sat through a few discussions on this item and I always -- I think there's some real benefits and there's some real drawbacks. I think we're still figuring this out. I was intrigued by a comment that was made, Dennis Martin made about are we getting the best deal? So I'm very interested in that. And you don't have to respond to it right now. But I want to -- I would want to make sure whatever we do we are getting the best deal in terms of how this thing's put together. I'm still interested in hearing how individual projects would fare, you know, are we getting value for being in this, is San José really getting something -- and it sounds like when we look at the 101 project that we talked about before, we couldn't have done that without having submitted that we were going through this process. So that would have delayed it. So there's some real benefits and I think we got to analyze you know the benefits to this and then how can we get the best deal. Did you want to comment on that?

>> Mayor Reed: We have an update from county counsel? County counsel and City Attorney?

>> City Attorney Doyle: There's just a clarification. It's a slight variation. It was passed approved on a 3-2 vote by the county board. The only thing that didn't get approved was a county budget to increase the county exec's the county has enough money in its budget to cover its share but as indicated there is a question as to whether or not they can accept the local shares, local partners, going to have to pay directly or find some kind of third party or another local entity to core it. So I think we have a sense of what will happen and it sounds like it's fixable if you want to proceed that way.

>> Mayor Reed: But October 18th we'll know for sure.

>> Joe Horwedel: We'll need to know for sure.

>> Mayor Reed: Anything else, any questions for staff? I think we're done on this one until the 18th and we'll take it up and make some decisions. That completes just the pure city agenda items. We have two joint items. A joint agency items and joint financing authority items so we'll take up the joint city-Redevelopment Agency board items at this time. We have two items on that agenda.

>> City Manager Figone: I believe we're just available for questions.

>> Mayor Reed: Item 9.1, citywide insurance renewals. Councilmember Liccardo.

>> Councilmember Liccardo: I just had one quick question about the secondary employment insurance. Is that something that we're asking the individual employers to pay for? Because I recognize these are officers who are working for someone other than the city. And I hope that somehow or another the city's getting compensated, since the officers aren't working for us.

>> Julia Cooper, acting director of finance. The secondary employment is for police officers and the police officers pay \$100 towards that cost.

>> Councilmember Liccardo: But the folks who are employing the officers are not charged for that insurance?

>> No.

>> Councilmember Liccardo: Hmm okay. I hope we can take that up around budget time.

>> City Attorney Doyle: It's been a topic of discussion for many, many years and part of the rationale they don't want to provide a disincentive for people to hire secondary or provide secondary employment.

>> Councilmember Liccardo: Okay, so when you say the officers are paying \$100 I think it's I think it's \$170 per officer, \$180. Is the remainder picked up --

>> Can't remember the exact number.

>> Councilmember Liccardo: The remainder is picked up by the General Fund?

>> Yes.

>> Councilmember Liccardo: Okay, perhaps we can revisit that when budget and fee setting comes along.

>> City Manager Figone: Councilmember, if I remember correctly I think the auditor is doing a audit of the secondary employment program and perhaps we can have her take a look at it and comment on it.

>> Councilmember Liccardo: Okay, I appreciate that.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: Thank you. Hi a question on page 2, the analysis section that spoke about the RFP process, as the City's broker. Whom should I be posing the question? Who conducted the RFP?

>> It was conducted when risk management was still in the human resources department.

>> Councilmember Rocha: Okay. And how much was that RFP that we put together?

>> Pardon?

>> Councilmember Rocha: How much did it cost us to do the RFP do you know?

>> It was done by city staff.

>> Councilmember Rocha: Okay.

>> It was part of the ongoing effort of the department.

>> Councilmember Rocha: And how long did it take to put together in process do you know?

>> No I don't. I can have John Daum come and talk about it. He was in HR when the RFP was set.

>> Councilmember Rocha: Another item previously and maybe this is a referral for staff to follow up if you don't mind I'm sorry I missed 3.4 I stepped out to grab a juice at the time and there's also reference to an RFP process as well on item 3.4 on the item of Alex Gurza, if I could get an idea of how much that RFP cost and how much it took. And I'll follow up.

>> City Manager Figone: Yes we'll do an info memo.

>> Good afternoon, honorable mayor and council. Could you repeat the question?

>> Councilmember Rocha: I was curious how long the RFP process took.

>> To hire the broker?

>> Councilmember Rocha: Yes.

>> It took us six months from beginning to end.

>> Councilmember Rocha: Was this all done with risk management staff?

>> We had a panel interview. I think we had three broker firm apply and we selected marsh selected on city services and price.

>> Councilmember Rocha: And that interview panel was made up of staff?

>> Yes.

>> Councilmember Rocha: Thank you.

>> You're welcome.

>> Mayor Reed: Is that all? Councilmember Campos.

>> Councilmember Campos: I also saw that we are covering in our -- let me find out where -- under the police aircraft haul and liability, a Cessna. And how often do we use that piece of equipment and I mean, what do we do with it? If we are not using it what's the point of having it?

>> City Manager Figone: We can have the chief follow up in more detail but I think that the aircraft is there in the event that surveillance is needed and it's like any other specialty piece of equipment. When you need it, you want it ready for the organization.

>> Councilmember Campos: So I guess my -- yes, could we have more -- a more thorough response? Because I would think that surveillance could also be done with the helicopter, and it would probably be a more nimble piece of equipment for those type of purposes.

>> City Manager Figone: Yes, we can have the chief do that. As you know we've grounded the helicopter on a pilot basis and no pun intended. And so I know he is evaluating the department's aircraft and so will be happy to respond. I think Councilmember Constant had a comment.

>> Mayor Reed: Were you done Xavier? Okay --

>> Councilmember Constant: I was going to address, the fixed wing and the helicopter have two distinct different purposes at the police department especially as it relates to surveillance. Because the fixed wing is more appropriately situated to fly at a different altitude and much quieter and less detectable than a helicopter in doing surveillance and that's why the two different pieces of equipment.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I can't help but notice that all of the insurance companies are in the East Coast. Do we -- is that just because that's their headquarters forever? Or have we -- have we tried to get someone on the West Coast? What's the deal?

>> Ed Shikada: I'm sorry councilmember could you repeat that question?

>> Councilmember Pyle: I'm trying to figure why every single company is from the East Coast. I understand some of them have headquarters there but I'm just wondering.

>> Honorable mayor and council.

>> Councilmember Pyle: . We went out to the market and our objective was to obtain the best coverage for the most affordable premium. It turned out to be the best carrier was on the East Coast.

>> Councilmember Pyle: That doesn't say much about us on the West Coast. We're not as competitive here. Thank you for that John.

>> Mayor Reed: I have no cards from the public to speak on this item. Any other questions? Is there a motion?

>> Motion to approve.

>> Councilmember Pyle: Second.

>> Mayor Reed: We have a motion to approve the recommendations on 9.1 on insurance renewals. All in favor, opposed, none opposed, that's approved. 9.2 is the amended enforceable obligation payment schedule.

>> City Manager Figone: Again here for questions. Is that correct Leslye or Richard?

>> Leslye Corsiglia: Yes Mr. Mayor we're here in case you have any questions. This is just you've seen the original enforceable obligation payment schedule. This just is a revised version it makes some corrections.

>> Mayor Reed: Motion is to approve. All in favor? Opposed? None opposed, that's approved. Completing the joint city-Redevelopment Agency board actions. We have the joint city financing authority actions. We have one item of action unless I official have to call it to order, so be it roll call we're all here. Actions related to the request for proposals for a power purchase agreement for solar energy installations on city facilities on land is the one item. Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. I'd just like to uphold the Berryessa community center out for oa separate vote because I live within 500 miles from the -- 500 feet, 500 miles? I'm sorry. 500 feet.

>> Mayor Reed: We'll take out everything but the Berryessa city center. We'll take that separately. City staff want to comment on that.

>> Good afternoon, Kerry Romanow, we have a brief presentation to cover the basics of our request today. I wanted to start out by saying that this process has been going on for almost two years now. We've been working on this project. So we're very excited about this point. We're excited to be working to install renewable energy on city facilities, save the General Fund a little bit of money and put a dent in our \$21 million a year PG&E bill. We issued an RFP in June 2010. In that we had seven proposers on that particular item and then we whittled it down to five and used the best and final offer process and then we focused that second stage on pricing. Solar city was selected in May of 2011 as the highest ranked proposal and the installations are proposed to have roofs and carport installations. Timing is important on this particular item because we're using ARRA stimulus money we are using EECBG conservation block grant money and that money is paying for the administrative cost of this effort. So procurement Public Works the time are all covered by this grant. Timing is also important because there is the U.S. treasury 1603 that expires in December of this year. We need to make a little bit of movement on these projects to secure the best pricing. Prices are expected to go up by about 20% if we are not moving forward by that time. We don't have to embark on all projects, we have authority to move forward we are confident we will be able to do that. The first year savings for this effort, if we were to move forward on all 28 proposed sites we would save \$148,000. And again there's no General Fund investment open that. We would save \$5.7 million cumulatively over a 20 year period total installations up to about 6.5 megawatts and put us at that top tier if not the highest in municipal installations nationwide. We use a PPA because it does allow solar city to also apply for additional incentives that if the city were to purchase them ourselves we wouldn't be able to do so. Additionally, it saves 500 homes electrical usage. So that's the basis of the project. But I know there's also concerns about making commitments for General Fund and we wanted to assure you that we have some pretty robust steps in place, that would provide checks and balances to ensure that we're not committing the General Fund over the long term. So once the -- if we had authority to move forward, our criteria includes cash -- sites must be cash flow positive by year 5. We say year 5 because the East San José Carnegie library cost \$50,000 a year for four years. All of those sites are either or cash positive. right from the start. Those sites already have CEQA

clearance, sites that are bond funded or act as collateral for bond funds must be approved by this financing authority and all other appropriate lenders. We have landlord contingency in there and there's also park land status which I'll talk a bit more in depth in a minute. But before we were to move forward and issue a notice to proceed we would have additional approval throughout the city from the budget office, finance, environmental services, and Public Works. Also the manager's office so lots of folks involved in that decision and there's no commitment, no financial commitment on the City's part prior to that notice to proceed. So up until now we're spending D.O.E. money no General Fund money and then there's no long term commitment on the City's point.

>> Thank you Kerry. Julia cooper, acting director of finance. There are a hurred most of the sites that are identified are in fact projects that were financed from the proceeds from G.O. bonds so it is a fairly complicated analysis and it will take some time. The reason that we need to go through this analysis is that we want to make sure that we don't violate any of the IRS limitations with respect to private activity on the facilities which would then lose the tax exempt status of the bonds and then bond holders wouldn't be too happy with us. As Kerry mentioned we do have grant money that is helping fund that review and we are going through the process to have that completed in an expeditious fashion.

>> Sorry. On the park land 13 of the 28 sites are on park lands, all of those are greater than five acres. So county policy 7-8 does apply. We would need to make some amendments to that. But this approval to move forward lets us embark on that outreach process. But again it doesn't commit us to making any decisions in regards to that. Of course, there's other considerations. The revised General Fund forecast does indicate that there will be service hour reductions. And potential for third parties to reuse some of these facilities. As we hone down on each site, so we've done a broad assessment, and selected a vendor that looks like they have the best pricing but we haven't done an assessment for each of the 28 sites. That's the next phase. So as we look at each site individually we will make a decision on that site whether to move forward or not. And we take doo into consideration the forecasted use increased or reduced for each particular site and look at how those numbers and those calculations pan out. If it looks like we want -- it makes sense to move forward, then again we go through those checks and balances with multiple departments in the city. If we were were to move forward with a notice to proceed and then the site was closed, our options are to terminate the PPA and pay the termination fees, to relocate the system to a

different building or to keep the system on the facility, make the PPA payments as they go forward and potentially leverage some AB 2466 rules which allow us to sell back the power to the grid, but that's that commodity pricing which is much lower than what we pay. So we would cover a little more than half on average and there's an example in the memo would cover about half of the cost of the PPA. But again that's if we do the notice to proceed and we move forward, there also would be assumed some base load at each of the sites that would need to be covered at any rate. Moving forward, Public Works will provide all the project management review and inspection services. Again those are costs covered by the EECBG grant and we'd work with the city arborist to work on city park lands in particular to make sure there no adverse impact to trees and working close with the community to ensure there's a full understanding of the projects as they move forward. So our recommendation is to accept the results of the RFP, approve the form to move forward with power purchase agreements or that continued assessment and then authorize the City Manager or designee to execute the PPAs for the 28 sites subject to the limitations that we've talked about. So with that Mary Tucker, Julia and I are here ready for any questions.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor. Thank you, I know this has been a very hard fought effort with the whole team so thank you for getting us here and I know that the obstacles have been numerous and substantial so thank you. I had a couple more questions, about these deadlines. I understand we've got a December deadline to avoid a 20% increase in cost. Is that per installation or is that for the whole program? In other words, if we get say five installations, sort of where they need to be, by December, is that get the whole program in at the 20% reduction?

>> It does. We have to make 5% progress in the whole bundle of work, so there's five facilities, the Powell sports center, Kelly park, municipality water office, south service yard and Prusch park that look like they would be impacted by some of the General Fund needed actions. And so two of those would get us into the 5%.

>> Councilmember Liccardo: Great.

>> And that secures the pricing for the rest of the project.

>> Councilmember Liccardo: Great, we have secured pricing, that's helpful. Is there any flexibility in the terms of this agreement that if net metering comes online in the happy world where we are actually able to sell excess power back at a price other than the commodity price is there a way in which we can go back and get additional PV installed to be able to really try to take advantage of roof area or whatever we've got? Because I know that there's really a tendency to under -- I say underinstall but clearly install less than we would need to satisfy 100% of our energy needs. And I'm wondering if there's flexibility for us if legislation becomes fortuitous, where we can add more without undertaking substantially more cost.

>> I like to add particularly when it's in my favor because we haven't assessed for each site, for the sites we haven't moved forward yet we can talk about the scope at that particular site as we move forward. I'm not sure that by December 2012 that net metering will really be in play but after that, we can certainly look backwards to add additional installations.

>> Councilmember Liccardo: Okay, so at least the arrangement that we'll have a solar city would give us the flexibility to do that without undue expense I hope?

>> Do you have anything to add? Yes.

>> Councilmember Liccardo: Okay, that's great. Refinemently if this is off topic I'll halt the question. I'm hearing what's going on with Miami and Sacramento with pays for commercial, are we looking into similar type program here in San José?

>> We've had a lot of questions about commercial pace and we're assessing it as part of our Green Vision work plan.

>> Councilmember Liccardo: Greatly. I look forward to hearing more and be with that I'd like to make a motion to approve.

>> Second.

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

>> Councilmember Oliverio: Thank you, mayor. Kerry you said timing was of the essence and pricing would increase 20%. What I hear in the solar industry is to get the panel down to make it more affordable. Can you explain that 20 first?

>> The 20% in January the rates without this incentive would be expected to be about 20% higher.

>> Councilmember Oliverio: That's outside of the procurement cost and installation?

>> Yes.

>> Councilmember Oliverio: And where we're looking at doing it on the roofs there's the new technology now where you don't have to actually bracket it into the roof and the weight of the panels make them stay. Are we doing that or the older technology?

>> Mary Tucker with the City of San José. We would be working with solar city to see the minimum impact to roofs as possible, what type of solar panels we would be put up there and how they would be bracketed up on the roof, we have the opportunity to look at that.

>> Councilmember Oliverio: Okay, thank you.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: I think this is great. Especially the cautiousness in terms of costing out each facility as we go forward and trying to get the best estimate we can. Because challenging individual households let alone some of these facilities that have various different hours of operation and so on. And I also appreciate the response of Councilmember Liccardo's question about flexibility going forward, whether it be a new policy put in place or new technologies, I mean the ability to be able to work with solar city and kind of mutually beneficially. Some of the buildings some of the newer ones group 1 Santa Teresa library were built to my knowledge to be at least solar ready. Is that the case with all the ones you're looking at in terms of the early -- I know some of them may not be the case because how old some of the facilities are but I imagine that we have a number of facilities that have been built in the last years that are solar ready, that help facilitate this process.

>> The buildings and sites are in a variety of conditions. So some would be more ready for solar, some a little bit less ready and that's all part of the calculation.

>> Councilmember Kalra: You listed some of the ones at least the early ones to get to the 5%. And one of the projects you referred to I think was Emma Prusch, is one of them. Interyes.

>> Councilmember Kalra: Again is that on some of the structures or is that also going to be over parking lot areas or is that alt you will are determining going forward and haven't got quite to that detail yet?

>> Those are all considerations.

>> Councilmember Kalra: I appreciate it. I think there is enough cautiousness here of protecting the General Fund, that's the thing if we're going to do this, we want to make sure we are not setting ourselves up going forward so I look forward to some of the more detailed analysis as you get more into the nitty-gritty.of this.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, this is wonderful thank you for getting into this and making us proud of what you're doing. Not only do we save money but we're making a statement. Speaking of making a statement is this going to get some press? This would be great press. If we could get it into the geek magazines and that sort of thing, environmental impact to magazines that would be great. One more set of people looking at San José and the things that we're doing here. So --

>> We're particularly proud of this program and we'll work to make sure that lots of people hear about it.

>> Councilmember Pyle: Thank you, appreciate that.

>> Mayor Reed: I want to thank the staff for getting this all done and thank the federal government specifically for helping us fund all the staff work on our side of it that's necessary to get this far even though we're doing power purchase agreements with solar city, meaning we are working with their money for installation, we still have work that we have to do and the recovery act, American recovery act, ARRA, recovery act funding which we received from the federal government a couple of years ago is hemming fund that. In case they are passing out money again we want to understand we appreciate it. Some day they will. I know it's a big project and having 28 of these moving at one time is really an accomplishment, a big deal. It is helping the Green Vision to move along. I have one request from the philanthropic speak, David Wall.

>> David Wall: Two years on this project, they haven't done an assessment on 28 sites. No specifics as to mounting. We can all be pleased. I'm very concerned about reliance on federal grant money and corporations that also farm grants. And of course, dost agencies that rely on farmed grants for long term stability. First we have an issue too of unjust enrichment of solar city. They can write off the complete cost of their project, which is fine. It's part of business. But the term of 20 years of buying power is not appropriate. Power may drop considerably. And yet the City of San José long after all of you have been rendered into political dust will be stuck with paying for this thing. The energy savings are illusory on that basis. Calculated at today's terms, multiply it or have multipliers that cost it out there's no guarantee. I have not heard any discussion as to maintenance of these panels. Let us not forget the long-winded discussion we had with the habitat plan, and nitrogen deposition. All sorts of things will

form on these panels that will interfere with efficiency and who cleans them? Who repairs them? The rush to be a Green Vision city Mr. Mayor is honorable if it's done with prudence. Planning. But when I think of the efforts to date, that the department so empowered to do this, I would basically request that you hire Ringling Brothers circus and get some real banana munching monkeys. Thank you. .

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: That reminded me. Does that include the RFP cost ?

>> Yes.

>> Councilmember Rocha: Can you let me know and maybe you have off the top of your head how much that amount was you billed for the RFP processing?

>> Yes.

>> Councilmember Rocha: Thank you. I'm also looking at page, where did it go, page 15. The discussion about the liability . \$970,000. That's one year. And maybe I'm not understanding that clear, but is that just the one-time cost I understand or is that annually for the remainder of the life of the agreement every year that it's \$970,000?

>> So that's worst case, assuming we move forward with the PPAs on all 28 sites and then we subsequently close all sites. So then our power bill would be 970,000.

>> Councilmember Rocha: That's the power bill?

>> That's what we would owe solar city.

>> Councilmember Rocha: One time or every year?

>> Every year if we close them all.

>> Councilmember Rocha: You mentioned the time sensitivity. Could you expand on that a little bit in terms of us needing to make a decision today rather than waiting a little bit longer so we have a better sense of our budget for the next fiscal year?

>> So what -- what approval today for us to move forward with this process, would let us hone down more information on each of the sites. Certainly going forward first with the ones that look like they won't be impacted by General Fund. Decisions and those would be the five that we talked about Kelly park, the Powell stadium and then we haven't committed anything until we issue a notice to proceed. So it lets us move forward with the honing, continue the dialogue with solar city, do a cost analysis and then, go through the cost analysis and then go through the process to issue a notice to proceed. And the reason it's important is to take advantage of that U.S. tradition 16 '03 grant and EECBG money.

>> Councilmember Rocha: And then return to council?

>> Our process doesn't call for that it goes through steps which include the budget office the finance office and the criteria it break even or save money.

>> Councilmember Rocha: Thank you very much.

>> Mayor Reed: That concludes the discussion. I don't know if we have a motion or not, but we'll move anything about the Berryessa community center first. We'll come back and see if anybody has anything to say about the Berryessa community near center. Does that include the motion?

>> Councilmember Liccardo: That concludes the motion.

>> Mayor Reed: On the motion, all in favor opposed none opposed, that's approved with the exception of Berryessa community center. Let's take that one up now. Councilmember Chu is going to abstain on that.

>> Councilmember Liccardo: Motion to approve.

>> Councilmember Herrera: Second.

>> Mayor Reed: I have no public testimony, anything else on that motion all in favor? Opposed? None opposed, one abstention Councilmember Chu. That concludes the joint city financing authority agenda. We have open forum. And just everybody remembers there will be a flag raising as soon as we get done honoring NASA. Rena Danielle satler, Mark Trout.

>> Hello, my name is Rena burns and I'm the office manager of HPMI, the holistic pain management institute. I'm speaking on behalf of HPMI not to promote medical marijuana but how we are being rejected. We started off wanting to make a difference in our community. We applied to adopt a park. We wanted to adopt Kelly park and the Japanese garden right near where we are located. Our system came up with a plan of action. We were very inspired, we went to meet in person to find out what was going on and let them know that we are serious about making a difference in the chunt. The visit was wonderful and inspiring but due to the industry we were in we were rejected. We just want to adopt and care for a park. And clean it up. You are welcome or the yr taxes that we are paying you in order to be in compliance with the city. But what I don't understand is why we are rejected. We are not here this time on behalf of patients only, but on behalf of law abiding citizens who just want to make a difference but are rejected due to the stigma around the choice for their holistic healing. Thank you.

>> Mayor Reed: Danielle satler followed by Mark Trout and José Medeira.

>> Good afternoon, guys, I'm Dan imrel satler, assistant manager of hole is tirk pain management institute. August 1st I sent in an application and cannot hear back from them for over a month just to be denied. HPMI is committed to make a difference in the community by making it fun and safe. We have been

working with hospice care for over a year. We have been having a blood drive. We had a blood drive on September 2nd which saved over 226 lives which could have been related to you or anyone in this room. Why can't we help save a park? Why can't we help it from being trashed, from being graffiti'd, why can we help from it being shut down every Monday or shut down completely? All we want to do is just help. We will -- we want to help the city save money therefore our members will do the work for you. We will compensate them with medicine in return for their services that they will provide and that we can help with. Hi goal is to bring the community back together and show you not all cannabis clubs are what you are thinking. Please don't deny these working helping hands that just want to make a difference in the community. We can help reeducate our community that mother earth is not our trash can it's our home that we are living in. Please don't judge us because of the holistic ways we choose. All we want to do is help you. Thank you.

>> Mayor Reed: Mark trout, José Medeiros David Wall.

>> Finally. Consider kindness. You only understand, somebody said having little experience walked in another man's moccasins. Now I know you have never walked in my moccasins, you didn't have your Bible taken away from you as I did several weeks ago. It's not a good feeling. Consider constitutionalism too. Consider kindness, consider constitutionalism. I'd like today to give my speech that I intended to give August 30th when I flipped the coin I was torn between giving the one you heard August 30th and the one on Dr. Ten penny and vaccinations. I'd like you to google that, google Dr. Sherry ten penny, she has how does that pertain to the City of San José? Our governor Brown has on his desk AB 499 which is forced vaccinations for kids. Did you hear that folks? 22 sewer rat senators in our state said they want forced vaccinations for our kids. We know Rick Perry during the presidential debate with Ron Paul was reprimanded very severely as he rightly ought to He ought to be in jail for mandating the Gardasil vaccinations. India is a lot smarter than we are. They banned the vaccinations. Rick Perry, and David Rockefeller for president, the low life scum Rick Perry mandated that. We have not only 64 dead we have over 18,000 adverse reactions from that thing. I'm wondering if brown signs that thing into law, you -- it is your obligation as a city council, I'm talking listen, I'm talking to 11 gods. Thou shalt not revile the gods or curse a ruler of the people. The compliment is up to you --

>> Mayor Reed: Your time is up. José Medeiros followed by David Wall.

>> Honorable mayor chuck Reed and city council my name is José Francisco mede rirvetionos, I was an employee of the City of San José from 1990 to 1995. I worked for the streets and traffic department. I fared you in 2010 when my house went into foreclosure. Still work with the bank on the excess funds in equity in the house, I haven't received a penny. I have been homeless living in my car, living next to 10th street, my must taj, a '66 fast back, towed by the San José police department. There were no signs posted and they put out temporary signs right before Labor Day. The people that would leave for a Labor Day vacation would at least put a 72-hour notice on the car. And they give the people at least a week advance notice. They post the signs at eye level. This cost me \$495 to get the car out of impound. I could not pay my storage fees for the items I had to move out of my house. I'm still behind in my storage for this month. I just got my unemployment check again so now can I pay my storage fees and be current. I got to pay a \$30 penalty. This really set me back. This concerns me that the streets department didn't put a 72 hour notice on the car. Especially Labor Day weekend, you are towing your car a day after Labor Day. In a commercial area, you know they're going to want to have some more time to try to move the car. And I know that my manager when I worked for the City of San José, would always give people at least a week notice. And for some reason we were going to tow the car we would knock on people's doors, we would do whatever we could to try get that car to the rightful owner and let people know we were going to move it.

>> Mayor Reed: Your time sum.

>> Thank you so much.

>> Mayor Reed: David Wall.

>> This has to do with the Redevelopment Agency. And I'm kind of concerned if the state takes away your Redevelopment Agency money, what does that do to your enforceable obligations? Now, Monday or yesterday at CED, the incubator program is far more in turmoil than has been led to believe to be milk. Specifically, I mean these leases are killing you. I mean these people are not making any money. It's fine if you want to have bragging

rights. But if they're not making any money and you're losing money, large amounts of it, there should be some remedy to that. Above all Mr. Mayor, the whole incubator program, lack of oversight by council is quite damnable. You have the Redevelopment Agency cutting those leases out, who is overseeing the San José State university research foundation. There's no long arm audit of these people and yesterday these people run rampant with city money. The transition plan allowing this group of, this research foundation to be the sole entity to date to run these incubators not prudent in any opinion. I think it should be opened up to Santa Clara, University of Santa Clara in my opinion. What gives San José State the only right to run these incubators? Pently I think they've run these into the ground. The lack of oversight, somebody has to be looking out for the city's money. I'd like to thank Councilmember Liccardo and Councilmember Herrera for your tough questioning yesterday, I know it will be repeated I'm very grateful for it. Thank you sir.

>> Mayor Reed: That concludes the open forum. We're going to adjourn until 7:00 p.m.

>> Mayor Reed: Good evening, I'd like to call the San José city council meeting back into session. We have several matters on the agenda this evening. We have one matter we continued from the afternoon that was 3.8 the Police and Fire retirement board appointment. But we will start this evening's agenda with several ceremonial item items. And first off I'd like to invite Councilmember Constant and Astruba and Anish Astrada, to join me as we proclaim the month of September 2011 as histiocytosis month. I know you're all wondering what this is, I'm going to let Councilmember Constant tell you. Councilmember Constant.

>> Councilmember Constant: Thank you mayor. I have a number of people behind me, first of them anish, Arjun his younger brother, the shortest one. We have Sruba his mother and Surendra his dad. And lets see if I get this one right. Lena Ray Choudrary. And the registered nurse. We are here today to talk about histiocytosis. It is probably something you've never heard before. We are here because histiocytosis is a collection of rare diseases that affects 200,000 children and adults each year in the U.S. The histiocytosis association has designated the month of September as histiocytosis awareness month. This disease occurs because of the over population of a certain cell in the body and can be just as fatal as prevalent diseases such as cancer, leukemia and others that receive a higher priority for federal research funding. Anish was diagnosed at the age of one and a half and feels strongly about spreading the awareness of this condition. Patients with the disease may be treated with chemotherapy surgery and or radiation, with the goal of causing the disease to go into remission because there is no known cure. The histiocytosis foundation is the only nonprofit organization in the world that is working to raise awareness to provide educational and emotional support to patients and their families and to fund grant requests for peer reviewed research to the national institutes of health so that we can discover better treatments and ultimately cure for this disease. We feel that in San José it's really important for us to take a role in providing awareness on issues like this so that everybody can know what's occurring, and can support the efforts to find cures for diseases such as this. So I'm very proud that we, the mayor and the city council are recognizing this month as histiocytosis awareness month in the City of San José and I hope that everybody in our city can take some time this month to encourage greater awareness and research into this and other disorders, and give special recognition to those who work tirelessly to offer hope to the many patients and their families. And Mr.

Mayor if you could present that to anish, come up here buddy and I think he has a few words he'd like to share with us, as well.

>> Respected mayor, Councilmember Constant and everyone, I'm Anish Ashadri and I live in West San José. I want to thank Councilmember Constant and Mayor Reed for proclaiming September as histiocytosis month in San José. This is a cause that is very important to me and my family, other histiocytosis families and doctors who treat histiocytosis. Since histiocytosis is a disorder not known to many people, increasing awareness is key to finding a cure for this disease. Thank you everyone for giving me this opportunity to speak and allowing my family and my doctors from LPCH to attend this meeting. I want to thank Mr. Shane Patrick Connolly of Councilmember Constant's office, for making this happen. Thank you.

>> Mayor Reed: Thank you. [applause]

>> Mayor Reed: Next I'd like to invite Dr. Greg Tramato, and Dr. Pete Wharton and Councilmember Constant and Councilmember Herrera to join me at the podium. Earlier today we raised the NASA flag above San José city hall. As I mentioned at the time, the NASA flag has been a lot of places, even out of this world, and we're proud to have it fly over San José City Hall because we're recognizing this week September 26th to October 2nd as astronaut week in the City of San José. Recognizing NASA as an organization, formerly known as the national aeronautic and space administration, have lived through NASA's great success stories over the last decade since it was established but there are a couple of things I want to mention about NASA that you may not know. They have more than 2,000 people working at the NASA Ames research center. Most of them live in San José. They continue their efforts to research and development in some terrific technology about space and science. And here to accept a proclamation tonight is Dr. Pete Warden, director of the NASA Ames research center at Moffitt field. [applause]

>> Well, thank you, as the mayor said, the majority of the employees at NASA Ames live in San José. And we really enjoy this community. And we're delighted of the cool things we're doing, and particularly we want to help inspire the next generation of young people here in San José and around the country. So thank you for being a

wonderful place to work and live. And just to kind of NASA has a long standing greeting to people that are going on a great journey and we're all going on a great journey, and that's Godspeed, Godspeed to all of us and Godspeed San José, thank you.

>> Mayor Reed: Thank you. I forgot to mention that Councilmember Herrera's father worked for NASA and Councilmember Constant went to school with an astronaut. It wouldn't be astronaut week without an astronaut. So tonight joining us for this commendation is astronaut Greg Chamatov who has had quite a few missions with NASA more important than that, he is a graduate of Blackford high school in 1980, Councilmember Constant was one year behind him, one went on to tremendous success and the other one did pretty well too. Dr. Chamatov, 2008, expedition Here to celebrate astronaut week, he has logged more than 198 days in space, and that's something he can be proud of and we are proud of as a city and we're very happy to be able to present him a commendation and I'm going to present that.

>> Thank you.

>> Thank you very much. Thank you, Mayor Reed, it is an honor to be here with all of you. And it's a great homecoming for me. As I flew into San José, yesterday, it definitely feels like a wonderful feeling to come home. But the idea of coming home has kind of changed for me. After living in space, you know when you go home, and you get to your house, that's home. If you go you know on a trip to another city, when you come back to San José, you say, I'm home. And if you fly to another country, you come back, as soon as you land in the United States you say I'm home. And after six months on the space station, it didn't matter to me where I landed on the world, anywhere I landed it was going to be perfectly fine that that was home. That's the way it felt. San José it's a place that represents a dream come true for me. I grew up here from the age of 11 through high school and my father believed that this was the land of opportunity and he moved my whole family here in Montreal back in 1974. Aside from Blackford here I went to school at Cal poly. And I worked all my summers here in the electronics industry. My father had many different positions here, but one of them was Atari, and when Atari was big in all the computer games, and remember that game Asteroids? We had the table version Asteroids in our house on a life-long tests. My brother and I were experts. We could go in any game place and we would get the

high score, no problem. But I was also when I grew up here, you know and many of you probably around the same age as me or older will remember, you know the first Apple computer and the first atari computer and the first commodore, and first IBM PC, I grew up on those first computers. Since the first computers things have come an incredible way but somehow the spirit of invention and development in San José seems to be at the core of what makes San José such a great city and the evolution of this had very much to do with NASA and the space program. Exploring space required the technology and the advancement and the communications and the computing and the software and hardware and the development of that technology through the local industry in academia and at NASA Ames here in the area that enabled all of those capabilities for us to build things in space. So now we have this amazing international space station that we just completed, it's amazing beautiful research facility we have in orbit, and it is filled with the computers and technology that were built right here in San José. It's been a really great privilege for me and one of the lucky ones to get to utilize this technology and research in space for the betterment of humanity and all of this with my role with NASA and as a student growing up in San José I got to be part of that information age explosion and as an engineer on this very recent mission I got to install the final components on the space station and we were able to declare that the space station assembly was complete which was an accomplishment not just the United States but 15 partner countries around the world, simply in terms of international cooperation. During my resubmission I had also the honor here to fly this flag that the mayor mentioned, actually I flew two flags. One of them is right here. We flew a flag of San José, and this little flag is also a flag of San José that flew on my mission with me. This is a little composition of photos taken on the mission, and as I mentioned this flag was flown in space and we flew a bigger one of the City of San José and this is in recognition of San José's contribution to the space program and also just to thank you to San José for the opportunities it afforded me as a student growing up here in San José so thank you very much.

>> Mayor Reed: This is the first time I've received a commemorative photo where everybody is upside down. Which way should I hold it?

>> Any way you like!

>> Mayor Reed: Well, thank you very much, Greg and we're going to take a picture.

>> Mayor Reed: Well I think we'll continue on our heroes theme. Heroes come in a lot of different shapes and sizes and with a lot of different characteristics. You've just heard a couple of them but now I'd like to invite members of the San José police department, District Attorney's office, chief Moore and Jeff Rosen to join me along with Councilmember Liccardo. [applause]

>> Mayor Reed: Well, this is a quite a collection of people here. This ceremonial items is long in the making. It has taken over three years to put it together, because it was a little over three years ago when indictments were handed down indicting some members of one of San José's worst street gangs. And I've been wanting to do a recognition of the folks who put the el Hoyos palmas gang, at least the leadership, behind bars and have done so much to protect the people of the City of San José. And there's this little thing called trials and things like that, so we kind of had to wait until we got the trials and the disposition behind us. So tonight is the night to give a long overdue thanks to the group of people behind me who represent our police department and our District Attorney's office. And as I said heroes come in a lot of different packages. And people do a lot of different things that are heroic and sometimes we don't necessarily take a minute to thank them. So tonight we're going to take a little bit than a minute to thank them. And I'm going to let the chief and the different explain what it took in the way of police efforts to get the folks off the treat and the District Attorney's effort to put them away. I'll let the chief and the D.A. wrestle who goes first.

>> We didn't wrestle. The chief said I could go first. Back in early 2007 this criminal street gang that Mayor Reed mentioned went on really a murder spree and committed multiple murders and literally was just going around shooting people. And the crime rate at that time was extremely high. And we were on pace for really a record year for murders. That was until a group of San José police officers and chief Moore will speak more specifically about them, worked with one of our prosecutors, Stacy capps, and we captured the leadership of this gang. And took them to the grand jury. And once they were in custody the murder rate dropped precipitously that year. It took a number of years for the case to go to trial. And there were eight defendants left. And the first trial began against four defendants. And Stacy capps from our office was the lead and only prosecutor on that case. This very petite, cute, girl from Fresno. Who went to trial against four very big defense attorneys. And by the end of the trial really

everyone in the courtroom was eating out of Stacy's hand. And the verdict in the case, there were over 50 counts in this case. And it took the clerk an hour and a half just to read the verdicts. And there were, the word that kept ringing out over and over again was guilty. Guilty on all counts of all charges of all allegations. In my 16 years of -- as a prosecutor I've never seen any verdict like that before. And it's really just magnificent. Stacy didn't accomplish that alone. There was a team not only of San José police officers but support staff from our office. Catalina Medina Alvarez and Jena Daugherty, the parallels on that case. Eric Barlow from our crime laboratory testified for several days about crime statistics and ballistics that were able to link many of these murders together. And it was a tremendous outstanding team effort and I'm really so pleased and proud of the folks in my office, and of course, very proud of the police officers. But I know chief Moore is going to talk about them in a moment. [applause]

>> Thank you, Jeff and thank you mayor and members of the council it is indeed my honor to be here to hand out some awards to people who are very, very well deserving. For those who followed any of our activities of the police department for the last several weeks, it's no secret that we as an organization when things get really rough we come together we come together like no other police department. The men and women you see behind me here are one -- are a group that through their efforts we're able to assist the District Attorney's office and not only the investigation but the capture and then follow-through prosecution of some very serious and violent individuals that needed to be taken off the street. And again I'd like to echo the mayor's thanks to the D.A.'s office and to the county for their support unwavering support to make sure these folks were put behind bars. Let me talk a little bit about the efforts of the police department. Again we're going to read some names off and hand out some commendations which is a great thing for the individual officers. But I want people to realize that its not just the folks here but the entire police department. It's the patrol force that get there that do the initial investigation it's the investigative bureau, everyone coming together in a way that no other police department does. I'm honored to present these commendations to these individuals because they are very deserving and look forward to that opportunity. I think what we're going to do is turn it over to Jeff for the commendations for his staff first and then we'll follow with the police department.

>> First person that Eric Barlow and our criminalist. [applause]

>> Catalina Medina Alvarez our paralegal. [applause]

>> Jena Daugherty one of our paralegals. [applause]

>> Our lead prosecutor on the case, Stacy capps. [cheering and applause]

>> No surprise, Stacy is absolutely the best. We thank you very much. From the San José police department, Reed Biersdorf. And I'm looking at Ed conover so we're going to go on to Sergeant Jason Dwyer. [applause]

>> Shane Granberg. [applause]

>> James Husse. [applause]

>> Jamie Jimenez. [applause]

>> Anthony Kilmer. [applause]

>> Will Manion. [applause]

>> Stanley Mcfaden. [applause]

>> Julio Morales. [applause]

>> Brett Myers. [applause]

>> The one and only, sergeant Dave newman, retired. [applause]

>> Another hero of the San José police department long standing, Gustavo Perez. [applause]

>> Sean Pritchard [applause]

>> Lieutenant James Randall. [applause]

>> Brandon Sanchez. [applause]

>> I am not seeing Tom Snuttenhouse but tom is not here so let's give a collaborate for him. [applause]

>> Randy Torrez [applause]

>> Will Young. [applause]

>> Donde West. [applause]

>> Mr. Mayor, thank you so much for the good work of the men and women up here, one more time, thank you. [applause]

>> Mayor Reed: Try squeeze to the middle a little bit so we can maybe get in one frame.

>> Mayor Reed: Well, we're usually not quite so inspirational. Before we swear in our youth commissioners. We do expect our youth commissioners to one day stand here behind us doing something heroic. And so we're going to swear in some youth commissioners. I would like to invite Vice Mayor Nguyen, Councilmember Liccardo, Councilmember Rocha and the youth commissioners that are here to join us at the podium. Please come on down. Our City Clerk Dennis Hawkins will do the swearing-in. We have Ezmerelda Valerio, Kenneth Huynh, and Nicole Lim. Thank you for joining us. Raise your right hand please.

>> Dennis Hawkins: I, and state your name. I, Do solemnly swear.

>>> do solemnly swear.

>> That I will support and defend.

>>> that I will support and defend.

>> The constitution of the United States.

>>> The constitution of the United States.

>> And the constitution of the State of California.

>>> And the constitution of the State of California.

>> Against all enemies. Foreign and domestic.

>>> Against all enemies. Foreign and domestic.

>> That I will bear true faith and allegiance.

>> That I will bear true faith and allegiance.

>> To the constitution of the United States.

>> To the constitution of the United States.

>> And the constitution of the state of California.

>> And the constitution of the state of California.

>> That I take this obligation freely.

>>> that I take this obligation freely.

>> Without any mental reservation.

>> Without any mental reservation.

>> Or purpose of evasion.

>>> Or purpose of evasion.

>> And I will well and faithfully.

>>> And I will well and faithfully.

>> Discharge the duties.

>>> Discharge the duties.

>> For which I'm about to enter.

>>> For which I'm about to enter.

>> Dennis Hawkins: Congratulations.

>> Councilmember Liccardo: Congratulations.

>> Mayor Reed: First item of the evening is to finish up the last item of the afternoon which is item 3.8, which is appointment of a member of the Police and Fire retirement board. We had a discussion and I now have a copy of the application for appointment as a public member of board that got circulated, to the council by electronic and hard copy I think both.

>> Dennis Hawkins: Yes, Mr. Mayor.

>> Mayor Reed: So let's take up where we left off. We had a motion guess it was withdrawn so we could defer it. I'll recognize Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. I'd like to make a motion as recommended by the Rules and Open Government committee to appoint Elizabeth rounds for the board of Police and Fire retirement plan.

>> Mayor Reed: We have a motion. Further discussion on the motion? All in favor? Opposed, none opposed, that's approved. That was easy, off to a good start. Now we start the evening agenda, which is land use items, our first item is 11.1 which had a couple of items on it that was consent calendar. I wanted to talk about item B. So the consent calendar would only have one item on it 11.1A which is zoning ordinance for property at 280 and Saratoga avenue for a private school.

>> Joe Horwedel: And Mr. Mayor staff is recommending approval of that. I will note that there was a memo that we distributed on the dais of the Planning Commission action, we realized that memo never made it to the council. Apologize for that delay.

>> Mayor Reed: But that has been distributed. I've got a copyright here.

>> Joe Horwedel: That's correct.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: I just want to make sure. Is this the one we're deferring or the one we're hearing?

>> Mayor Reed: 11.A is what we're hearing, 11.B there was a recommendation to drop it but I wanted to ask questions before we drop it.

>> Councilmember Constant: I'll make a motion to approve.

>> Mayor Reed: Motion is to approve 11.1A. Further discussion. All in favor, opposed, none opposed, that's approved. 11.1B then is recommended to be dropped but I had some questions about it. Almaden expressway and Chenoweth avenue. The 400,000 square feet of uses, Almaden ramp is the more common name. This is being dropped because the Planning Commission declined to certify the environmental impact report. I had some questions, how long dit take here and how long will it take it to get back in sort of the ordinary process? This is a big project and serves an important place in the sales tax generation plan.

>> Joe Horwedel: Mr. Mayor, I do not know the exact date it was filed, it was filed in early 2010 with the file number there. It did have an environmental impact report and we spent probably six to nine months with the applicant's traffic engineer just to sort out traffic issues with the Almaden expressway and with CalTrans. The Planning Commission in their hearing to certify the EIR heard testimony from some individuals that were at the meeting and raised concerns about water supply assessment, and the potential for blight, for approving the amount of development on the property. Because of how CEQA is situated, and the standard proof for legal challenge is so low, the Planning Commission was concerned that, of those issues and felt that it was appropriate to continue the EIR for that work to occur. We already have the water supply assessment has been received from the water company. And the analysis on blight is underway. The applicant has retained a consultant that is

looking at retail properties in the area. The turnover of rental vacancies in that area. So that we can refute any claims of blight. It is an unusual claim. We have had it in several large format retail proposals in the past several years. It's not something we normally build into an EIR, not wanting to pile-on issues but it is one that we may revisit that larger question in the future. Our meetings with the applicant on Friday our expectation is, assuming the blight analysis comes back into the city by November 1st, we anticipate being into the Planning Commission in January, and the council right behind that.

>> Mayor Reed: And if it goes -- well it has to go back to the Planning Commission first so it has to certify the EIR.

>> Joe Horwedel: That's correct.

>> Mayor Reed: And if they decline to certify the EIR you go out and recirculate again or something?

>> Joe Horwedel: The -- trying to think of how the particulars are, that I think actually, if there are issues that the commission is raising such as there, is that we do need to address those issues. At the end if the Planning Commission was to just refuse to certify the EIR whether there's an opt-out provision I'm going to defer to Rick because I don't think we've ever run into that issue.

>> City Attorney Doyle: I guess we have the right of appeal to the city council ultimately but you're right we've never run into that.

>> Joe Horwedel: Yeah.

>> City Attorney Doyle: And so it's you know I think now the idea is let's address the concerns raised by the Planning Commission and it goes back to Planning Commission and hopefully come back here shortly. Whatever time period it takes to do the additional studies.

>> Mayor Reed: Okay, well I know this is a big project. But a retail strategy is important to helping us increase the revenues for the city, and this was a significant project. That was the only question I had was just about the timing of how long it's going to take in the process to do that. So with that I'd recommend that we follow staff recommendation and drop it, if there's a motion.

>> Second.

>> Mayor Reed: Motion is to drop, all in favor, opposed, none opposed, all right that takes care of that one it's dropped. That means it will get renoticed when it's ready to come back through the process. Our next item would be 11.2, that's rezoning of property located at Northwest corner of Jackson street and north 19th street. Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. I submitted a memorandum with today's date, that I would like to make into a motion with one small amendment. The item E, I'd just like to clarify that the last sentence should read any attempt to do so will require application pursuant to the city's secondary unit ordinance or other lawful process. I don't want to restrict whatever process the applicant may take in order to make a residential application. But at this point that's not applicant's intention and we expect this would go forward without any residential occupation. That is a motion, thank you.

>> Mayor Reed: All right we have a motion on the floor, Councilmember Constant got the second I believe. I have no cards from the public on this. So we have a motion. All in favor? Opposed, none opposed, that is approved. Item 11.3, consideration of appeal of the Planning Commission's decision to deny a conditional use permit and determination of public convenience or necessity.

>> Joe Horwedel: So Mr. Mayor, this is one of several alcohol applications on tonight's agenda. It is subject to the mandatory denial provisions of the Municipal Code. The Planning Commission did recommend denial of pursuant to the ordinance but is one that staff is recommending approval of the appeal, and to allow the offsale of

alcohol at the establishment. It is a full service grocery store. That police department has assessed, the neighborhood and the business, and is taken no position on it. They do not oppose the offsale.

>> Mayor Reed: Since there are several let me identify this one as the southeast corner of Story Road and McGinnis avenue. I have some requests to speak, we'll get to that in a moment. Councilmember Constant.

>> Councilmember Constant: Thank you. I know this is District 5's. I am not going to make the motion. I just wanted to ask a question. We have three mandatory denials on the calendar today and I was wondering if we could get an update on when we could expect the ordinance before the council to change this cumbersome process?

>> Joe Horwedel: So planning staff met to go over the draft ordinance that was put together 50 city attorney's office providing comments back. It was woven in as one ordinance dealing with multiple issues and we're recommending that it be pulled apart to deal with the distinct issues that will be coming before the council namely the mandatory denial and then the question about should we deregulate grocery stores. Because we wanted to make sure the council had the opportunity to move either way with that. So that is back to the attorney's office. Those comments so allowing Renee to work on it. So I think it was pretty close so it will be before the end of the year.

>> Councilmember Constant: Rick do you concur with that time?

>> City Attorney Doyle: Yeah I think you know it's something that's been a work in process, I suspect end of the year will be plenty of time if not more.

>> Councilmember Constant: Thanks.

>> Mayor Reed: I have some requests on the public to speak on this. We'll take that now. We will fir hear from the applicant. We allow the applicant fives minutes on these administrative appeals. So the applicant

representative whoever's involved with the applicant will speak first and then we'll hear public testimony. I'm guessing Greg Kays is going to speak for the applicant.

>> Yes, thank you, mayor, good evening council. My name is Greg Kays. I'm here to speak on behalf of the applicant, Mi Rancho Supermarket. I'm not sure if any or all of you have had a chance to visit the market but let me describe it briefly for you. It is a full service supermarket, approximately 7,000 square feet. It has a full service meat counter, full service produce. It serves a variety of dry goods. Cheeses, creams, there's prepared food items. It is in every sense of the word a supermarket. I'm sure you're all familiar, I'm familiar from just following what the council does. And this whole concept of offsale of alcohol in grocery store settings is clearly an issue that people are concerned about. This is exactly the type of business that many people want to see the alcohol sold out of. The applicant is only asking for a maximum of 5% of square footage. They probably won't even use but one or 2%. It is the intention of the applicant to, if you have the staff report in front of you, if you'll turn to the floor plan, if you look at the floor plan, which is at it's about the third page from the back, second page, you'll see a number of what are cooler doors as you look at the diagram on the left towards the top. And there's a couple of doors that are going to be reserved in the back there, for putting in the beer and the wine. Again, this is only an intention to sell beer and wine, not distilled spirits. So the actual place where the where the beer and wine will be picked up by the customer is not even visible from the front doors of the store. It is an inconspicuous place to sell but it's important because this store which actually opened last year gets many, many, many requests from its customers. They simply want to be able to buy typically a six pack of beer, to take home with whatever meat they're going to barbecue or whatever they're going to prepare for the evening meal, or on the weekend or whatever. So it is simply driven by the consumer, and the desire of the owner to service the clientele. They also have competitors in the area. Competitors who do sell beer and wine. So this will enable them to be on a more even keel, a more fair setting, in terms of competing with other stores in the area, which will ultimately benefit the consumers, hopefully, by reduction in price. So as was mentioned by staff, and we're of course pleased to hear that staff does support this, this was a mandatory denial at the Planning Commission. I appeared at the commission. No one spoke against it. I'm not aware of anybody that has lodged any complaints or objections to this. The neighborhood supports it. We did submit a letter from the neighborhood organization, supporting it, I believe people are here tonight who will express themselves and express that support. So on behalf of the

applicant I would encourage the council to follow the staff recommendation, uphold the appeal so this store can then proceed to have its license issued and sell beer and wine as indicated. If there are questions I'd be happy to address any.

>> Mayor Reed: No questions at this time. Still got a little bit of time left. I'll let you come back after everybody has testified to wrap things up. Councilmember Liccardo.

>> Councilmember Liccardo: I'm very intrigued. You say it's 7,000 square feet but still full service with regard to meat and produce.

>> Yes.

>> Councilmember Liccardo: I'm trying to imagine in my head how you cram all that in. Suburban concept is 27,000 square feet and urban concept is Safeway about 20,000 in the downtown is that fair Joe?

>> Joe Horwedel: I would say that's in that ballpark.

>> Councilmember Liccardo: I'm trying to imagine how you do all that in the 7,000 square feet.

>> Well, do you have the diagram, the floor plan in front of you?

>> Councilmember Liccardo: I was looking through the materials.

>> At the very back is a sheet of elevations and it should be right before that.

>> Councilmember Liccardo: Thank you, yes do I see that.

>> Okay and looking at the diagram, you enter the store from the bottom of the diagram. There's -- and as you enter the store immediately to your left, is against that wall is basically it's a kitchen for prepared foods and then they sell cheeses and more dairy products right as you enter the store to your left. As you go back you have all the refrigerated cabinets and the freezers and those are those little doors that you see that are drawn in there. To represent an opening of a door, do you see that?

>> Councilmember Liccardo: Yes I do.

>> Across the entire back in that rectangular section that's the meat department and so that entire area is a butcher shop basically, and then you have the rows where the dry goods and the baked goods would appear and then to your right actually I think one of those gondolas or areas have been removed, I'm not saying there is tons of space, it is well utilized space. But indeed a full service market. There is very little that you would want that you can't find here. So it is truly a grocery store.

>> Councilmember Liccardo: I commend you for utilizes a concept that is so space efficient. I hope you appreciate the nature of my question because in the downtown we have plenty of 7,000 square foot stores that sell Cheetos and twinkies and lots of beer. I know you have a focus on fresh food which is what we're trying to encourage with the use of these scarce alcohol permits. I appreciate you have a concept that's consistent with that.

>> Absolutely, absolutely. I think the thing that struck me when I first walked into the store was that unlike the store I typically frequent which I really can't see from side to side in the store, I can see the store, I can go exactly to, if I am looking for something, it is easy to get around this store because it is smaller but yet it has basically everything.

>> Mayor Reed: Councilmember Campos questions for the applicant?

>> Councilmember Campos: Actually just wanted to continue on with Councilmember Liccardo's concerns. This, the concept is not unique. I mean there's plenty of examples that have that have succeed in district 5 and in district 3, if you remember the supermercado Mexico, bases itself around the 5,000 to 10,000 square foot model. Santa Fe is about a mile down, chaparral is about 10 to 12,000 square feet. I think when we look at full service grocery stores and allowing them and wanting to really ABC licenses granted in communities that really should be the appropriate place. And if you think of the convenience part you know someone is going in for fresh meat, vegetables dry goods et cetera, then having to stop off at Safeway to go buy you know a six pack or whatever for whatever they're going to do that night. Is a little bit inconvenient. I think what this will do is it will help them to satisfy the clientele they're having go in right now. When I make a motion I'll continue on with my comments. Just wanted to -- I hear your concerns and those would be my concerns and I know when I was on the Planning Commission and Joe can attest to that, when I was a new commissioner, I didn't look at them this way and then I started seeing all the different types of models that small neighborhood grocery stores have and they really do make sense. So those are my comments for now and then when I'm ready to make a motion I'll make the motion, thank you.

>> Mayor Reed: Done with the questions, I'll take the public testimony now. Come down when your flame is called Alofa Talivaa, Stephen Chavez.

>> Good evening, mayor, city council, manager. Councilmembers. My name is Alofa Talivaa I'm here to represent Sierra neighborhood association as a leader and an activist. I'm here to support the me rancho grocery store. I went over there and I did my homework, and checked this place inside and out. The appears is very clean. No graffiti, no litter around. And the owner of this place, you know, he makes it as his high priority, to make sure the cleanliness inside and out, free of graffiti, you know, that's the thing that I was looking at. And I look around you know it is very, very clean. And this is in District 5. And I'm here to urge you, mayor and councilmembers, to please vote yes. I look at it as, at this store as no different from the me pueblo that all of you vote unanimously you know to support their offsale alcohol license. So that's why I'm here to please vote yes, you know these are bad times. They need you know their financial, you know to -- you know to push up and all that so we all know the economy is not going to get better any soon. So please, give them a chance to survive. They bring revenue in our

city, and also, they're taxpayer. Thank you for listening. And also I have the letter of support over here for you guys. Thank you.

>> Mayor Reed: Thank you. If you would hand that to the clerk. Christina Duarte or Steven Chavez and Christina Duarte. Go ahead Mr. Chavez.

>> I'm asking and requesting that you say yes to Mayor Reed and the total council, in regards to councilman Campos he had just mentioned sometimes you want to go to the store and I have steak and want to put beer on it and barbecue. As a man myself I know if I go beer store first I'll spend my money there and get drunk without getting steak. It's an inconvenience. I don't drink anymore. Back then in the days, I at any time have the steak there, the only thing there was drink and it's a big inconvenience. As far as would I have the positive attitude of saying yes I want a wine with my stake or you know, you know a beer with my chili beans and taco at home and relax and enjoy that and get something beneficial out of it. And I'd like to thank all of you for your support for the neighborhood. Long years contribute, the police being active, and the youth community there to make it safe and wonderful environment for community, especially the youth. Nowadays, they need tall support they can. And since this store is opened up there they have been on the forefront helping out the community. In events for youth projects. So that says a lot for me. That they deserve our help. And you know being able to continue to do the things you are doing for the community. And we can work together. I know the community I'm in now, I love a lot and they really will go out of their way to make things that when we see crime in the area, they're willing to stand up for something they believe in so thank you.

>> Mayor Reed: Christina Duarte, Brittany tommateo, Alofa Talivaa.

>> Good evening mayor and councilmembers. My name is Christina Duarte, I'm ten years old and I live in the Sierra neighborhood association. I'm here to let you know that I'm supporting me rancho grocery stores of offsale of alcohol. They help us a lot in the community. Please vote yes for me, rancho stores, thank you.

>> Mayor Reed: Brittany tomateo, (saying names).

>> Oh, hello my name is Brittany Tomateo, I'm 13 years old and I go to Lee matson middle school. I'm here to support knee rancho grocery store offsale of alcohol. The other than has a good heart. He supported our Sierra association events Mayor Reed and councilmembers please vote yes for me rancho store. Thank you.

>> Mayor Reed: Carmen Talivaa, (saying names).

>> Hi, my name is Carmen Talivaa I'm here to offer my support to the me rancho grocery store. Offsale of alcohol and I just want to say they've been a big help to the community and I thank any business to give back it's a positive thing to the neighborhoods and yeah, I just here to hope you guys vote yes for them and thank you for your time.

>> Mayor Reed: Luli Tafa, Leo mariner, and (saying names).

>> Thank you very much for the honor and the privilege be there in the City Hall, my first time here, it's a wonderful place. For right now I think my name is Uli Tafa, I represent the Sierra neighborhood. I did not prepare any speech or anything, but driving by the neighborhood for me rancho grocery the supermarket, it creates a wonderful family atmosphere. If we're continuing having something that makes the -- represent the community I think we should vote yes to go forth and grant the liquor license to the me rancho. Why can't the Mercado and Safeway, why can't the me rancho have the same thing? I think it's great for the community and members of the neighborhood with me. Thank you very much.

>> Mayor Reed: Horon Racindes is the last speaker.

>> Good evening, Mayor Reed and council, I wasn't going to come tonight, we have two important meetings in district 5, but I had to come out. I'm not for I'm not against. I couldn't come last time when I was protesting one of those liquor licenses but we had a councilmember that always oppose alcohol and also it's for me sad to see a neighbor that used to be against alcohol all the time, now she's in favor of every one of those liquor

stores. Another thing that you got to look at, bringing children here under 18 to talk in favor of alcohol, that's not right. Take a look at that. Another thing, we make a walking tour, and I invite any one of you that can come. You got to make a walking tour in that area to see, we got ten liquor store right on 10 and story and white. Me rancho is not even a half mile away. It's like three blocks away from story and white. There is already ten existing liquor stores. Okay? So any one to want to make a walking tour come on over and you'll see all the alcohol homeless and things that are in there. Thank you very much and -- thank you.

>> Mayor Reed: That concludes the public testimony. The applicant had a minute left if you wish to take it. Okay. Applicant passes, Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. So I want to start off with a motion to approve the staff recommendation on item 11.3.

>> Councilmember Constant: Second.

>> Mayor Reed: Have a motion on the floor.

>> Councilmember Campos: Just wanted to speak to it. And again in a bad economy, a competitive disadvantage is -- it's the break point of putting a business that's not just supporting families that work there, and even you know the businesses, those are there, the business owners, that's their livelihood as well. And let's not mention that these businesses are also contributing to our economy. I think these small grocery stores, the 7,000 square foot you know between 12,000 square foot stores if you really look at them, those are the ones that really promote pedestrian oriented retail. When you look at the customers like this they are really coming from the neighborhoods that are behind them. In this case, the Ryan neighborhood, the neighborhood across the street that is behind the Home Depot. They actually if you think about it, add to our Green Vision, because you have residents that are actually walking to do their retail as opposed to driving a car to do their retail. I mean, that is just one of a host of a number of reasons why we should be supporting this. They've been a proven good business for

our community. And for those reasons, you know, I'm supporting this and made the motion. And I would ask my colleagues to also support this project. Thank you.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. And yeah, you know, I've seen projects like this both the time when I was on the Planning Commission with Councilmember Campos and as a councilmember as I've said they need to be looked at case-by-case. I know that Councilmember Campos more than anyone I'd known at the time I was on the Planning Commission voted no on alcohol and liquor licenses because he's held steadfast to the fact that they needed to be full service stores. And I think that he does point out something well, Councilmember Liccardo's questions brought it out in an effective way and I think the applicant answered the question in a very detailed manner which helped me to gain a better understanding of what the store was about, as I had the opportunity when I was on the Planning Commission to visit the store, gives you a better sense. A lot of the ethnic markets, I walk into an Indian store and they cram a lot of stuff in there. It is a different model than frankly a lot of us are used to growing up in suburbia. That square footage could lend itself into a completely different experience. The outside is very clean which says a lot about the management. It reminds me of the Edenvale area where we have stand alone liquor stores, which I wish we could close down. We had Mercado with prepared foods and all that. I think even further analysis when we get to this point and kind of look at whether or not it is a full service store, they don't have just a couple of bananas and an apple out front and say they're a full service grocery store. It's been pretty clear from the council that we're trying to do as much as we can especially in neighborhoods that don't have fresh meat fresh produce, maintain those types of stores, especially when they're restricting the shelf space and just beer and wine and have the risk of becoming some of those grocery stores that are not too far from the spot as it is. So I'll be supporting the motion on the table.

>> Mayor Reed: We have a motion to approve the appeal. On the motion all in favor, opposed, none opposed, that's approved. The appeal is approved and we will move on to 11.4. That's a consideration of an appeal of the Planning Commission's decision to deny a conditional use permit and determination of public convenience or necessity to allow the offsale of alcohol at a full service grocery store at Foxworthy Avenue and Meridian avenue.

>> Councilmember Rocha: Do you have any requests to speak?

>> Mayor Reed: None.

>> Councilmember Rocha: They are making an improvement on this site. Right now it's a vacant building. I'd like to make a determination of public convenience and necessity of offsale of alcohol at a full service grocery store. As recommended by the Planning Department.

>> Mayor Reed: We have a motion to appeal. Vice Mayor Nguyen.

>> Councilmember Nguyen: I just wanted to report that I had a meeting with the other than of grocery outlet.

>> Councilmember Constant: Ditto.

>> Mayor Reed: I also did.

>> Councilmember Campos: I forgot, I had a meeting.

>> Mayor Reed: No cards, on the motion, all in favor, opposed, none opposed, that's approved. 11.5, administrative hearing and consideration of appeal of the Planning Commission's decision to deny a conditional use permit and determination of public convenience or necessity to allow the offsale of alcohol at a full service grocery store. Beverages and more or Bev Mo, depending on your preference. On these appeals we take the applicant, applicant has five minutes. I'm not sure who on this list is representing applicant but Jeff Seely is just a guess. Taking a break? All right, we'll just see who wants to talk, and we'll let the applicant have some time at the appropriate time.

>> Joe Horwedel: Mr. Mayor, while the applicant is returning back staff does have a few introductory comments.

>> Mayor Reed: All right, let's do that, then.

>> Joe Horwedel: Thank you, Mr. Mayor. This is, as the last two, an appeal of the mandatory denial findings. This is one that staff is not recommending the council approve the offsale. Staff would concur that Bev Mo has been a very good retailer, I visit them myself. But the issue is how the offsale licenses operate are distributed around the city and this is a location that we do have numerous offsale licenses already existing in the areas noted in our staff report. I think the one comment that staff really feels is important and I want to talk about is the conditional use permit that council has before you tonight runs with the land, it does not run with the operator. That is part of the hesitation that staff has with granting or recommending approval of offsale licenses for essentially a full service liquor store. That as I said Bev Mo runs a very good business but it is a major policy issue about granting those because at the end of the day this permit will run for either five years or forever, depending on what term that the council is inclined to approve it you put into the permit and in they choose to move or move out of the business, there is nothing the city can do as the part of the staff's hesitancy of recommending approval of a regular liquor type business. Excuse me, staff is recommending a cocktail. That the council not approve the offsale of alcohol license and we'll be happy to answer any questions.

>> Mayor Reed: That's dedication is the applicant back? We'll hear five minutes from the applicant and we'll take public testimony. Applicant and appellant is the proper terminology.

>> Mr. Mayor, councilmembers Jeff Seely with Bev Mo. I think we all know that what we're proposing is to occupy a portion of the former PW market in the west valley shopping center. I believe the findings or at least we believe that the findings that you have to make have been submitted into the record. Tonight what I'd like to do is really run through a short slide presentation as to why we feel Bev Mo is not your typical liquor store and in fact will provide a public convenience to the residents of West San José. So again this is just the elevation that you're looking for. Really just signage. What is Bev Mo, we're an award winning specialty retailer, great service and everyday value. What's so special about our selection? We have got wines from around the world. We carry about 3,000 wines. That's going to be about ten times what you'll find in an average grocery store. What we do is also,

have wines you can only buy at Bev Mo, okay, about 350 exclusive wines. Okay, 350 exclusive wines is about what a grocery store carries in their standard set. We carry spirits and craft beer, the craft beer is extremely popular right now. Importantly, we also carry a huge selection of national sodas, caviar, cheeses, crackers and glassware, what we call wine accessories. What about this Bev Mo service we hear about all the time, what we do specially. It starts with Wilfred, he is our cellar master. We encourage our customers to come in, explore in the store Wilfred writes all the product descriptions for our wines, beers and spirits. Okay, you taste about 8,000 wines a year, okay that's the good news and the bad news I suppose. We use his rating until wine spectator or another wine rating group comes along and provides another rating and we include that as well. In the store the service, we've got green shirts equals friendly service, burgundy service equals a wine expert, okay? Half of our customers are women. They don't feel intimidated to come into our store because they have friendly faces in the store. We also have beer and wine tastings, Fridays 4:00 to 7, Saturdays, 12 to 3. There's a \$2 charge and again there's no seating and there's one-ounce pours. The other thing we do in-store call boxes, online ordering, money back guarantee. If you don't like it bring it back we'll refund your money. We've got services covered. What about value? We have our club program. We are not always the cheapest but we do allow every day value. It is a free membership, we have over 3 million members, a lot of them sent in e-mails and letters of support to you. 90% of our sales go to our members. Equally important is what we're not. Not a typical liquor store and not a typical convenience store. Why do I say that? We don't sell cigarettes, we don't sell malt liquor or fortified wines, we don't sell adult magazines or lotto tickets. We close at 10:00 p.m. during the week days. Not allow customers under 21 in the store. Do not employ staff under 21. Drug test prior to employment, get customer feedback from thousands of surveys, we incorporate that into our customer service. And we have our other minor decoy program, we have zero tolerance for sale to minors. We'll benefit the community by employ 12 to 15 local employees. Recapturing retail sales leakage to Santa Clara, provide incremental sales tax to Saratoga and Campbell, filling a long term vacancy. PW market has been vacant about a year now Sunflower market has filed an application to fill the remainder of the building. We are going to have a clean store and take care of it. We have three stores in San José you know we're a good operator and we are responsible we have a great record with the ABC, they consider us to be the Nordstrom of liquor stores. Given that, it's time for Bev Mo in West valley, happy to answer any questions.

>> Mayor Reed: Any questions for the applicant? Councilmember Kalra.

>> Councilmember Kalra: Thank you. Over here. Thank you for the -- thanks for your very nice presentation and as our planning director was indicating once if we were to go forward and to grant this permit, that you know, if Bev Mo went away from that site in a couple of years someone else could come in there and not have the same standards or for whatever reason be a blight, to that neighborhood. And so I guess the question is and I bring this up because I know that I'll mention my colleague here, before this hearing started, that there's a Bev Mo at TSA Teresa which was a tower records, Bev Mo came in, babies R us and a party city something like that and it actually very much helped I think it helped that shopping center. But in this case here, and I know that you're a large you know kind of a large chain of stores so what kind of market research goes in so you can be assured as much as possible, given the ups and downs of the economy and the ups and downs of the market, this will be a viable option for you?

>> Again we look at demographics. We look at the spacing in between our stores. We also know pretty well where our customers are coming from based on that club Bev data and we are able to estimate based on what I call analog stores where we have other stores that have similar demographics whether or not this particular store will be successful or not. The positioning of it from a strategic standpoint, positions us to serve the West San José market. It's an area where we're currently not getting a substantial level of sales from. And we're very confident that we're going to be successful here. As you know our Camden store has been open 17 years. We opened up a store in Willow Glen, it's doing well. As you mentioned the Blossom Hill store is open since 2008. Worst recession we've ever seen powered right through it and we feel very strongly that we're going to be successful in this location.

>> Councilmember Kalra: Well I think it's encouraging that there's a market that is going to be opening, a food market that's going to open next door. That's definitely a compatible type use and I don't think anyone would object here that we have a large empty store front that we can get a use out of both on the retail store side but also in terms of the vibrancy of having activity in the shopping center. I think it's just ensuring that it's something that we can rely on being there, in fact people understand your model you presented it very well, it's not a liquor

store we get that. But you know what if you're not there five years from now? That's a concern that the planning director appropriately raises.

>> If you'll allow me, the conditional use permit runs with the land. The PCN which is the public convenience or necessity finding that is a finding that has to be made with the issuance of every license by the ABC. So a subsequent user of that space would have to come back before you to get that PCN determination.

>> Councilmember Kalra: In that case this makes it a no brainer then. I'll follow up with the planning director, thank you.

>> Yep.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: Thank you mayor. I had a question for the planning director.

>> Mayor Reed: Sir, you can have a seat, I do have public testimony. We can take the questions now or later. Let's take the public testimony.

>> Councilmember Liccardo: Is it possible that we could ask a question of the applicant while he was at the mic?

>> Mayor Reed: Question of the applicant, one more question sir.

>> Councilmember Liccardo: Sort of save you the time of having to run back and forth later.

>> Mayor Reed: You've already done that.

>> Councilmember Liccardo: I didn't work that out. So nice to see you.

>> That's fine.

>> Councilmember Liccardo: Just to preface, I share some of the concerns the planning director has. You made it clear how you're not a quote unquote liquor store. Some of those distinctions things like not selling cigarettes, closing at 10:00 p.m, not selling lotto tickets, things of that nature, would you be amenable of having those kinds of restrictions that you impose on yourself as conditions on the C.U.P?

>> Sure.

>> Councilmember Liccardo: So essentially they would bind anybody at that site?

>> Those operating conditions that are self imposed haven't changed since we founded the company in 1994.

>> Councilmember Liccardo: I'll explore that later so thank you.

>> Uh-huh.

>> Mayor Reed: Any further questions of the applicant before we let him sit down again? All right. Public testimony we'll do that now. Please come down so you're close to the microphone. Sarah Edwards, John Michado, John ryeman.

>> Good evening, Mayor Reed, vice mayor and councilmembers, my name is Sarah Edwards, I'm here as a resident of San José, in support of beverages and more. I'm not an expert in wine and always feel very comfortable in going into a beverages and more and ask them for advice on what types of wine would be appropriate to purchase as a gift for friends and family. And I think that I do shop the Westgate area and I feel that beverages and more would be a great addition to the area. Thank you for your time.

>> Mayor Reed: John Michado John ryeman and Matt Francois.

>> Good evening I'm John Michado, here for the West valley shopping center Inc. the owner of this property. Approximately a year ago the owner approached me and asked me to find a replacement grocery store for the 45,000 square feet. We went out and hit the independent grocery stores that are operating in Northern California and could not find a grocery store that was willing to occupy the 45,000 square feet. After a six to eight month search the ownership said John let's see if we could divide the space. As everyone knows tonight if one grocery store was operating here and there has been a grocery store at this location with a liquor license for over 67 years there would be no automatic denial from Planning Commission or hearing tonight. So we ended up and we were successful in getting sunflower markets who has a restriction who has a very -- has no hard liquor sales and very minor beer and wine sales to come in and then also get beverages and more to come in. So we've kind of succeeded in having what the city wanted, a grocery store 35,000 feet and a installer liquor store. I'd also like to address a couple of issues that came it tonight about how are we certain that Bev Mo would remain? From an ownership perspective we have a lease that commits them for 25 years at this location. Unless they are going to violate their lease we have a control over that. Another item in the report that recommended denial, as it said there were too many liquor stores in the area. We're not adding a liquor store, we're not adding a liquor license. Bev Mo purchased the former liquor license from the former PW market so it should be an even situation here, we're not adding and we're not taking away. I also point out that Safeway has a liquor license across the street. That Safeway has been vacant now for eight months so again there is no negative impact as far as adding. Thank you very much.

>> Mayor Reed: John ryeman, Matt Francois.

>> John ryeman, the landlord, mayor city council members. This site is 10,000 square feet. And it's part of a larger 45,000 square feet. That represents about 50 -- about 50% of the shopping Center. And it's been vacant for now about over a year. So we have been struggling as a shopping center to find tenants to go into that

space. That space has had since the '60s a Safeway, a liquor barn, and so it has had a liquor component for all these years. So I urge you to allow liquor barn in that space. Thank you.

>> Mayor Reed: Matt Francois is our last speaker.

>> Good evening, Mr. Mayor and members of the council, Matt Francois Sedgewick on behalf of beverages and more. I wanted to briefly address the transferability issue. As Mr. Seely pointed out, given that every liquor licensee would require a transfer and a public convenience or necessity determination, the city still has the control. This is exactly what we have here. PW had a liquor license, it's being transferred to beverages and more. As a result of that process, we are coming before you for a public necessity determination. If beverages and more would want to transfer that to anyone else, we would be going through the same process, a discretion as to who is loud in that space. The cases are clear that the city can't condition a use permit as being unique to one particular retail. And so we think that you likewise can't deny a use permit on the grounds that it is transferable which staff seems to be suggesting here. It did want to point out as Mr. Ryeman said that there are six offsale establishments in the area with Bev Mo there will still be 6 because it is acquiring PW's license. All the other five operators are grocery stores, a drugstore, general retailer. None of them are liquor stores. There's also no shortage of food stores in this area. There will be five supermarkets at prospect and Saratoga with the sunflower market. The Planning Commission unanimously recommended approval, there is overwhelming support of business owners and others in the community. We reviewed the conditions for approval and are in general agreement with the proposed conditions with one exception and that is condition 3. Do I have a handout that I'll hand to the clerk after I'm done but essentially condition 3 restricts and requires that no more than 15% of the sales floor area be dedicated to specialty items like cheeses caviars and chocolate. We think that's unduly restrictive and respectfully request that language be stricken. We are comfortable with the language that a specialty liquor store has to be on the property which is what we are and any future retailer would have to be. Thank you for your consideration of the project, I'll hand out these changes to the City Clerk.

>> Mayor Reed: All right, if you will pass that over to the clerk that concludes the public testimony. Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. Like Joe, I have shopped quite frequently at Bev Mo but unfortunately I've had to go to the City of Santa Clara and I'm sure Joe shops at that same one. But the reason do I that for my colleagues, let me just clarify. The reason do I that is because Bev Mo does their market research very well. And they have a location that you can stand in San José, and even with my poor athletic ability, can hit the front of the store with a baseball. I wouldn't do that, of course. And what that has done has created a draw a magnet of sales tax dollars out of our city, to the City of Santa Clara. And trust me I cringe when I go into those stores right on the border. But as you know wherever you stand in District 1 you're within a mile and a half to two miles of one of our four adjacent cities that surround district 1, Santa Clara, Cupertino, Saratoga and Campbell. What is very appealing about this location, well, there's a number of things, but primarily it does the exact reverse, and that is, it places a specialty retailer right at the border of San José but on our side! It is not only very close to the city of Campbell and Saratoga as was pointed out but it is within a half a mile of the city of Cupertino as well. One of the most important things to note is we are not talking about a new license. As was mentioned by one of the speakers this a license that has existed on this location from when I remember as a kid my parents shopped there and it has always served alcohol. It is a little bit different than many we have seen. We got a great description from Bev Mo about the type of retailer they are, the specialty lifestyle retailer and this is in no way comparable to a liquor store you think of as a corner liquor store. There are a whole bunch of reasons that I lay out in my memorandum that I co-authored with the mayor that I know all my colleagues have in front of them and I'm not going to bore you with going through all of those but I did want to say that the support that this project has had in our district has really been unprecedented. We have the country lane, English estates, Hathaway Park, Baker West, Easterbrook neighborhood associations, the Blackford NAC and the Murdock neighborhood associations that are all either immediately adjacent to or within just a couple of blocks of this location. All of these neighborhood associations support this business coming into San José. From the time the Planning Commission had their meeting, until the time my memorandum came out, 100 e-mails were received, that were forwarded to the City Clerk's office in support of this location. In addition, from yesterday to today, my office and I believe many of your offices received in excess of 30 e-mails in support from the neighborhood. And only one e-mail that was not supportive of this location. Also, via Facebook and other social media we've had dozens and dozens of people provide support for this application. I think that one of the important things to note, as well, that was pointed out

was the availability of a variety of different full-service grocery stores in the area, but what those grocery stores don't have is the selection and the service, specifically related to wine in their stores. Trader Joe's is just across the parking lot from this location. Another area that I shop at fortunately in my city this time. And they do have some wines but they don't have nearly the selection that you would be able to get at this proposed location. I think as we look at our city policies, it's important that we look at them in ways where we can encourage good, high-quality retailers like Bev Mo to come to our city and not set themselves up right on the border of our city, and that we really distinguish those from the liquor stores. And I don't think anyone would argue, that if all of these licenses in this area were liquor stores, it would be a completely different discussion than what I hope we're going to have tonight. Personally, I have no problem with the conditions that Sam was mentioning. And I'm going to get to a motion here very shortly and based on the fact that the applicant doesn't have any problem with that, if that will help ease some concerns for the future I'd be more than happy to include those. I'm going to pass out a copy of the C.U.P. demonstrations. The public convenience determinations so everyone has them and they will be projected on your screen as well. I'm going to summarize them because it's long but I want to make sure we have everything we need to have on the record. I've provided a copy of this to the City Clerk so that the full text will be in the record. I move that the city council uphold the appeal and grant the conditional use permit in determination of public convenience and necessity for the reasons set forth in the memo, that I authored with Mayor Reed, dated September 7th -- let me make sure I got the date right -- September 23rd, 2011, for the specific -- and the specific reasons outlined here. For the C.U.P. determination, that for -- this is for the category of uses closer to 500 feet of another offsale use that results in more than four offsale establishments within 1,000 feet the excess concentration will not adversely affect the peace, health, safety morals or welfare of persons residing or working in the area or impaired the utility or value of property of others in the area or be detrimental to public health, safety, or general welfare. The reasons for that is that the permit will allow the ownership transfer of the existing alcohol license use of the existing building that this project -- this project is substantially surrounded by other commercial uses. No additional adverse parking or traffic impacts have been identified and no police issues have been identified. In addition, the project is located in an existing shopping center oriented in a compatible manner with its other retail tenants and not towards residential units. For the public convenience determination the public benefits are, the project will add 12 to 15 jobs and generate an estimated \$1 million in sales annually for this location. The project will add a specialty goods retail establishment to the shopping center. The project draws

residents from other nearby cities to shop in San José thus increasing sales tax revenue from the residents and preventing further leakage, sale tax leakage. Bev Mo maintains an excellent reputation as a good retail neighbor and a high quality store at its existing stores in San José and the adjacent surrounding communities. Bev Mo has a track record of being a responsible retailer and Bev Mo has received a significant outpouring of support from customers, tenants, adjacent neighborhood associations in the broader community. The proposed outlet, the project will reoccupy a currently vacant space in the west valley shopping center with a reputable and popular specialty goods establishment. Long motion and second motion but there it is. All I need is a second. That's a hint.

>> Councilmember Campos: Second.

>> Mayor Reed: All right, do we have a motion? I'm not going to repeat it. Councilmember Liccardo. Councilmember Rocha.

>> Councilmember Rocha: Don't know if you -- did you include Sam's in that?

>> Councilmember Constant: Yes.

>> Councilmember Rocha: Okay, can you repeat it? I had one question for planning director. You acknowledge Bev Mo being a good business and you had frequented it before but talked about the location. So in your mind so I understand your position where would a Bev Mo location go?

>> Joe Horwedel: The concern of staff is more about the issue of how do we distinguish between a traditional liquor store and a retailer like Bev Mo and I think we do need to spend some time probably as we bring the owners forward to talk about that policy issue. I think what Councilmember Constant has done of putting the findings and facts into the record is much appreciated by staff. Because we are trying to lay out the framework so that if and when a traditional liquor store comes in, Fred's liquors, that sells 3,000 bottles of wine and you know, spirits, how do we distinguish between that? And that the challenge of equal protection. And so from staff's

standpoint, we think it really is important to go and get the -- that policy issue kind of worked through. But of getting it out on -- in the public hearing of what are the distinguishing differences here. And that's the part we've had trouble as staff of what makes that different. What is the fundamental difference? So that's why we've started with the full service grocery and the permits that you saw tonight used that specific wording full service grocery, because that's going to become a term of art identified in the zoning codes. I don't have a specialty alcohol retailer, I don't know what that is. Where Councilmember Constant was going of laying out structure, if you are going to put a full service liquor store such as this, this is a good place to do it. It does not have a neighborhood right behind it. It is in a larger center, it's not stand-alone so there's some accountability that goes with that. But that said it's getting that distinguishing characteristic that you know when I read this use permit and there's somebody else that wants to move into this space, how would I go through with the PCN process and say you would be yes or no? That the no part is what troubles me. Because the liquor retailers are getting very aggressive and you've seen that with the drugstores about why can't I have it? What is it that's different about me than the last one you did? So that's a concern that I have.

>> Councilmember Rocha: So not only will is policy you bring forward talk about full service grocery, you'll also talk about this specialty liquor store?

>> Joe Horwedel: Right now --

>> Councilmember Rocha: I wasn't aware of that but now this is what you for see happening now?

>> Joe Horwedel: That is something that would warrant some discussion. Staff is not prepared to have that discussion this fall but it is one of the things we should put on the list for us to talk through and have some community discussion about when is the good time to say yes and when is the best time so say maybe not?

>> Councilmember Rocha: Thank you. I'd prefer to go that direction rather than reading this every time we have one of these I'll be supporting the motion thank you.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: I'm sorry mayor, the applicant mentioned condition number 3. If one of our goals is to -- we have almost the exact opposite condition when we're talking with grocery stores. Why would we limit to not more than 15% to ancillary things? Is there a reason for that?

>> Joe Horwedel: In converse Congress was saying a minimum of 15% would be associated with that many can it would not 100% of alcohol sales. If staff was not clear, it would be up to 85% alcohol sales, minimum 15% non-alcohol. So --

>> Councilmember Constant: I'd like to ask the applicant what is your percentage in your stores? Because I think we are all familiar with your stores hopefully more in the city than others. We're familiar with those stores but what is your ratio in the other stores?

>> The reason for concern on our part is staff actually laid out a percentage of the square footage of the store. We actually look at the space and being shelf space and so what we've got is about 475 square feet of shelf space donated to the and more, the glass wear and caviar and that sort of thing, non-alcoholic. Really, the actual shift space altogether is about 2500 square feet total in a 10,000 square foot space. So I guess the way I would like to approach it, if we could, is just say, you know what, it will be a typical Bev Mo, and that way if we were to ever change it in this store we would have to change all the stores.

>> Councilmember Constant: So my question would be to staff and the City Attorney, how do we accommodate something like that? Because we know Bev Mo has an operating model, a model they use nationally. How can we address this comfortably?

>> Joe Horwedel: That I'm not going to have to send a code inspector out with a tape measure calculator and a laser protractor. If the number is 5%, the number is 5% but we're trying to get a sense of the amount of floor area

that's devoted to the nonalcoholic base again trying to distinguish how this is different than a traditional liquor store.

>> Councilmember Constant: Is that something that we can -- have you seen this proposed?

>> Joe Horwedel: No. Do I now.

>> Councilmember Constant: If you could just take a second and look at it --

>> Can I just interject something real quick?

>> Councilmember Constant: Yes.

>> So in the staff report we have a proposed merchandise arrangement which shows a racking plan which identifies the area in which the merchandise is located. And we identify it by type of merchandise. And we're required to operate by in accordance with that plan. So I think we've satisfied the issue.

>> Councilmember Constant: Okay. So let's give Joe just a second to read this.

>> Sure.

>> Councilmember Constant: I just want to make sure we get this right the first time through and we don't have to do an amendment later.

>> Joe Horwedel: So staff was trying to go and put that recognizing the types of products that Bev Mo sells, that is kind of character-defining. That is why we used those specific items that are there. I think the question is, how do I come up with something that is a reasonable approximation of sales floor area of what that would be, because I do -- we do use the floor plan as a part of how we will ultimately regulate this through our alcohol

license program. But the display spaces where typically we would see like glass wear showing up, is not, showing which of these are selling glass wear versus which are selling wine or beer on it? Our goal is not every time they have to move furniture they have to get an approval. I don't want that. I want to have 5%, 10%, something that recognizes the part of sales that is non-alcohol.

>> Councilmember Constant: I think the City Attorney wants to jump in.

>> City Attorney Doyle: The way I heard, at least 20 to 25% of your shelf space was.

>> It's 2500 feet -- did I say that right -- if 2400 total, 2500 total linear feet of shelf space. On a square footage basis that's only 20 persons of the store. Anything else is isles and non-selling space.

>> City Attorney Doyle: Okay, I'm just trying to think if there's something to incorporate with the site plan as well as some kind of percentage of space. What I'm hearing from the planning department, is to have some kind of numbers which sort of sets forth an approximation that is similar to the language here. And we can always fill in some language about consistent that's consistent with similar Bev Mos stores, or something, I think there's language we can tweak in working out that condition. And joe, I don't know if you are comfortable with that.

>> Joe Horwedel: Yeah, I mean, that's what we were trying to do, when we said approximately, not that I had you know, it was 15% exactly, it was that general thing. Like I said, if it's 5% or 10% of floor area that should be reflected, the challenge is, and we're going through this and defining full service grocery. Because produce is sold flat and beer and wine is sold stacked tall. And so we were getting this whole dilemma, do you measure racks, or we said deal with it on square foot, because we really don't have the ability to be counting shelves and everything else.

>> Councilmember Constant: Can I simply just incorporate in my motion, I think you know what our intent is here that the two of you will get together and make the number work, so that it meets their business model and meets

yours and the city attorney's requirement of specificity so that there can be enforcement, hopefully there never will need to be.

>> We can do that.

>> Councilmember Constant: I'm going to amend my motion, if it's okay with whoever made the second, I believe it was Xavier.

>> Mayor Reed: All right, so we have a slightly amended motion to deal with condition number 3. Councilmember Kalra.

>> Councilmember Kalra: Thank you. And as to the appropriate amendment regarding some of the items that would not be included for sale, that the applicant indicated wouldn't be a problem, what about from the planning side, is there a problem putting that in there? I don't believe there is, I just want to get staff --

>> Joe Horwedel: What staff would suggest, we have done something different than we have ever done before. We have given you two draft resolutions. To work from the draft resolution, we had a finding number 25 on page 3 of 8 that recognizes the applicant's representation that they do not sell those products and what we would add is a condition at the end, probably 22, that is equivalent of no sale of cigarettes, lottery tickets, adult magazines or fortified wine is permitted at this establishment.

>> Councilmember Kalra: Let me run that by staff as well. Then additionally, the determination of public convenience or necessity, applicant indicates that for future applicants they would have to go through that process even if there's a C.U.P. that may run with the land. Is that correct? That's correct, liquor licenses that are already granted it would come back through a separate PCN process so that we would be deliberating about whether to grant the PCN or not.

>> Councilmember Kalra: It would go to the entire council to determine if it qualified, depending what the Planning Commission does.

>> Joe Horwedel: Depending on --

>> Councilmember Kalra: A situation like this where there might be a concern that a liquor store might come in sometime in the future, the reality is they would have to have that same determination made unless there is some change in the ordinance that at this point is not contemplated?

>> Joe Horwedel: Correct and we would also verify that they comply with the use permit.

>> Councilmember Kalra: That satisfies my concern about that, and the 25 year lease and all the stability that Bev Mo, you never know, the reality is when stores go out of business they go out of business. The stability that Bev Mo does bring coupled with the fact that any future potential tenant would have to go through the same process I think that at least this council and we hope councils going forward would have the fortitude to understand what it is, and what is not an appropriate type of outlet in our neighborhood communities. So with that I'll certainly support the motion.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. So Joe if this were a grocery store, so say PW closed it had a permission to sell alcohol and another grocery store came in I thought if they came in within two years that they didn't have to go through the process again. Is there some different regulation for grocery stores?

>> Joe Horwedel: It is a function of whether there is a still a valid use permit that exist on the property and then going through the ABC process, if it in fact trips on the PCN process. Not all offsale alcohol requires a PCN because it's in an area where there's not alcohol sales that are overconcentrated or there's not a high crime

area. So not all, you know, like if Evergreen village center for example is not one I would anticipate a PCN because I think there's one other license that exists for offsale in that center and it's not a high crime area.

>> Councilmember Herrera: But then if it runs its course as far as the time frame they have to start over again?

>> Joe Horwedel: Legal nonconforming use the permit had expired they might have to come in to get the actual use permit reinstated for it.

>> Councilmember Herrera: In this case they would have to come back in because you --

>> Joe Horwedel: There are too many licenses or the number licenses in this area requires the PCN.

>> Councilmember Herrera: I wasn't comfortable, at the beginning, I am more comfortable, I like that there's a grocery store in the same development.

>> Joe Horwedel: And that application will be coming before the council in the next couple of meetings for conditional use permit and a PCN process. Because there will be a new license.

>> Councilmember Herrera: And what percentage, have we established a percentage of alcohol in that particular one?

>> Joe Horwedel: It will be a normal grocery store. You heard it represented they're just asking I think for beer and wine, it will be the normal 5 to 10% the incidental part of their business.

>> Councilmember Herrera: I'm more comfortable that there is a grocery store in the same area and being in district 8 and losing a couple of grocery stores I can empathize with the community and the owner how difficult it is to go find another grocery store to retenant that property. I know I've actually gone out and talk to Safeway and gone to you know different, you know, events to try to find grocery stores and unfortunately we've gotten a couple

of new ones but it is really a tough prospect so I'm feeling better about it. I want to make sure Joe that you're comfortable with moving forward understanding the difference between Bev Mo and as you're looking at how we grant these scarce C.U.P.s for alcohol, how Bev Mo is going to fill into that category and do you feel comfortable with this -- I kind of see where you're going with the 15% because then can you sort of differentiate it from another liquor store.

>> Joe Horwedel: Right, definitely we'll work on the number. It might be as low as 5% so I won't oversell, we will work with Bev Mo on what that right-number is but I think putting in the findings that have been talked about today, the restrictions that Bev Mo introduced that we're adding in, doing the tweaked but recognizing the other product that is sold integral to their business I think is an important way of distinguishing this from what people might perceive as the traditional liquor store. So that's our goal is to make sure there's enough of a differentiation.

>> Councilmember Herrera: I agree, I think that's really important, and along with the additions that Councilmember Liccardo added, I think that definitely helps. Thank you.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Just a question Joe about the staff rationale on the memo because I know we've -- I don't know if we've had conversations one on one but I know at least in the public forum there's been some discussion around the idea that by creating scarcity, with alcohol permits, we can create incentives for grocery stores and fresh food uses. Is the reason now I didn't see that in your memo and is the reason for that because there's a trader Joe's nearby already? Or --

>> Joe Horwedel: No I think the other applications we looked at tonight especially the ones on Story Road and the challenges that a small market like that faces, how staff has looked at this, that was a way for us to help that business to be economically viable and be competitive.

>> Councilmember Liccardo: Right.

>> Joe Horwedel: So we've kind of been a little bit more lenient or willing to look at places that maybe five years ago would have been just an absolute no and as Councilmember Campos noted. Those are the things that we really said we didn't want to work with those small types of markets because we thought that there'd be problems. We have seen that that has not been the case that they really have been operating well. So we find ways to keep encouraging that. I think the case here is that it's more that larger equal treatment concern that staff has that we want to make sure that if we're going to go through and treat a class of the customer one way, that we've got a way to differentiate that. And it's one that I'm hypersensitive sitting through a lot of decisions on land use decisions recently having to explain 20 or 30 residential conversions, why some were approved and some weren't. Arguing or defending an equal protection claim that we do get those challenges. So it's one that we try to be careful about. But we have that ability to articulate the differences and I think what Councilmember Constant did tonight of laying out that groundwork essentially the overriding consideration to why it made sense here was really important to articulate that. But I think from staff standpoint I really believe that belongs with the council.

>> Councilmember Liccardo: Okay thank you Joe and I want to thank the America of the motion for including the additional conditions. In fact it may be helpful to insert those as well as justifications for how we distinguish this within your framework however you'd like to do that but I don't recommend you read it all again. Thank you.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thanks Sam. I just wanted to make one last comment and I appreciate all the words of support. I think the other thing, I hope this will, anyone who's feeling uneasy this will help them is we have a very sophisticated landlord in this location and what they have done is negotiated the leases with Bev Mo and sunflower together so they are complementary. And as part of the lease for the sunflower it's limiting even much further than we would ever limit the alcohol sales so that they will work complementary and not be competitors to each other. So that it provides an opportunity at this location for a one-stop of two complementary stores.

>> Mayor Reed: I think we're done. We have a motion, as modified. On the motion? All in favor? Opposed? One opposed, I count one opposed, Oliverio, the motion passes on a 10-1 vote. That concludes our work on item 11.5 taking us top open forum. I have one request to speak, Mark Trout.

>> When I was going in this meeting, talking one on one with people, I had a security officer right there, what's his name? What is that man's name? He said, he said to me, sit down. As I was going saying Mark Trout, former candidate for city council in district 9. I'm concerned that we talk with governor brown about AB 499. And I worked with maybe one-third of the crowd, if that you know, 20 people or so and he told me to sit down. What is going on here? What is going on in the City of San José, when a man wants to communicate with his fellow citizens about a very important issue? Really, this -- it has to do with the Bible because we're to love our neighbors ourself aren't we but what didn't have to do with the Bible in the sense I wasn't preaching to them about salvation. Now you got to be half-nuts to not be concerned when our governor just might sign into law forced vaccinations for children. For crying out loud. Now what is going on. You ought to be ashamed of yourself and we have a right of free speech and I have a right to talk, as you do and as everybody in this city has a right to talk, do things decently and in order as the Bible says. I was told by Laurie, here she is, Laurie today, that I may be kicked out of this city council if I don't behave myself forever. I will not be welcome again. I will be subject to arrest for trespassing if I, Mark Trout former candidate for city council, who by the way slam dunked Don Rocha, and the rest of them in the debate, by the grace of God -- I give God all the glory -- but I did, if you will probably watch it on the Internet, but what is going on? I mean, for crying out loud, let's picture your kid being grabbed and being vaccinated. There is evidence as I mentioned before of poison in some of these vaccinations. No not all of them but if you google --

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

>> Mayor Reed: Good evening, I'd like to call the San José city council meeting back into session. We have several matters on the agenda this evening. We have one matter we continued from the afternoon that was 3.8 the Police and Fire retirement board appointment. But we will start this evening's agenda with several ceremonial item items. And first off I'd like to invite Councilmember Constant and Astruba and Anish Astrada, to join me as

we proclaim the month of September 2011 as histiocytosis month. I know you're all wondering what this is, I'm going to let Councilmember Constant tell you. Councilmember Constant.

>> Councilmember Constant: Thank you mayor. I have a number of people behind me, first of them anish, Arjun his younger brother, the shortest one. We have Sruba his mother and Surendra his dad. And lets see if I get this one right. Lena Ray Choudrary. And the registered nurse. We are here today to talk about histiocytosis. It is probably something you've never heard before. We are here because histiocytosis is a collection of rare diseases that affects 200,000 children and adults each year in the U.S. The histiocytosis association has designated the month of September as histiocytosis awareness month. This disease occurs because of the over population of a certain cell in the body and can be just as fatal as prevalent diseases such as cancer, leukemia and others that receive a higher priority for federal research funding. Anish was diagnosed at the age of one and a half and feels strongly about spreading the awareness of this condition. Patients with the disease may be treated with chemotherapy surgery and or radiation, with the goal of causing the disease to go into remission because there is no known cure. The histiocytosis foundation is the only nonprofit organization in the world that is working to raise awareness to provide educational and emotional support to patients and their families and to fund grant requests for peer reviewed research to the national institutes of health so that we can discover better treatments and ultimately cure for this disease. We feel that in San José it's really important for us to take a role in providing awareness on issues like this so that everybody can know what's occurring, and can support the efforts to find cures for diseases such as this. So I'm very proud that we, the mayor and the city council are recognizing this month as histiocytosis awareness month in the City of San José and I hope that everybody in our city can take some time this month to encourage greater awareness and research into this and other disorders, and give special recognition to those who work tirelessly to offer hope to the many patients and their families. And Mr. Mayor if you could present that to anish, come up here buddy and I think he has a few words he'd like to share with us, as well.

>> Respected mayor, Councilmember Constant and everyone, I'm Anish Ashadri and I live in West San José. I want to thank Councilmember Constant and Mayor Reed for proclaiming September as histiocytosis month in San José. This is a cause that is very important to me and my family, other histiocytosis families and doctors who treat

histiocytosis. Since histiocytosis is a disorder not known to many people, increasing awareness is key to finding a cure for this disease. Thank you everyone for giving me this opportunity to speak and allowing my family and my doctors from LPCH to attend this meeting. I want to thank Mr. Shane Patrick Connolly of Councilmember Constant's office, for making this happen. Thank you.

>> Mayor Reed: Thank you. [applause]

>> Mayor Reed: Next I'd like to invite Dr. Greg Tramato, and Dr. Pete Wharton and Councilmember Constant and Councilmember Herrera to join me at the podium. Earlier today we raised the NASA flag above San José city hall. As I mentioned at the time, the NASA flag has been a lot of places, even out of this world, and we're proud to have it fly over San José City Hall because we're recognizing this week September 26th to October 2nd as astronaut week in the City of San José. Recognizing NASA as an organization, formerly known as the national aeronautic and space administration, have lived through NASA's great success stories over the last decade since it was established but there are a couple of things I want to mention about NASA that you may not know. They have more than 2,000 people working at the NASA Ames research center. Most of them live in San José. They continue their efforts to research and development in some terrific technology about space and science. And here to accept a proclamation tonight is Dr. Pete Warden, director of the NASA Ames research center at Moffitt field. [applause]

>> Well, thank you, as the mayor said, the majority of the employees at NASA Ames live in San José. And we really enjoy this community. And we're delighted of the cool things we're doing, and particularly we want to help inspire the next generation of young people here in San José and around the country. So thank you for being a wonderful place to work and live. And just to kind of NASA has a long standing greeting to people that are going on a great journey and we're all going on a great journey, and that's Godspeed, Godspeed to all of us and Godspeed San José, thank you.

>> Mayor Reed: Thank you. I forgot to mention that Councilmember Herrera's father worked for NASA and Councilmember Constant went to school with an astronaut. It wouldn't be astronaut week without an astronaut. So

tonight joining us for this commendation is astronaut Greg Chamatov who has had quite a few missions with NASA more important than that, he is a graduate of Blackford high school in 1980, Councilmember Constant was one year behind him, one went on to tremendous success and the other one did pretty well too. Dr. Chamatov, 2008, expedition Here to celebrate astronaut week, he has logged more than 198 days in space, and that's something he can be proud of and we are proud of as a city and we're very happy to be able to present him a commendation and I'm going to present that.

>> Thank you.

>> Thank you very much. Thank you, Mayor Reed, it is an honor to be here with all of you. And it's a great homecoming for me. As I flew into San José, yesterday, it definitely feels like a wonderful feeling to come home. But the idea of coming home has kind of changed for me. After living in space, you know when you go home, and you get to your house, that's home. If you go you know on a trip to another city, when you come back to San José, you say, I'm home. And if you fly to another country, you come back, as soon as you land in the United States you say I'm home. And after six months on the space station, it didn't matter to me where I landed on the world, anywhere I landed it was going to be perfectly fine that that was home. That's the way it felt. San José it's a place that represents a dream come true for me. I grew up here from the age of 11 through high school and my father believed that this was the land of opportunity and he moved my whole family here in Montreal back in 1974. Aside from Blackford here I went to school at Cal poly. And I worked all my summers here in the electronics industry. My father had many different positions here, but one of them was Atari, and when Atari was big in all the computer games, and remember that game Asteroids? We had the table version Asteroids in our house on a life-long tests. My brother and I were experts. We could go in any game place and we would get the high score, no problem. But I was also when I grew up here, you know and many of you probably around the same age as me or older will remember, you know the first Apple computer and the first atari computer and the first commodore, and first IBM PC, I grew up on those first computers. Since the first computers things have come an incredible way but somehow the spirit of invention and development in San José seems to be at the core of what makes San José such a great city and the evolution of this had very much to do with NASA and the space program. Exploring space required the technology and the advancement and the communications and the

computing and the software and hardware and the development of that technology through the local industry in academia and at NASA Ames here in the area that enabled all of those capabilities for us to build things in space. So now we have this amazing international space station that we just completed, it's amazing beautiful research facility we have in orbit, and it is filled with the computers and technology that were built right here in San José. It's been a really great privilege for me and one of the lucky ones to get to utilize this technology and research in space for the betterment of humanity and all of this with my role with NASA and as a student growing up in San José I got to be part of that information age explosion and as an engineer on this very recent mission I got to install the final components on the space station and we were able to declare that the space station assembly was complete which was an accomplishment not just the United States but 15 partner countries around the world, simply in terms of international cooperation. During my resubmission I had also the honor here to fly this flag that the mayor mentioned, actually I flew two flags. One of them is right here. We flew a flag of San José, and this little flag is also a flag of San José that flew on my mission with me. This is a little composition of photos taken on the mission, and as I mentioned this flag was flown in space and we flew a bigger one of the City of San José and this is in recognition of San José's contribution to the space program and also just to thank you to San José for the opportunities it afforded me as a student growing up here in San José so thank you very much.

>> Mayor Reed: This is the first time I've received a commemorative photo where everybody is upside down. Which way should I hold it?

>> Any way you like!

>> Mayor Reed: Well, thank you very much, Greg and we're going to take a picture.

>> Mayor Reed: Well I think we'll continue on our heroes theme. Heroes come in a lot of different shapes and sizes and with a lot of different characteristics. You've just heard a couple of them but now I'd like to invite members of the San José police department, District Attorney's office, chief Moore and Jeff Rosen to join me along with Councilmember Liccardo. [applause]

>> Mayor Reed: Well, this is a quite a collection of people here. This ceremonial items is long in the making. It has taken over three years to put it together, because it was a little over three years ago when indictments were handed down indicting some members of one of San José's worst street gangs. And I've been wanting to do a recognition of the folks who put the el Hoyos palmas gang, at least the leadership, behind bars and have done so much to protect the people of the City of San José. And there's this little thing called trials and things like that, so we kind of had to wait until we got the trials and the disposition behind us. So tonight is the night to give a long overdue thanks to the group of people behind me who represent our police department and our District Attorney's office. And as I said heroes come in a lot of different packages. And people do a lot of different things that are heroic and sometimes we don't necessarily take a minute to thank them. So tonight we're going to take a little bit than a minute to thank them. And I'm going to let the chief and the different explain what it took in the way of police efforts to get the folks off the treat and the District Attorney's effort to put them away. I'll let the chief and the D.A. wrestle who goes first.

>> We didn't wrastle. The chief said I could go first. Back in early 2007 this criminal street gang that Mayor Reed mentioned went on really a murder spree and committed multiple murders and literally was just going around shooting people. And the crime rate at that time was extremely high. And we were on pace for really a record year for murders. That was until a group of San José police officers and chief Moore will speak more specifically about them, worked with one of our prosecutors, Stacy capps, and we captured the leadership of this gang. And took them to the grand jury. And once they were in custody the murder rate dropped precipitously that year. It took a number of years for the case to go to trial. And there were eight defendants left. And the first trial began against four defendants. And Stacy capps from our office was the lead and only prosecutor on that case. This very petite, cute, girl from Fresno. Who went to trial against four very big defense attorneys. And by the end of the trial really everyone in the courtroom was eating out of Stacy's hand. And the verdict in the case, there were over 50 counts in this case. And it took the clerk an hour and a half just to read the verdicts. And there were, the word that kept ringing out over and over again was guilty. Guilty on all counts of all charges of all allegations. In my 16 years of -- as a prosecutor I've never seen any verdict like that before. And it's really just magnificent. Stacy didn't accomplish that alone. There was a team not only of San José police officers but support staff from our office. Catalina Medina Alvarez and Jena Daugherty, the parallels on that case. Eric Barlow from our crime

laboratory testified for several days about crime statistics and ballistics that were able to link many of these murders together. And it was a tremendous outstanding team effort and I'm really so pleased and proud of the folks in my office, and of course, very proud of the police officers. But I know chief Moore is going to talk about them in a moment. [applause]

>> Thank you, Jeff and thank you mayor and members of the council it is indeed my honor to be here to hand out some awards to people who are very, very well deserving. For those who followed any of our activities of the police department for the last several weeks, it's no secret that we as an organization when things get really rough we come together we come together like no other police department. The men and women you see behind me here are one -- are a group that through their efforts we're able to assist the District Attorney's office and not only the investigation but the capture and then follow-through prosecution of some very serious and violent individuals that needed to be taken off the street. And again I'd like to echo the mayor's thanks to the D.A.'s office and to the county for their support unwavering support to make sure these folks were put behind bars. Let me talk a little bit about the efforts of the police department. Again we're going to read some names off and hand out some commendations which is a great thing for the individual officers. But I want people to realize that its not just the folks here but the entire police department. It's the patrol force that get there that do the initial investigation it's the investigative bureau, everyone coming together in a way that no other police department does. I'm honored to present these commendations to these individuals because they are very deserving and look forward to that opportunity. I think what we're going to do is turn it over to Jeff for the commendations for his staff first and then we'll follow with the police department.

>> First person that Eric Barlow and our criminalist. [applause]

>> Catalina Medina Alvarez our paralegal. [applause]

>> Jena Daugherty one of our paralegals. [applause]

>> Our lead prosecutor on the case, Stacy capps. [cheering and applause]

>> No surprise, Stacy is absolutely the best. We thank you very much. From the San José police department, Reed Biersdorf. And I'm looking at Ed conover so we're going to go on to Sergeant Jason Dwyer. [applause]

>> Shane Granberg. [applause]

>> James Husse. [applause]

>> Jamie Jimenez. [applause]

>> Anthony Kilmer. [applause]

>> Will Manion. [applause]

>> Stanley Mcfaden. [applause]

>> Julio Morales. [applause]

>> Brett Myers. [applause]

>> The one and only, sergeant Dave newman, retired. [applause]

>> Another hero of the San José police department long standing, Gustavo Perez. [applause]

>> Sean Pritchard [applause]

>> Lieutenant James Randall. [applause]

>> Brandon Sanchez. [applause]

>> I am not seeing Tom Snuttenhouse but tom is not here so let's give a collaborate for him. [applause]

>> Randy Torrez [applause]

>> Will Young. [applause]

>> Donde West. [applause]

>> Mr. Mayor, thank you so much for the good work of the men and women up here, one more time, thank you. [applause]

>> Mayor Reed: Try squeeze to the middle a little bit so we can maybe get in one frame.

>> Mayor Reed: Well, we're usually not quite so inspirational. Before we swear in our youth commissioners. We do expect our youth commissioners to one day stand here behind us doing something heroic. And so we're going to swear in some youth commissioners. I would like to invite Vice Mayor Nguyen, Councilmember Liccardo, Councilmember Rocha and the youth commissioners that are here to join us at the podium. Please come on down. Our City Clerk Dennis Hawkins will do the swearing-in. We have Ezmerelda Valerio, Kenneth Huynh, and Nicole Lim. Thank you for joining us. Raise your right hand please.

>> Dennis Hawkins: I, and state your name. I, Do solemnly swear.

>>> do solemnly swear.

>> That I will support and defend.

>>> that I will support and defend.

>> The constitution of the United States.

>>> The constitution of the United States.

>> And the constitution of the State of California.

>>> And the constitution of the State of California.

>> Against all enemies. Foreign and domestic.

>>> Against all enemies. Foreign and domestic.

>> That I will bear true faith and allegiance.

>> That I will bear true faith and allegiance.

>> To the constitution of the United States.

>> To the constitution of the United States.

>> And the constitution of the state of California.

>> And the constitution of the state of California.

>> That I take this obligation freely.

>>> that I take this obligation freely.

>> Without any mental reservation.

>> Without any mental reservation.

>> Or purpose of evasion.

>>> Or purpose of evasion.

>> And I will well and faithfully.

>>> And I will well and faithfully.

>> Discharge the duties.

>>> Discharge the duties.

>> For which I'm about to enter.

>>> For which I'm about to enter.

>> Dennis Hawkins: Congratulations.

>> Councilmember Liccardo: Congratulations.

>> Mayor Reed: First item of the evening is to finish up the last item of the afternoon which is item 3.8, which is appointment of a member of the Police and Fire retirement board. We had a discussion and I now have a copy of

the application for appointment as a public member of board that got circulated, to the council by electronic and hard copy I think both.

>> Dennis Hawkins: Yes, Mr. Mayor.

>> Mayor Reed: So let's take up where we left off. We had a motion guess it was withdrawn so we could defer it. I'll recognize Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. I'd like to make a motion as recommended by the Rules and Open Government committee to appoint Elizabeth rounds for the board of Police and Fire retirement plan.

>> Mayor Reed: We have a motion. Further discussion on the motion? All in favor? Opposed, none opposed, that's approved. That was easy, off to a good start. Now we start the evening agenda, which is land use items, our first item is 11.1 which had a couple of items on it that was consent calendar. I wanted to talk about item B. So the consent calendar would only have one item on it 11.1A which is zoning ordinance for property at 280 and Saratoga avenue for a private school.

>> Joe Horwedel: And Mr. Mayor staff is recommending approval of that. I will note that there was a memo that we distributed on the dais of the Planning Commission action, we realized that memo never made it to the council. Apologize for that delay.

>> Mayor Reed: But that has been distributed. I've got a copyright here.

>> Joe Horwedel: That's correct.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: I just want to make sure. Is this the one we're deferring or the one we're hearing?

>> Mayor Reed: 11.A is what we're hearing, 11.B there was a recommendation to drop it but I wanted to ask questions before we drop it.

>> Councilmember Constant: I'll make a motion to approve.

>> Mayor Reed: Motion is to approve 11.1A. Further discussion. All in favor, opposed, none opposed, that's approved. 11.1B then is recommended to be dropped but I had some questions about it. Almaden expressway and Chenoweth avenue. The 400,000 square feet of uses, Almaden ramp is the more common name. This is being dropped because the Planning Commission declined to certify the environmental impact report. I had some questions, how long dit take here and how long will it take it to get back in sort of the ordinary process? This is a big project and serves an important place in the sales tax generation plan.

>> Joe Horwedel: Mr. Mayor, I do not know the exact date it was filed, it was filed in early 2010 with the file number there. It did have an environmental impact report and we spent probably six to nine months with the applicant's traffic engineer just to sort out traffic issues with the Almaden expressway and with CalTrans. The Planning Commission in their hearing to certify the EIR heard testimony from some individuals that were at the meeting and raised concerns about water supply assessment, and the potential for blight, for approving the amount of development on the property. Because of how CEQA is situated, and the standard proof for legal challenge is so low, the Planning Commission was concerned that, of those issues and felt that it was appropriate to continue the EIR for that work to occur. We already have the water supply assessment has been received from the water company. And the analysis on blight is underway. The applicant has retained a consultant that is looking at retail properties in the area. The turnover of rental vacancies in that area. So that we can refute any claims of blight. It is an unusual claim. We have had it in several large format retail proposals in the past several years. It's not something we normally build into an EIR, not wanting to pile-on issues but it is one that we may revisit that larger question in the future. Our meetings with the applicant on Friday our expectation is, assuming the blight analysis comes back into the city by November 1st, we anticipate being into the Planning Commission in January, and the council right behind that.

>> Mayor Reed: And if it goes -- well it has to go back to the Planning Commission first so it has to certify the EIR.

>> Joe Horwedel: That's correct.

>> Mayor Reed: And if they decline to certify the EIR you go out and recirculate again or something?

>> Joe Horwedel: The -- trying to think of how the particulars are, that I think actually, if there are issues that the commission is raising such as there, is that we do need to address those issues. At the end if the Planning Commission was to just refuse to certify the EIR whether there's an opt-out provision I'm going to defer to Rick because I don't think we've ever run into that issue.

>> City Attorney Doyle: I guess we have the right of appeal to the city council ultimately but you're right we've never run into that.

>> Joe Horwedel: Yeah.

>> City Attorney Doyle: And so it's you know I think now the idea is let's address the concerns raised by the Planning Commission and it goes back to Planning Commission and hopefully come back here shortly. Whatever time period it takes to do the additional studies.

>> Mayor Reed: Okay, well I know this is a big project. But a retail strategy is important to helping us increase the revenues for the city, and this was a significant project. That was the only question I had was just about the timing of how long it's going to take in the process to do that. So with that I'd recommend that we follow staff recommendation and drop it, if there's a motion.

>> Second.

>> Mayor Reed: Motion is to drop, all in favor, opposed, none opposed, all right that takes care of that one it's dropped. That means it will get renoticed when it's ready to come back through the process. Our next item would be 11.2, that's rezoning of property located at Northwest corner of Jackson street and north 19th street. Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. I submitted a memorandum with today's date, that I would like to make into a motion with one small amendment. The item E, I'd just like to clarify that the last sentence should read any attempt to do so will require application pursuant to the city's secondary unit ordinance or other lawful process. I don't want to restrict whatever process the applicant may take in order to make a residential application. But at this point that's not applicant's intention and we expect this would go forward without any residential occupation. That is a motion, thank you.

>> Mayor Reed: All right we have a motion on the floor, Councilmember Constant got the second I believe. I have no cards from the public on this. So we have a motion. All in favor? Opposed, none opposed, that is approved. Item 11.3, consideration of appeal of the Planning Commission's decision to deny a conditional use permit and determination of public convenience or necessity.

>> Joe Horwedel: So Mr. Mayor, this is one of several alcohol applications on tonight's agenda. It is subject to the mandatory denial provisions of the Municipal Code. The Planning Commission did recommend denial of pursuant to the ordinance but is one that staff is recommending approval of the appeal, and to allow the offsale of alcohol at the establishment. It is a full service grocery store. That police department has assessed, the neighborhood and the business, and is taken no position on it. They do not oppose the offsale.

>> Mayor Reed: Since there are several let me identify this one as the southeast corner of Story Road and McGinnis avenue. I have some requests to speak, we'll get to that in a moment. Councilmember Constant.

>> Councilmember Constant: Thank you. I know this is District 5's. I am not going to make the motion. I just wanted to ask a question. We have three mandatory denials on the calendar today and I was wondering if we could get an update on when we could expect the ordinance before the council to change this cumbersome process?

>> Joe Horwedel: So planning staff met to go over the draft ordinance that was put together 50 city attorney's office providing comments back. It was woven in as one ordinance dealing with multiple issues and we're recommending that it be pulled apart to deal with the distinct issues that will be coming before the council namely the mandatory denial and then the question about should we deregulate grocery stores. Because we wanted to make sure the council had the opportunity to move either way with that. So that is back to the attorney's office. Those comments so allowing Renee to work on it. So I think it was pretty close so it will be before the end of the year.

>> Councilmember Constant: Rick do you concur with that time?

>> City Attorney Doyle: Yeah I think you know it's something that's been a work in process, I suspect end of the year will be plenty of time if not more.

>> Councilmember Constant: Thanks.

>> Mayor Reed: I have some requests on the public to speak on this. We'll take that now. We will first hear from the applicant. We allow the applicant five minutes on these administrative appeals. So the applicant representative whoever's involved with the applicant will speak first and then we'll hear public testimony. I'm guessing Greg Kays is going to speak for the applicant.

>> Yes, thank you, mayor, good evening council. My name is Greg Kays. I'm here to speak on behalf of the applicant, Mi Rancho Supermarket. I'm not sure if any or all of you have had a chance to visit the market but let me describe it briefly for you. It is a full service supermarket, approximately 7,000 square feet. It has a full service

meat counter, full service produce. It serves a variety of dry goods. Cheeses, creams, there's prepared food items. It is in every sense of the word a supermarket. I'm sure you're all familiar, I'm familiar from just following what the council does. And this whole concept of offsale of alcohol in grocery store settings is clearly an issue that people are concerned about. This is exactly the type of business that many people want to see the alcohol sold out of. The applicant is only asking for a maximum of 5% of square footage. They probably won't even use but one or 2%. It is the intention of the applicant to, if you have the staff report in front of you, if you'll turn to the floor plan, if you look at the floor plan, which is at it's about the third page from the back, second page, you'll see a number of what are cooler doors as you look at the diagram on the left towards the top. And there's a couple of doors that are going to be reserved in the back there, for putting in the beer and the wine. Again, this is only an intention to sell beer and wine, not distilled spirits. So the actual place where the where the beer and wine will be picked up by the customer is not even visible from the front doors of the store. It is an inconspicuous place to sell but it's important because this store which actually opened last year gets many, many, many requests from its customers. They simply want to be able to buy typically a six pack of beer, to take home with whatever meat they're going to barbecue or whatever they're going to prepare for the evening meal, or on the weekend or whatever. So it is simply driven by the consumer, and the desire of the owner to service the clientele. They also have competitors in the area. Competitors who do sell beer and wine. So this will enable them to be on a more even keel, a more fair setting, in terms of competing with other stores in the area, which will ultimately benefit the consumers, hopefully, by reduction in price. So as was mentioned by staff, and we're of course pleased to hear that staff does support this, this was a mandatory denial at the Planning Commission. I appeared at the commission. No one spoke against it. I'm not aware of anybody that has lodged any complaints or objections to this. The neighborhood supports it. We did submit a letter from the neighborhood organization, supporting it, I believe people are here tonight who will express themselves and express that support. So on behalf of the applicant I would encourage the council to follow the staff recommendation, uphold the appeal so this store can then proceed to have its license issued and sell beer and wine as indicated. If there are questions I'd be happy to address any.

>> Mayor Reed: No questions at this time. Still got a little bit of time left. I'll let you come back after everybody has testified to wrap things up. Councilmember Liccardo.

>> Councilmember Liccardo: I'm very intrigued. You say it's 7,000 square feet but still full service with regard to meat and produce.

>> Yes.

>> Councilmember Liccardo: I'm trying to imagine in my head how you cram all that in. Suburban concept is 27,000 square feet and urban concept is Safeway about 20,000 in the downtown is that fair Joe?

>> Joe Horwedel: I would say that's in that ballpark.

>> Councilmember Liccardo: I'm trying to imagine how you do all that in the 7,000 square feet.

>> Well, do you have the diagram, the floor plan in front of you?

>> Councilmember Liccardo: I was looking through the materials.

>> At the very back is a sheet of elevations and it should be right before that.

>> Councilmember Liccardo: Thank you, yes do I see that.

>> Okay and looking at the diagram, you enter the store from the bottom of the diagram. There's -- and as you enter the store immediately to your left, is against that wall is basically it's a kitchen for prepared foods and then they sell cheeses and more dairy products right as you enter the store to your left. As you go back you have all the refrigerated cabinets and the freezers and those are those little doors that you see that are drawn in there. To represent an opening of a door, do you see that?

>> Councilmember Liccardo: Yes I do.

>> Across the entire back in that rectangular section that's the meat department and so that entire area is a butcher shop basically, and then you have the rows where the dry goods and the baked goods would appear and then to your right actually I think one of those gondolas or areas have been removed, I'm not saying there is tons of space, it is well utilized space. But indeed a full service market. There is very little that you would want that you can't find here. So it is truly a grocery store.

>> Councilmember Liccardo: I commend you for utilizes a concept that is so space efficient. I hope you appreciate the nature of my question because in the downtown we have plenty of 7,000 square foot stores that sell Cheetos and twinkies and lots of beer. I know you have a focus on fresh food which is what we're trying to encourage with the use of these scarce alcohol permits. I appreciate you have a concept that's consistent with that.

>> Absolutely, absolutely. I think the thing that struck me when I first walked into the store was that unlike the store I typically frequent which I really can't see from side to side in the store, I can see the store, I can go exactly to, if I am looking for something, it is easy to get around this store because it is smaller but yet it has basically everything.

>> Mayor Reed: Councilmember Campos questions for the applicant?

>> Councilmember Campos: Actually just wanted to continue on with Councilmember Liccardo's concerns. This, the concept is not unique. I mean there's plenty of examples that have that have succeed in district 5 and in district 3, if you remember the supermercado Mexico, bases itself around the 5,000 to 10,000 square foot model. Santa Fe is about a mile down, chaparral is about 10 to 12,000 square feet. I think when we look at full service grocery stores and allowing them and wanting to really ABC licenses granted in communities that really should be the appropriate place. And if you think of the convenience part you know someone is going in for fresh meat, vegetables dry goods et cetera, then having to stop off at Safeway to go buy you know a six pack or whatever for whatever they're going to do that night. Is a little bit inconvenient. I think what this will do is it will help

them to satisfy the clientele they're having go in right now. When I make a motion I'll continue on with my comments. Just wanted to -- I hear your concerns and those would be my concerns and I know when I was on the Planning Commission and Joe can attest to that, when I was a new commissioner, I didn't look at them this way and then I started seeing all the different types of models that small neighborhood grocery stores have and they really do make sense. So those are my comments for now and then when I'm ready to make a motion I'll make the motion, thank you.

>> Mayor Reed: Done with the questions, I'll take the public testimony now. Come down when your name is called Alofa Talivaa, Stephen Chavez.

>> Good evening, mayor, city council, manager. Councilmembers. My name is Alofa Talivaa I'm here to represent Sierra neighborhood association as a leader and an activist. I'm here to support the me rancho grocery store. I went over there and I did my homework, and checked this place inside and out. The appears is very clean. No graffiti, no litter around. And the owner of this place, you know, he makes it as his high priority, to make sure the cleanliness inside and out, free of graffiti, you know, that's the thing that I was looking at. And I look around you know it is very, very clean. And this is in District 5. And I'm here to urge you, mayor and councilmembers, to please vote yes. I look at it as, at this store as no different from the me pueblo that all of you vote unanimously you know to support their offsale alcohol license. So that's why I'm here to please vote yes, you know these are bad times. They need you know their financial, you know to -- you know to push up and all that so we all know the economy is not going to get better any soon. So please, give them a chance to survive. They bring revenue in our city, and also, they're taxpayer. Thank you for listening. And also I have the letter of support over here for you guys. Thank you.

>> Mayor Reed: Thank you. If you would hand that to the clerk. Christina Duarte or Steven Chavez and Christina Duarte. Go ahead Mr. Chavez.

>> I'm asking and requesting that you say yes to Mayor Reed and the total council, in regards to councilman Campos he had just mentioned sometimes you want to go to the store and I have steak and want to put beer on it

and barbecue. As a man myself I know if I go beer store first I'll spend my money there and get drunk without getting steak. It's an inconvenience. I don't drink anymore. Back then in the days, I at any time have the steak there, the only thing there was drink and it's a big inconvenience. As far as would I have the positive attitude of saying yes I want a wine with my stake or you know, you know a beer with my chili beans and taco at home and relax and enjoy that and get something beneficial out of it. And I'd like to thank all of you for your support for the neighborhood. Long years contribute, the police being active, and the youth community there to make it safe and wonderful environment for community, especially the youth. Nowadays, they need tall support they can. And since this store is opened up there they have been on the forefront helping out the community. In events for youth projects. So that says a lot for me. That they deserve our help. And you know being able to continue to do the things you are doing for the community. And we can work together. I know the community I'm in now, I love a lot and they really will go out of their way to make things that when we see crime in the area, they're willing to stand up for something they believe in so thank you.

>> Mayor Reed: Christina Duarte, Brittany tommateo, Alofa Talivaa.

>> Good evening mayor and councilmembers. My name is Christina Duarte, I'm ten years old and I live in the Sierra neighborhood association. I'm here to let you know that I'm supporting me rancho grocery stores of offsale of alcohol. They help us a lot in the community. Please vote yes for me, rancho stores, thank you.

>> Mayor Reed: Brittany tomateo, (saying names).

>> Oh, hello my name is Brittany Tomateo, I'm 13 years old and I go to Lee matson middle school. I'm here to support knee rancho grocery store offsale of alcohol. The other than has a good heart. He supported our Sierra association events Mayor Reed and councilmembers please vote yes for me rancho store. Thank you.

>> Mayor Reed: Carmen Talivaa, (saying names).

>> Hi, my name is Carmen Talivaa I'm here to offer my support to the me rancho grocery store. Offsale of alcohol and I just want to say they've been a big help to the community and I thank any business to give back it's a positive thing to the neighborhoods and yeah, I just here to hope you guys vote yes for them and thank you for your time.

>> Mayor Reed: Luli Tafa, Leo mariner, and (saying names).

>> Thank you very much for the honor and the privilege be there in the City Hall, my first time here, it's a wonderful place. For right now I think my name is Uli Tafa, I represent the Sierra neighborhood. I did not prepare any speech or anything, but driving by the neighborhood for me rancho grocery the supermarket, it creates a wonderful family atmosphere. If we're continuing having something that makes the -- represent the community I think we should vote yes to go forth and grant the liquor license to the me rancho. Why can't the Mercado and Safeway, why can't the me rancho have the same thing? I think it's great for the community and members of the neighborhood with me. Thank you very much.

>> Mayor Reed: Horon Racindes is the last speaker.

>> Good evening, Mayor Reed and council, I wasn't going to come tonight, we have two important meetings in district 5, but I had to come out. I'm not for I'm not against. I couldn't come last time when I was protesting one of those liquor licenses but we had a councilmember that always oppose alcohol and also it's for me sad to see a neighbor that used to be against alcohol all the time, now she's in favor of every one of those liquor stores. Another thing that you got to look at, bringing children here under 18 to talk in favor of alcohol, that's not right. Take a look at that. Another thing, we make a walking tour, and I invite any one of you that can come. You got to make a walking tour in that area to see, we got ten liquor store right on 10 and story and white. Me rancho is not even a half mile away. It's like three blocks away from story and white. There is already ten existing liquor stores. Okay? So any one to want to make a walking tour come on over and you'll see all the alcohol homeless and things that are in there. Thank you very much and -- thank you.

>> Mayor Reed: That concludes the public testimony. The applicant had a minute left if you wish to take it. Okay. Applicant passes, Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. So I want to start off with a motion to approve the staff recommendation on item 11.3.

>> Councilmember Constant: Second.

>> Mayor Reed: Have a motion on the floor.

>> Councilmember Campos: Just wanted to speak to it. And again in a bad economy, a competitive disadvantage is -- it's the break point of putting a business that's not just supporting families that work there, and even you know the businesses, those are there, the business owners, that's their livelihood as well. And let's not mention that these businesses are also contributing to our economy. I think these small grocery stores, the 7,000 square foot you know between 12,000 square foot stores if you really look at them, those are the ones that really promote pedestrian oriented retail. When you look at the customers like this they are really coming from the neighborhoods that are behind them. In this case, the Ryan neighborhood, the neighborhood across the street that is behind the Home Depot. They actually if you think about it, add to our Green Vision, because you have residents that are actually walking to do their retail as opposed to driving a car to do their retail. I mean, that is just one of a host of a number of reasons why we should be supporting this. They've been a proven good business for our community. And for those reasons, you know, I'm supporting this and made the motion. And I would ask my colleagues to also support this project. Thank you.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. And yeah, you know, I've seen projects like this both the time when I was on the Planning Commission with Councilmember Campos and as a councilmember as I've said they need to be looked at case-by-case. I know that Councilmember Campos more than anyone I'd known at the time I was

on the Planning Commission voted no on alcohol and liquor licenses because he's held steadfast to the fact that they needed to be full service stores. And I think that he does point out something well, Councilmember Liccardo's questions brought it out in an effective way and I think the applicant answered the question in a very detailed manner which helped me to gain a better understanding of what the store was about, as I had the opportunity when I was on the Planning Commission to visit the store, gives you a better sense. A lot of the ethnic markets, I walk into an Indian store and they cram a lot of stuff in there. It is a different model than frankly a lot of us are used to growing up in suburbia. That square footage could lend itself into a completely different experience. The outside is very clean which says a lot about the management. It reminds me of the Edenvale area where we have stand alone liquor stores, which I wish we could close down. We had Mercado with prepared foods and all that. I think even further analysis when we get to this point and kind of look at whether or not it is a full service store, they don't have just a couple of bananas and an apple out front and say they're a full service grocery store. It's been pretty clear from the council that we're trying to do as much as we can especially in neighborhoods that don't have fresh meat fresh produce, maintain those types of stores, especially when they're restricting the shelf space and just beer and wine and have the risk of becoming some of those grocery stores that are not too far from the spot as it is. So I'll be supporting the motion on the table.

>> Mayor Reed: We have a motion to approve the appeal. On the motion all in favor, opposed, none opposed, that's approved. The appeal is approved and we will move on to 11.4. That's a consideration of an appeal of the Planning Commission's decision to deny a conditional use permit and determination of public convenience or necessity to allow the offsale of alcohol at a full service grocery store at Foxworthy Avenue and Meridian avenue.

>> Councilmember Rocha: Do you have any requests to speak?

>> Mayor Reed: None.

>> Councilmember Rocha: They are making an improvement on this site. Right now it's a vacant building. I'd like to make a determination of public convenience and necessity of offsale of alcohol at a full service grocery store. As recommended by the Planning Department.

>> Mayor Reed: We have a motion to appeal. Vice Mayor Nguyen.

>> Councilmember Nguyen: I just wanted to report that I had a meeting with the other than of grocery outlet.

>> Councilmember Constant: Ditto.

>> Mayor Reed: I also did.

>> Councilmember Campos: I forgot, I had a meeting.

>> Mayor Reed: No cards, on the motion, all in favor, opposed, none opposed, that's approved. 11.5, administrative hearing and consideration of appeal of the Planning Commission's decision to deny a conditional use permit and determination of public convenience or necessity to allow the offsale of alcohol at a full service grocery store. Beverages and more or Bev Mo, depending on your preference. On these appeals we take the applicant, applicant has five minutes. I'm not sure who on this list is representing applicant but Jeff Seely is just a guess. Taking a break? All right, we'll just see who wants to talk, and we'll let the applicant have some time at the appropriate time.

>> Joe Horwedel: Mr. Mayor, while the applicant is returning back staff does have a few introductory comments.

>> Mayor Reed: All right, let's do that, then.

>> Joe Horwedel: Thank you, Mr. Mayor. This is, as the last two, an appeal of the mandatory denial findings. This is one that staff is not recommending the council approve the offsale. Staff would concur that Bev Mo has been a very good retailer, I visit them myself. But the issue is how the offsale licenses operate are distributed around the city and this is a location that we do have numerous offsale licenses already existing in the areas noted in our staff report. I think the one comment that staff really feels is important and I want to talk about is the conditional

use permit that council has before you tonight runs with the land, it does not run with the operator. That is part of the hesitation that staff has with granting or recommending approval of offsale licenses for essentially a full service liquor store. That as I said Bev Mo runs a very good business but it is a major policy issue about granting those because at the end of the day this permit will run for either five years or forever, depending on what term that the council is inclined to approve it you put into the permit and in they choose to move or move out of the business, there is nothing the city can do as the part of the staff's hesitancy of recommending approval of a regular liquor type business. Excuse me, staff is recommending a cocktail. That the council not approve the offsale of alcohol license and we'll be happy to answer any questions.

>> Mayor Reed: That's dedication is the applicant back? We'll hear five minutes from the applicant and we'll take public testimony. Applicant and appellant is the proper terminology.

>> Mr. Mayor, councilmembers Jeff Seely with Bev Mo. I think we all know that what we're proposing is to occupy a portion of the former PW market in the west valley shopping center. I believe the findings or at least we believe that the findings that you have to make have been submitted into the record. Tonight what I'd like to do is really run through a short slide presentation as to why we feel Bev Mo is not your typical liquor store and in fact will provide a public convenience to the residents of West San José. So again this is just the elevation that you're looking for. Really just signage. What is Bev Mo, we're an award winning specialty retailer, great service and everyday value. What's so special about our selection? We have got wines from around the world. We carry about 3,000 wines. That's going to be about ten times what you'll find in an average grocery store. What we do is also, have wines you can only buy at Bev Mo, okay, about 350 exclusive wines. Okay, 350 exclusive wines is about what a grocery store carries in their standard set. We carry spirits and craft beer, the craft beer is extremely popular right now. Importantly, we also carry a huge selection of national sodas, caviar, cheeses, crackers and glassware, what we call wine accessories. What about this Bev Mo service we hear about all the time, what we do specially. It starts with Wilfred, he is our cellar master. We encourage our customers to come in, explore in the store Wilfred writes all the product descriptions for our wines, beers and spirits. Okay, you taste about 8,000 wines a year, okay that's the good news and the bad news I suppose. We use his rating until wine spectator or another wine rating group comes along and provides another rating and we include that as well. In the store the

service, we've got green shirts equals friendly service, burgundy service equals a wine expert, okay? Half of our customers are women. They don't feel intimidated to come into our store because they have friendly faces in the store. We also have beer and wine tastings, Fridays 4:00 to 7, Saturdays, 12 to 3. There's a \$2 charge and again there's no seating and there's one-ounce pours. The other thing we do in-store call boxes, online ordering, money back guarantee. If you don't like it bring it back we'll refund your money. We've got services covered. What about value? We have our club program. We are not always the cheapest but we do allow every day value. It is a free membership, we have over 3 million members, a lot of them sent in e-mails and letters of support to you. 90% of our sales go to our members. Equally important is what we're not. Not a typical liquor store and not a typical convenience store. Why do I say that? We don't sell cigarettes, we don't sell malt liquor or fortified wines, we don't sell adult magazines or lotto tickets. We close at 10:00 p.m. during the week days. Not allow customers under 21 in the store. Do not employ staff under 21. Drug test prior to employment, get customer feedback from thousands of surveys, we incorporate that into our customer service. And we have our other minor decoy program, we have zero tolerance for sale to minors. We'll benefit the community by employ 12 to 15 local employees. Recapturing retail sales leakage to Santa Clara, provide incremental sales tax to Saratoga and Campbell, filling a long term vacancy. PW market has been vacant about a year now Sunflower market has filed an application to fill the remainder of the building. We are going to have a clean store and take care of it. We have three stores in San José you know we're a good operator and we are responsible we have a great record with the ABC, they consider us to be the Nordstrom of liquor stores. Given that, it's time for Bev Mo in West valley, happy to answer any questions.

>> Mayor Reed: Any questions for the applicant? Councilmember Kalra.

>> Councilmember Kalra: Thank you. Over here. Thank you for the -- thanks for your very nice presentation and as our planning director was indicating once if we were to go forward and to grant this permit, that you know, if Bev Mo went away from that site in a couple of years someone else could come in there and not have the same standards or for whatever reason be a blight, to that neighborhood. And so I guess the question is and I bring this up because I know that I'll mention my colleague here, before this hearing started, that there's a Bev Mo at TSA Teresa which was a tower records, Bev Mo came in, babies R us and a party city something like that and it

actually very much helped I think it helped that shopping center. But in this case here, and I know that you're a large you know kind of a large chain of stores so what kind of market research goes in so you can be assured as much as possible, given the ups and downs of the economy and the ups and downs of the market, this will be a viable option for you?

>> Again we look at demographics. We look at the spacing in between our stores. We also know pretty well where our customers are coming from based on that club Bev data and we are able to estimate based on what I call analog stores where we have other stores that have similar demographics whether or not this particular store will be successful or not. The positioning of it from a strategic standpoint, positions us to serve the West San José market. It's an area where we're currently not getting a substantial level of sales from. And we're very confident that we're going to be successful here. As you know our Camden store has been open 17 years. We opened up a store in Willow Glen, it's doing well. As you mentioned the Blossom Hill store is open since 2008. Worst recession we've ever seen powered right through it and we feel very strongly that we're going to be successful in this location.

>> Councilmember Kalra: Well I think it's encouraging that there's a market that is going to be opening, a food market that's going to open next door. That's definitely a compatible type use and I don't think anyone would object here that we have a large empty store front that we can get a use out of both on the retail store side but also in terms of the vibrancy of having activity in the shopping center. I think it's just ensuring that it's something that we can rely on being there, in fact people understand your model you presented it very well, it's not a liquor store we get that. But you know what if you're not there five years from now? That's a concern that the planning director appropriately raises.

>> If you'll allow me, the conditional use permit runs with the land. The PCN which is the public convenience or necessity finding that is a finding that has to be made with the issuance of every license by the ABC. So a subsequent user of that space would have to come back before you to get that PCN determination.

>> Councilmember Kalra: In that case this makes it a no brainer then. I'll follow up with the planning director, thank you.

>> Yep.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: Thank you mayor. I had a question for the planning director.

>> Mayor Reed: Sir, you can have a seat, I do have public testimony. We can take the questions now or later. Let's take the public testimony.

>> Councilmember Liccardo: Is it possible that we could ask a question of the applicant while he was at the mic?

>> Mayor Reed: Question of the applicant, one more question sir.

>> Councilmember Liccardo: Sort of save you the time of having to run back and forth later.

>> Mayor Reed: You've already done that.

>> Councilmember Liccardo: I didn't work that out. So nice to see you.

>> That's fine.

>> Councilmember Liccardo: Just to preface, I share some of the concerns the planning director has. You made it clear how you're not a quote unquote liquor store. Some of those distinctions things like not selling cigarettes,

closing at 10:00 p.m, not selling lotto tickets, things of that nature, would you be amenable of having those kinds of restrictions that you impose on yourself as conditions on the C.U.P?

>> Sure.

>> Councilmember Liccardo: So essentially they would bind anybody at that site?

>> Those operating conditions that are self imposed haven't changed since we founded the company in 1994.

>> Councilmember Liccardo: I'll explore that later so thank you.

>> Uh-huh.

>> Mayor Reed: Any further questions of the applicant before we let him sit down again? All right. Public testimony we'll do that now. Please come down so you're close to the microphone. Sarah Edwards, John Michado, John ryeman.

>> Good evening, Mayor Reed, vice mayor and councilmembers, my name is Sarah Edwards, I'm here as a resident of San José, in support of beverages and more. I'm not an expert in wine and always feel very comfortable in going into a beverages and more and ask them for advice on what types of wine would be appropriate to purchase as a gift for friends and family. And I think that I do shop the Westgate area and I feel that beverages and more would be a great addition to the area. Thank you for your time.

>> Mayor Reed: John Michado John ryeman and Matt Francois.

>> Good evening I'm John Michado, here for the West valley shopping center Inc. the owner of this property. Approximately a year ago the owner approached me and asked me to find a replacement grocery store for the 45,000 square feet. We went out and hit the independent grocery stores that are operating in Northern

California and could not find a grocery store that was willing to occupy the 45,000 square feet. After a six to eight month search the ownership said John let's see if we could divide the space. As everyone knows tonight if one grocery store was operating here and there has been a grocery store at this location with a liquor license for over 67 years there would be no automatic denial from Planning Commission or hearing tonight. So we ended up and we were successful in getting sunflower markets who has a restriction who has a very -- has no hard liquor sales and very minor beer and wine sales to come in and then also get beverages and more to come in. So we've kind of succeeded in having what the city wanted, a grocery store 35,000 feet and a installer liquor store. I'd also like to address a couple of issues that came it tonight about how are we certain that Bev Mo would remain? From an ownership perspective we have a lease that commits them for 25 years at this location. Unless they are going to violate their lease we have a control over that. Another item in the report that recommended denial, as it said there were too many liquor stores in the area. We're not adding a liquor store, we're not adding a liquor license. Bev Mo purchased the former liquor license from the former PW market so it should be an even situation here, we're not adding and we're not taking away. I also point out that Safeway has a liquor license across the street. That Safeway has been vacant now for eight months so again there is no negative impact as far as adding. Thank you very much.

>> Mayor Reed: John ryeman, Matt Francois.

>> John ryeman, the landlord, mayor city council members. This site is 10,000 square feet. And it's part of a larger 45,000 square feet. That represents about 50 -- about 50% of the shopping Center. And it's been vacant for now about over a year. So we have been struggling as a shopping center to find tenants to go into that space. That space has had since the '60s a Safeway, a liquor barn, and so it has had a liquor component for all these years. So I urge you to allow liquor barn in that space. Thank you.

>> Mayor Reed: Matt Francois is our last speaker.

>> Good evening, Mr. Mayor and members of the council, Matt Francois Sedgewick on behalf of beverages and more. I wanted to briefly address the transferability issue. As Mr. Seely pointed out, given that every liquor

licensee would require a transfer and a public convenience or necessity determination, the city still has the control. This is exactly what we have here. PW had a liquor license, it's being transferred to beverages and more. As a result of that process, we are coming before you for a public necessity determination. If beverages and more would want to transfer that to anyone else, we would be going through the same process, a discretion as to who is loud in that space. The cases are clear that the city can't condition a use permit as being unique to one particular retail. And so we think that you likewise can't deny a use permit on the grounds that it is transferable which staff seems to be suggesting here. It did want to point out as Mr. Ryeman said that there are six offsale establishments in the area with Bev Mo there will still be 6 because it is acquiring PW's license. All the other five operators are grocery stores, a drugstore, general retailer. None of them are liquor stores. There's also no shortage of food stores in this area. There will be five supermarkets at prospect and Saratoga with the sunflower market. The Planning Commission unanimously recommended approval, there is overwhelming support of business owners and others in the community. We reviewed the conditions for approval and are in general agreement with the proposed conditions with one exception and that is condition 3. Do I have a handout that I'll hand to the clerk after I'm done but essentially condition 3 restricts and requires that no more than 15% of the sales floor area be dedicated to specialty items like cheeses caviars and chocolate. We think that's unduly restrictive and respectfully request that language be stricken. We are comfortable with the language that a specialty liquor store has to be on the property which is what we are and any future retailer would have to be. Thank you for your consideration of the project, I'll hand out these changes to the City Clerk.

>> Mayor Reed: All right, if you will pass that over to the clerk that concludes the public testimony. Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. Like Joe, I have shopped quite frequently at Bev Mo but unfortunately I've had to go to the City of Santa Clara and I'm sure Joe shops at that same one. But the reason do I that for my colleagues, let me just clarify. The reason do I that is because Bev Mo does their market research very well. And they have a location that you can stand in San José, and even with my poor athletic ability, can hit the front of the store with a baseball. I wouldn't do that, of course. And what that has done has created a draw a magnet of sales tax dollars out of our city, to the City of Santa Clara. And trust me I cringe when I go into those

stores right on the border. But as you know wherever you stand in District 1 you're within a mile and a half to two miles of one of our four adjacent cities that surround district 1, Santa Clara, Cupertino, Saratoga and Campbell. What is very appealing about this location, well, there's a number of things, but primarily it does the exact reverse, and that is, it places a specialty retailer right at the border of San José but on our side! It is not only very close to the city of Campbell and Saratoga as was pointed out but it is within a half a mile of the city of Cupertino as well. One of the most important things to note is we are not talking about a new license. As was mentioned by one of the speakers this a license that has existed on this location from when I remember as a kid my parents shopped there and it has always served alcohol. It is a little bit different than many we have seen. We got a great description from Bev Mo about the type of retailer they are, the specialty lifestyle retailer and this is in no way comparable to a liquor store you think of as a corner liquor store. There are a whole bunch of reasons that I lay out in my memorandum that I co-authored with the mayor that I know all my colleagues have in front of them and I'm not going to bore you with going through all of those but I did want to say that the support that this project has had in our district has really been unprecedented. We have the country lane, English estates, Hathaway Park, Baker West, Easterbrook neighborhood associations, the Blackford NAC and the Murdock neighborhood associations that are all either immediately adjacent to or within just a couple of blocks of this location. All of these neighborhood associations support this business coming into San José. From the time the Planning Commission had their meeting, until the time my memorandum came out, 100 e-mails were received, that were forwarded to the City Clerk's office in support of this location. In addition, from yesterday to today, my office and I believe many of your offices received in excess of 30 e-mails in support from the neighborhood. And only one e-mail that was not supportive of this location. Also, via Facebook and other social media we've had dozens and dozens of people provide support for this application. I think that one of the important things to note, as well, that was pointed out was the availability of a variety of different full-service grocery stores in the area, but what those grocery stores don't have is the selection and the service, specifically related to wine in their stores. Trader Joe's is just across the parking lot from this location. Another area that I shop at fortunately in my city this time. And they do have some wines but they don't have nearly the selection that you would be able to get at this proposed location. I think as we look at our city policies, it's important that we look at them in ways where we can encourage good, high-quality retailers like Bev Mo to come to our city and not set themselves up right on the border of our city, and that we really distinguish those from the liquor stores. And I don't think anyone would argue, that if all of these licenses

in this area were liquor stores, it would be a completely different discussion than what I hope we're going to have tonight. Personally, I have no problem with the conditions that Sam was mentioning. And I'm going to get to a motion here very shortly and based on the fact that the applicant doesn't have any problem with that, if that will help ease some concerns for the future I'd be more than happy to include those. I'm going to pass out a copy of the C.U.P. determinations so everyone has them and they will be projected on your screen as well. I'm going to summarize them because it's long but I want to make sure we have everything we need to have on the record. I've provided a copy of this to the City Clerk so that the full text will be in the record. I move that the city council uphold the appeal and grant the conditional use permit in determination of public convenience and necessity for the reasons set forth in the memo, that I authored with Mayor Reed, dated September 7th -- let me make sure I got the date right -- September 23rd, 2011, for the specific -- and the specific reasons outlined here. For the C.U.P. determination, that for -- this is for the category of uses closer to 500 feet of another offsale use that results in more than four offsale establishments within 1,000 feet the excess concentration will not adversely affect the peace, health, safety morals or welfare of persons residing or working in the area or impaired the utility or value of property of others in the area or be detrimental to public health, safety, or general welfare. The reasons for that is that the permit will allow the ownership transfer of the existing alcohol license use of the existing building that this project -- this project is substantially surrounded by other commercial uses. No additional adverse parking or traffic impacts have been identified and no police issues have been identified. In addition, the project is located in an existing shopping center oriented in a compatible manner with its other retail tenants and not towards residential units. For the public convenience determination the public benefits are, the project will add 12 to 15 jobs and generate an estimated \$1 million in sales annually for this location. The project will add a specialty goods retail establishment to the shopping center. The project draws residents from other nearby cities to shop in San José thus increasing sales tax revenue from the residents and preventing further leakage, sale tax leakage. Bev Mo maintains an excellent reputation as a good retail neighbor and a high quality store at its existing stores in San José and the adjacent surrounding communities. Bev Mo has a track record of being a responsible retailer and Bev Mo has received a significant outpouring of support from customers, tenants, adjacent neighborhood associations in the broader community. The proposed outlet, the project will reoccupy a currently vacant space in the west valley shopping center with a reputable and popular

specialty goods establishment. Long motion and second motion but there it is. All I need is a second. That's a hint.

>> Councilmember Campos: Second.

>> Mayor Reed: All right, do we have a motion? I'm not going to repeat it. Councilmember Liccardo. Councilmember Rocha.

>> Councilmember Rocha: Don't know if you -- did you include Sam's in that?

>> Councilmember Constant: Yes.

>> Councilmember Rocha: Okay, can you repeat it? I had one question for planning director. You acknowledge Bev Mo being a good business and you had frequented it before but talked about the location. So in your mind so I understand your position where would a Bev Mo location go?

>> Joe Horwedel: The concern of staff is more about the issue of how do we distinguish between a traditional liquor store and a retailer like Bev Mo and I think we do need to spend some time probably as we bring the owners forward to talk about that policy issue. I think what Councilmember Constant has done of putting the findings and facts into the record is much appreciated by staff. Because we are trying to lay out the framework so that if and when a traditional liquor store comes in, Fred's liquors, that sells 3,000 bottles of wine and you know, spirits, how do we distinguish between that? And that the challenge of equal protection. And so from staff's standpoint, we think it really is important to go and get the -- that policy issue kind of worked through. But of getting it out on -- in the public hearing of what are the distinguishing differences here. And that's the part we've had trouble as staff of what makes that different. What is the fundamental difference? So that's why we've started with the full service grocery and the permits that you saw tonight used that specific wording full service grocery, because that's going to become a term of art identified in the zoning codes. I don't have a specialty alcohol retailer, I don't know what that is. Where Councilmember Constant was going of laying out structure, if you are

going to put a full service liquor store such as this, this is a good place to do it. It does not have a neighborhood right behind it. It is in a larger center, it's not stand-alone so there's some accountability that goes with that. But that said it's getting that distinguishing characteristic that you know when I read this use permit and there's somebody else that wants to move into this space, how would I go through with the PCN process and say you would be yes or no? That the no part is what troubles me. Because the liquor retailers are getting very aggressive and you've seen that with the drugstores about why can't I have it? What is it that's different about me than the last one you did? So that's a concern that I have.

>> Councilmember Rocha: So not only will is policy you bring forward talk about full service grocery, you'll also talk about this specialty liquor store?

>> Joe Horwedel: Right now --

>> Councilmember Rocha: I wasn't aware of that but now this is what you for see happening now?

>> Joe Horwedel: That is something that would warrant some discussion. Staff is not prepared to have that discussion this fall but it is one of the things we should put on the list for us to talk through and have some community discussion about when is the good time to say yes and when is the best time so say maybe not?

>> Councilmember Rocha: Thank you. I'd prefer to go that direction rather than reading this every time we have one of these I'll be supporting the motion thank you.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: I'm sorry mayor, the applicant mentioned condition number 3. If one of our goals is to -- we have almost the exact opposite condition when we're talking with grocery stores. Why would we limit to not more than 15% to ancillary things? Is there a reason for that?

>> Joe Horwedel: In converse Congress was saying a minimum of 15% would be associated with that many can it would not 100% of alcohol sales. If staff was not clear, it would be up to 85% alcohol sales, minimum 15% non-alcohol. So --

>> Councilmember Constant: I'd like to ask the applicant what is your percentage in your stores? Because I think we are all familiar with your stores hopefully more in the city than others. We're familiar with those stores but what is your ratio in the other stores?

>> The reason for concern on our part is staff actually laid out a percentage of the square footage of the store. We actually look at the space and being shelf space and so what we've got is about 475 square feet of shelf space donated to the and more, the glass wear and caviar and that sort of thing, non-alcoholic. Really, the actual shift space altogether is about 2500 square feet total in a 10,000 square foot space. So I guess the way I would like to approach it, if we could, is just say, you know what, it will be a typical Bev Mo, and that way if we were to ever change it in this store we would have to change all the stores.

>> Councilmember Constant: So my question would be to staff and the City Attorney, how do we accommodate something like that? Because we know Bev Mo has an operating model, a model they use nationally. How can we address this comfortably?

>> Joe Horwedel: That I'm not going to have to send a code inspector out with a tape measure calculator and a laser protractor. If the number is 5%, the number is 5% but we're trying to get a sense of the amount of floor area that's devoted to the nonalcoholic base again trying to distinguish how this is different than a traditional liquor store.

>> Councilmember Constant: Is that something that we can -- have you seen this proposed?

>> Joe Horwedel: No. Do I now.

>> Councilmember Constant: If you could just take a second and look at it --

>> Can I just interject something real quick?

>> Councilmember Constant: Yes.

>> So in the staff report we have a proposed merchandise arrangement which shows a racking plan which identifies the area in which the merchandise is located. And we identify it by type of merchandise. And we're required to operate by in accordance with that plan. So I think we've satisfied the issue.

>> Councilmember Constant: Okay. So let's give Joe just a second to read this.

>> Sure.

>> Councilmember Constant: I just want to make sure we get this right the first time through and we don't have to do an amendment later.

>> Joe Horwedel: So staff was trying to go and put that recognizing the types of products that Bev Mo sells, that is kind of character-defining. That is why we used those specific items that are there. I think the question is, how do I come up with something that is a reasonable approximation of sales floor area of what that would be, because I do -- we do use the floor plan as a part of how we will ultimately regulate this through our alcohol license program. But the display spaces where typically we would see like glass wear showing up, is not, showing which of these are selling glass wear versus which are selling wine or beer on it? Our goal is not every time they have to move furniture they have to get an approval. I don't want that. I want to have 5%, 10%, something that recognizes the part of sales that is non-alcohol.

>> Councilmember Constant: I think the City Attorney wants to jump in.

>> City Attorney Doyle: The way I heard, at least 20 to 25% of your shelf space was.

>> It's 2500 feet -- did I say that right -- if 2400 total, 2500 total linear feet of shelf space. On a square footage basis that's only 20 persons of the store. Anything else is isles and non-selling space.

>> City Attorney Doyle: Okay, I'm just trying to think if there's something to incorporate with the site plan as well as some kind of percentage of space. What I'm hearing from the planning department, is to have some kind of numbers which sort of sets forth an approximation that is similar to the language here. And we can always fill in some language about consistent that's consistent with similar Bev Mos stores, or something, I think there's language we can tweak in working out that condition. And joe, I don't know if you are comfortable with that.

>> Joe Horwedel: Yeah, I mean, that's what we were trying to do, when we said approximately, not that I had you know, it was 15% exactly, it was that general thing. Like I said, if it's 5% or 10% of floor area that should be reflected, the challenge is, and we're going through this and defining full service grocery. Because produce is sold flat and beer and wine is sold stacked tall. And so we were getting this whole dilemma, do you measure racks, or we said deal with it on square foot, because we really don't have the ability to be counting shelves and everything else.

>> Councilmember Constant: Can I simply just incorporate in my motion, I think you know what our intent is here that the two of you will get together and make the number work, so that it meets their business model and meets yours and the city attorney's requirement of specificity so that there can be enforcement, hopefully there never will need to be.

>> We can do that.

>> Councilmember Constant: I'm going to amend my motion, if it's okay with whoever made the second, I believe it was Xavier.

>> Mayor Reed: All right, so we have a slightly amended motion to deal with condition number 3. Councilmember Kalra.

>> Councilmember Kalra: Thank you. And as to the appropriate amendment regarding some of the items that would not be included for sale, that the applicant indicated wouldn't be a problem, what about from the planning side, is there a problem putting that in there? I don't believe there is, I just want to get staff --

>> Joe Horwedel: What staff would suggest, we have done something different than we have ever done before. We have given you two draft resolutions. To work from the draft resolution, we had a finding number 25 on page 3 of 8 that recognizes the applicant's representation that they do not sell those products and what we would add is a condition at the end, probably 22, that is equivalent of no sale of cigarettes, lottery tickets, adult magazines or fortified wine is permitted at this establishment.

>> Councilmember Kalra: Let me run that by staff as well. Then additionally, the determination of public convenience or necessity, applicant indicates that for future applicants they would have to go through that process even if there's a C.U.P. that may run with the land. Is that correct? That's correct, liquor licenses that are already granted it would come back through a separate PCN process so that we would be deliberating about whether to grant the PCN or not.

>> Councilmember Kalra: It would go to the entire council to determine if it qualified, depending what the Planning Commission does.

>> Joe Horwedel: Depending on --

>> Councilmember Kalra: A situation like this where there might be a concern that a liquor store might come in sometime in the future, the reality is they would have to have that same determination made unless there is some change in the ordinance that at this point is not contemplated?

>> Joe Horwedel: Correct and we would also verify that they comply with the use permit.

>> Councilmember Kalra: That satisfies my concern about that, and the 25 year lease and all the stability that Bev Mo, you never know, the reality is when stores go out of business they go out of business. The stability that Bev Mo does bring coupled with the fact that any future potential tenant would have to go through the same process I think that at least this council and we hope councils going forward would have the fortitude to understand what it is, and what is not an appropriate type of outlet in our neighborhood communities. So with that I'll certainly support the motion.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. So Joe if this were a grocery store, so say PW closed it had a permission to sell alcohol and another grocery store came in I thought if they came in within two years that they didn't have to go through the process again. Is there some different regulation for grocery stores?

>> Joe Horwedel: It is a function of whether there is a still a valid use permit that exist on the property and then going through the ABC process, if it in fact trips on the PCN process. Not all offsale alcohol requires a PCN because it's in an area where there's not alcohol sales that are overconcentrated or there's not a high crime area. So not all, you know, like if Evergreen village center for example is not one I would anticipate a PCN because I think there's one other license that exists for offsale in that center and it's not a high crime area.

>> Councilmember Herrera: But then if it runs its course as far as the time frame they have to start over again?

>> Joe Horwedel: Legal nonconforming use the permit had expired they might have to come in to get the actual use permit reinstated for it.

>> Councilmember Herrera: In this case they would have to come back in because you --

>> Joe Horwedel: There are too many licenses or the number licenses in this area requires the PCN.

>> Councilmember Herrera: I wasn't comfortable, at the beginning, I am more comfortable, I like that there's a grocery store in the same development.

>> Joe Horwedel: And that application will be coming before the council in the next couple of meetings for conditional use permit and a PCN process. Because there will be a new license.

>> Councilmember Herrera: And what percentage, have we established a percentage of alcohol in that particular one?

>> Joe Horwedel: It will be a normal grocery store. You heard it represented they're just asking I think for beer and wine, it will be the normal 5 to 10% the incidental part of their business.

>> Councilmember Herrera: I'm more comfortable that there is a grocery store in the same area and being in district 8 and losing a couple of grocery stores I can empathize with the community and the owner how difficult it is to go find another grocery store to retenant that property. I know I've actually gone out and talk to Safeway and gone to you know different, you know, events to try to find grocery stores and unfortunately we've gotten a couple of new ones but it is really a tough prospect so I'm feeling better about it. I want to make sure Joe that you're comfortable with moving forward understanding the difference between Bev Mo and as you're looking at how we grant these scarce C.U.P.s for alcohol, how Bev Mo is going to fill into that category and do you feel comfortable with this -- I kind of see where you're going with the 15% because then can you sort of differentiate it from another liquor store.

>> Joe Horwedel: Right, definitely we'll work on the number. It might be as low as 5% so I won't oversell, we will work with Bev Mo on what that right-number is but I think putting in the findings that have been talked about today, the restrictions that Bev Mo introduced that we're adding in, doing the tweaked but recognizing the other

product that is sold integral to their business I think is an important way of distinguishing this from what people might perceive as the traditional liquor store. So that's our goal is to make sure there's enough of a differentiation.

>> Councilmember Herrera: I agree, I think that's really important, and along with the additions that Councilmember Liccardo added, I think that definitely helps. Thank you.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Just a question Joe about the staff rationale on the memo because I know we've -- I don't know if we've had conversations one on one but I know at least in the public forum there's been some discussion around the idea that by creating scarcity, with alcohol permits, we can create incentives for grocery stores and fresh food uses. Is the reason now I didn't see that in your memo and is the reason for that because there's a trader Joe's nearby already? Or --

>> Joe Horwedel: No I think the other applications we looked at tonight especially the ones on Story Road and the challenges that a small market like that faces, how staff has looked at this, that was a way for us to help that business to be economically viable and be competitive.

>> Councilmember Liccardo: Right.

>> Joe Horwedel: So we've kind of been a little bit more lenient or willing to look at places that maybe five years ago would have been just an absolute no and as Councilmember Campos noted. Those are the things that we really said we didn't want to work with those small types of markets because we thought that there'd be problems. We have seen that that has not been the case that they really have been operating well. So we find ways to keep encouraging that. I think the case here is that it's more that larger equal treatment concern that staff has that we want to make sure that if we're going to go through and treat a class of the customer one way, that we've got a way to differentiate that. And it's one that I'm hypersensitive sitting through a lot of decisions on land use decisions recently having to explain 20 or 30 residential conversions, why some were approved and some

weren't. Arguing or defending an equal protection claim that we do get those challenges. So it's one that we try to be careful about. But we have that ability to articulate the differences and I think what Councilmember Constant did tonight of laying out that groundwork essentially the overriding consideration to why it made sense here was really important to articulate that. But I think from staff standpoint I really believe that belongs with the council.

>> Councilmember Liccardo: Okay thank you Joe and I want to thank the America of the motion for including the additional conditions. In fact it may be helpful to insert those as well as justifications for how we distinguish this within your framework however you'd like to do that but I don't recommend you read it all again. Thank you.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thanks Sam. I just wanted to make one last comment and I appreciate all the words of support. I think the other thing, I hope this will, anyone who's feeling uneasy this will help them is we have a very sophisticated landlord in this location and what they have done is negotiated the leases with Bev Mo and sunflower together so they are complementary. And as part of the lease for the sunflower it's limiting even much further than we would ever limit the alcohol sales so that they will work complementary and not be competitors to each other. So that it provides an opportunity at this location for a one-stop of two complementary stores.

>> Mayor Reed: I think we're done. We have a motion, as modified. On the motion? All in favor? Opposed? One opposed, I count one opposed, Oliverio, the motion passes on a 10-1 vote. That concludes our work on item 11.5 taking us top open forum. I have one request to speak, Mark Trout.

>> When I was going in this meeting, talking one on one with people, I had a security officer right there, what's his name? What is that man's name? He said, he said to me, sit down. As I was going saying Mark Trout, former candidate for city council in district 9. I'm concerned that we talk with governor brown about AB 499. And I worked with maybe one-third of the crowd, if that you know, 20 people or so and he told me to sit down. What is going on here? What is going on in the City of San José, when a man wants to communicate with his fellow citizens about

a very important issue? Really, this -- it has to do with the Bible because we're to love our neighbors ourself aren't we but what didn't have to do with the Bible in the sense I wasn't preaching to them about salvation. Now you got to be half-nuts to not be concerned when our governor just might sign into law forced vaccinations for children. For crying out loud. Now what is going on. You ought to be ashamed of yourself and we have a right of free speech and I have a right to talk, as you do and as everybody in this city has a right to talk, do things decently and in order as the Bible says. I was told by Laurie, here she is, Laurie today, that I may be kicked out of this city council if I don't behave myself forever. I will not be welcome again. I will be subject to arrest for trespassing if I, Mark Trout former candidate for city council, who by the way slam dunked Don Rocha, and the rest of them in the debate, by the grace of God -- I give God all the glory -- but I did, if you will probably watch it on the Internet, but what is going on? I mean, for crying out loud, let's picture your kid being grabbed and being vaccinated. There is evidence as I mentioned before of poison in some of these vaccinations. No not all of them but if you google --

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