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>> Councilmember Constant: Good afternoon, everybody. Welcome to the Public Safety, Finance and Strategic Support meeting of November 17th. First under orders of the day and work plan, we'll handle those together. We're going to take items D-7 and D-8 first before we go on to anything else. Under review of the work plan we've got a few deferrals here, a couple till December and one till January. Any comments from the committee on any of those? How about a motion for those deferrals?

>> Councilmember Oliverio: So moved.

>> Councilmember Nguyen: Second.

>> Councilmember Constant: All in favor, that passes. Sharon I fibbed a little. We'll take the consent calendar but it will be over quickly. One item, we spoke about this before committee. We got a monthly capital cost and projections from the Redevelopment Agency. Given the lower volume of activity going through the Redevelopment Agency, I think it would be better if we just heard that quarterly. So whoever makes the motion, if you could make a motion --

>> Councilmember Oliverio: So move.

>> Councilmember Constant: That -- the motion will be that we approve these, accept these reports, cross-reference this to the city council with a recommendation for approval to hear these on a quarterly basis instead of a monthly basis. Is that what your motion was?

>> Councilmember Oliverio: Yes.

>> Councilmember Constant: I thought so. All in favor, that carries. Sharon.

>> Just a minor matter, I think you want to cross reference it to the board not the full council.

>> Councilmember Constant: That's what I meant. Sharon.

>> Sharon Erickson: The monthly activity of the auditor's office, October 2011. During the month we issued two audit reports, the audit of airport Public Safety level of service and the semi annual report on open audit recommendations. What I'd like to do is take just a minute. Under the charter, the Auditor's office is required to be audited once every two years. The team is on site this week and we've been undergoing our audit. We have made an arrangement with the association of local government auditors for the biennial review. I'd like to introduce the peer review team. They include Michael Iglinsky, who City Auditor from the city of Lawrence, Kansas. Deborah DeValt who is an internal auditor with the city of Phoenix, in Arizona. And Jennifer Scott, who's the senior management auditor with the City of Portland. If they could just say a couple of words.

>> I'm Mike Iglinsky, I'm the City Auditor in Lawrence, Kansas. We've been on site here for most of the week. And what we are doing is auditing the practices and the policies and procedures of the office. Basically, we have two objectives, to make sure the quality control system is designed appropriately and then that it's been operating appropriately over the last two years. We issue then an opinion letter about compliance with government auditing standards. We also will make any recommendations if we see any issues, and a lot of this process is about just sharing experiences and helping, you know we learn a lot about seeing how another office works and we try to share some of that information. We should have a report issued soon that I believe will come back to you guys. I did want to also mention that we too have a supervisor who is not onsite. But it's a guy named Matt Weller with the office of the City Auditor in the city of Oklahoma city. Be happy to answer any questions.

>> Councilmember Constant: Have any questions? Nope.

>> Sharon Erickson: Thank you again.

>> Councilmember Constant: Thanks for being out here and doing your work. I've been to two of your cities but hopefully I'll be to Kansas soon. Do we have a motion? Motion and second. Anyone from the public like to speak

on this item? All in favor, any post? That motion carries. Thank you. So we'll move right into the next item, D-8, audit of annual form 700 filers.

>> Sharon Erickson: Thank you very much. I'm being joined by Dennis Hawkins of course your City Clerk. This audit as you well know is about the political reform act. So the political reform act of 1974 requires many state and local public officials and employees and some government consultants to disclose personal financial holdings on a statement of economic interest fondly known as the form 700. The City of San José also requires these individuals who file a separate family gift report form. For the year 2011, 1066 persons who were required to file these annual forms. These included 924 individuals and 142 consultants. The purpose of our review was simply to determine whether or not the city had identified everyone who should be filing these reforms and to document whether they had filed timely or not. We did not review the forms. As of July 20th, 2011, only 12 of the 924 individuals had not filed their form 700. Which is 99% compliance. But of course, being auditors we look at everything. We did find that 73 individuals had not filed timely, and 99 had not filed their family gift reporting form. Many of these individuals have been contacted numerous times by the City Clerk's office. Regarding their noncompliance. So we are recommending, because there are fines imposed 50 state, that the city impose those fines on late and nonfilers as appropriate. Secondly, the compliance among consultants listed in the City Clerk's database appears to be significantly less. That's because only 45 of 142 consultants who were listed as form 700 annual filers were actually filing their form 700s. And furthermore, only 36 of those 142 filed their annual family gift reporting form. However, we did find that some of the listed consultants should not have been on the list. And some consultants who in fact were working for the city weren't on the list. So what we're recommending is the City Clerk's office require consulting firms whose employees should be filing those forms to coordinate the assuming office statements for their assigned employees when they begin work and then once a year on an annual basis. Finally, this whole process is extraordinarily time-consuming and labor-intensive for everyone involved. In our opinion the city should seek legislation to allow it to participate in an electronic filing program which would greatly simplify everyone's work. I wanted to thank the office of the City Clerk, the city attorney's office and the City Manager's office for their help during our audit. I wanted to make a special call-out to Robin Opheim from my office who conducted the audit and to Dennis Hawkins and Lupe Nieto in the Clerk's Office who were the brains behind making sure that these 1066 individuals all properly file. With that I'll turn it over to Dennis.

>> Dennis Hawkins: Thank you, Sharon. Good afternoon, members of the committee. You have before you our response to the audit and generally our office concurs with the recommendations made by the City Auditor. We have a long standing commitment to continuously try and improve the process. Every two years we go through an exhaustive review along with the city attorney's office and the City Manager's office to try and make sure that we identify properly the employees who should be filing a form 700 and make sure that their disclosure categories are appropriate given their level of responsibilities. Over the past few years, through a number of factors, we've reduced the number of employees that are required to file while still maintaining quality to assure that those that should be filing do file. We recognize that there is definitely room for improvement in the process regarding consultants. Frankly, we've identified that as our Achilles heel for some time and continue to work with the city attorney's office and the city administration to identify better ways to identify consultants who should be filing, and to work with the departments to make sure that those consultants do file their Form 700s in a timely manner. So with that I'd be happy to answer any questions the committee might have.

>> Councilmember Constant: Thank you. I don't have any questions, other than thank you for a good report. Although I would challenge the referring to them fondly as form 700s because I don't really refer to mine that fondly. Questions or comments from my colleagues? No, could I have a motion?

>> Councilmember Oliverio: Motion to accept the report.

>> Councilmember Constant: Anybody in the audience like to speak on this item? We have a motion and second -- did you have something you wanted to add?

>> Sharon Erickson: I'm sorry, should it be cross referenced?

>> Councilmember Constant: Who made the motion?

>> Councilmember Oliverio: Did I.

>> Councilmember Constant: Any comments from the public? We have a motion and second. All in favor, any opposed? That passes, thank you for another great audit report. We'll moving back to item D-1, report on the domestic violence prevention program. I think Norberto is going to bring us up to date on that.

>> Norberto Duenas: Good afternoon, Mr. Chair, members of the committee. Norberto Duenas deputy City Manager and with us is Eve Castellanos our lead officer in this matter. Lieu 10th Savella will be the new unit commander at the family violence center and we want to welcome him to our team. Members of the committee in accordance with the policy direction that was adopted in the 11 and 12 budget we have engaged with members of the City's family domestic violence advisory board including the Santa Clara County District Attorney's office, the Department of Family and children's services, San José State university, local service providers and the San José police department to discuss how best to ensure that the City's domestic violence priorities be addressed given the difficult budget situation. We are in an effort to redefine the city's role in this effort based on the council direction. To that end I think it's important to note that the City Manager's office has utilized transitional funding resources provided by the mayor's office, by Councilmember Constant by Councilmember Rocha and by Councilmember Pyle in the amount of \$55,000, to allow us to continue to engage and provide input from the stakeholders in this effort. From July to the present, transitional funding has been used to support the following activities related to the City's domestic violence prevention program. First and foremost, the planning and implementation of the city's 14th annual walk to end domestic violence. Many of you participated last month in another successful event. Over 450 attendees participated in this event which consisted of a program, a walk procession, a community lunch and a resource fair. For the first time ever in addition to going through downtown San José this year's walk procession went through San José State university campus, in an effort to address our collective goal on this issue. Very important to note this year's event was a donor sponsored event, cumulative donations exceeded \$5,000. I really want to thank Eve Castellanos in raising the funds to make this walk successful. Staff has also been active in the facilitation of plans to relocate the City's family violence center. We are very excited about that effort. We understand how important it is to have a facility that not only works for our police department but also for the stakeholders. As members of this committee have previously noted, the facility that currently houses the family violence center has a number of challenges, some of which include a lack of

accessibility by public transportation, because of its location and a lack of parking and restroom facilities for visitors and clients and a lack of private meeting space. We are very excited that this is going to change soon. We have been working with the police department, the Office of Economic Development, real estate division, to secure a location from the family violence center to relocate in a more centrally located part of the city. 671 the Alameda and we anticipate that a memorandum will be coming to the city council for approval of that lease arrangement at the end of this month, actually, November 29th. As we've met with our various stakeholders, we've engaged in a number of discussions of what the redefining and the refocusing of our program should look like. And there are a number of areas I'd like to highlight from the stakeholders meeting that we convened, that the group felt was extremely important to continue to pursue and evaluate. Obviously, the advocacy and support to the San José police department for this effort was an important component. Community education, awareness and prevention campaigns and activities. Development of partnerships, model that would bring resources together to continue the coordinated community response efforts, and of course, a continued effort to find ways to continue the intergovernmental, inter-collaboration efforts that have been established over the years. The City Manager's office will be evaluating all these priorities and the input from the stakeholders to determine how they will be addressed. We anticipate the development of a formal transition plan to be brought back to this committee in January. And we look forward to communicating further with the advisory board as well as members of this committee and the council as a whole as we continue to advance upon this important Public Safety issue. And with that, thank you for listening and we're available to answer any questions.

>> Councilmember Constant: Thank you very much. First of all I want to say thank you to Eve for all the work that you've done for quite a number of years. In corralling everyone and keeping everything coordinated especially your work on the events. I know I've told you this personally but I want to make sure I say it publicly. I know you've done a great job. Lieutenant, great to see you. Kevin. You have big shoes to fill. John did a great job but we know you can fill those shoes and we look forward to working with you. Any comments from my colleagues? Pierluigi.

>> Councilmember Oliverio: Thank you chair. Thank you for all your efforts as Councilmember Constant said. Curious on these types of services being offered today does the county offer any in the terms of domestic violence programs?

>> Councilmember Oliverio, the county does offer a variety of services in the area of crisis intervention, primarily through the social services agency. They work through the Department of Family and children's services with battered women primarily and there are children that have been abused. In addition to that the county exec's office has an office of policy who we work closely with who offers support to the county's domestic violence council that we coordinate often with, in addition to the superior courts. They do both of those efforts focused primarily on crisis intervention services, whereas we do that through our law enforcement services, in addition to that we also try and promote early intervention services because we know them to be most cost effective.

>> Councilmember Oliverio: Are other agencies offering services like City of San José does?

>> Unfortunately not. They partner with us to help support our efforts because at this time especially with the resource challenges, many of the smaller municipalities are often grappling with we often have to pull together and pool resources to have activities that we can offer county wide. But City of San José has generally spearheaded those activities.

>> Councilmember Oliverio: And is our services city-agnostic, so if someone comes to us with trouble from Milpitas, Sunnyvale, Mountain View, we still will offer them the same services as we would provide a San José resident?

>> Absolutely.

>> Councilmember Oliverio: Okay, thank you.

>> Councilmember Constant: I might add that I co-chair the family advisory domestic violence board, we have had discussions with reaching out to the county to see if we could leverage our resources. Because about 95% of the people sitting around the table at our advisory board are the same people that sit around the table on their board. We think that we may be able to find some efficiencies there going forward. We will continue to explore that. And to the other point of other agencies in the county, we have folks from north county and south county that work with us on our domestic family violence board to coordinate efforts county wide. Anything from you Vice Mayor?

>> No.

>> Councilmember Constant: Anybody from the public like to is speak on this item? With that I'll ask for a motion to accept the report.

>> Councilmember Oliverio: Motion --

>> Councilmember Constant: We'll take it anyway. Motion and second. All in favor, thank you very much we'll see you guys soon. We'll move on to our next item which is D-2, report on title 16 amendments. I think we have a few people that will be moving into place. Rick will you be starting this off?

>> City Attorney Doyle: I was just going to introduce it and we're here to answer a lot of questions. Mr. Chair, members of the committee, the proposal before you are proposed changes to title 16, title 16 is the section of the municipal code that governs the card rooms and the regulation of card rooms. The changes are really twofold. Largely in response to a -- the audit by the City Auditor and to make conforming changes. I want to note that a lot of these changes are current practice by the game regulators already. But this would codify that. And then separately, there are a number of changes that are in response to prior council direction. And so they are conforming with those -- with that direction. I also want to note there's a few other miscellaneous changes that we felt were needed to clarify. I'm going to ask Carl Mitchell to briefly run through the specific changes. The report's in

your packet. Just sort of self-explanatory but briefly run through it for the benefit of the audience and we'll take it from there.

>> Good afternoon, chairman. We were -- let me start in chronological order, with the 2009 council directions, one was to include an appeal process for the chief of police to review revocation of temporary key employee licenses. And that's been accomplished as a matter of administrative practice, and we have made conforming changes in the proposed ordinance to take care of that. Second, council asked that we specify that if approval of the application of a license takes longer than 180 days, the administrator will give a written explanation for the reasons for the delay and an estimated date for the completion of the review which will be updated every two months until the application has been issued, withdrawn or denied. We have a very similar provision already in the -- in title 16 with this language, and the only tweak really was to give a written explanation for the reason for delay and then to update it every two months. And so the application has been -- where there's been issuance of a license or where the application has been withdrawn or denied, and we've made the conforming changes to that. Third was to add a review and approval of new administrative regulations by the chief of police before they become final, and we've accomplished that, both as a matter of administrative practice and in these conforming changes into title 16. The City Auditor issued her report on the City's licensing and permitting of card room owners and employees on April 7th. The report recommended that title 16 be amended to require and rely on the state's key employee license as the basis for issuing a city key employee license while preserving the city's ability to issue limitations and conditions on the city license. The auditor further recommended that the revision should apply to all new pending and key employee license applications. City council adopted the you auditor's report and recommendations on June 22nd, 2010. And the -- have made changes in our amendments that would conform to those recommendations. Then we get into two further staff recommendations. One was with respect to technical clarification regarding the minor violations procedures to make those conform more to the procedures we use for administrative citations under title one of the municipal code, and that's all it's intended to do is provide clarification for that process which was supposed to be a very summary process anyway and we've tried to keep it fairly summary. Last but not least, where staff is making a recommendation to amend our card room permit procedure, and related sections in the -- in title 16, to apply to the issue of gaming on other than ground floor level. As currently written title 16 requires that the playing of control games be limited to a single level or to such

areas as may be approved by the administrator. Currently Bay 101 and Garden City have gaming only on the ground floor of their respective premises. Since location where control games can be played is properly, we believe, a term or condition of the card room permit, the proposed amendment to title 16 will require that a cardroom permittee desiring to play control games any place other than the ground floor level of their premises will have to provide for a card room permit amendment under the existing procedures set out in title 16 for card room permit amendments. Neither cardroom in the past has sought to have gambling anywhere other than the ground floor level of their respective premises. The proposed changes will take the discretion to allow for gaming anywhere other than the ground floor level from the discretion of the administrator and place the decision with the chief of police within the context of a formal investigation and public hearing procedure where there will be an opportunity for public testimony. And the Chief of Police or his designee will have to make formal findings in order to have a -- have the card room permit amendments approved. And that's about it. If you have any questions we'll be happy to --

>> Councilmember Constant: I'm sure we will. Does anybody else have anything to add before we get into the questions? I had a series of questions. And being the chair I'm going to let myself go first. The reason we got to this point was because of the City Auditor's report that came out in April of 2010 and it highlighted a number of issues with the permitting process and we had a couple of lengthy discussions at this committee about those issues. And there was a lot of follow-up which led us to where we are. And I have a couple of questions -- is our gaming administrator here? I was kind of surprised to not see him there given that he's probably going to be the person to have the answers to almost all of these questions and this is pretty specific to --

>> Councilmember Oliverio: Chair can I follow up with where -- I mean why wouldn't he be here?

>> Councilmember Constant: Go ahead.

>> Councilmember Oliverio: That's my question.

>> Councilmember Constant: The question from Councilmember Oliverio.

>> We weren't able too get ahold of him today. He was e-mailed not otherwise here.

>> Councilmember Oliverio: Did he show up to work today?

>> I believe so, yes.

>> Councilmember Oliverio: I think it's really --

>> I think there was also -- there was also some hesitancy on our part to whether or not it was appropriate for him to be here. So that's part of the issue.

>> Councilmember Oliverio: I want to throw out the comment that I think it's very pertinent to the discussion, so almost like having a discussion on any other topic and not having the department head or someone there to be part of that discussion as the main user. I mean, you know, is it just me?

>> Councilmember Constant: Well, I'll be more blunt, I think it's inappropriate that he's not here to be quite frank because we had a lot of discussions at two committee meetings, and since he is the person who administers this and he is the person that guides the process, and is really the control valve for everything that happens between our card clubs, their employees, and the city, everything goes through one funnel point. And that funnel point's not here and this entire report is about the activities that are controlled by that person. So let's just suffice to say that I'm not happy that he's not here. And I'll ask these questions and if they're not able to be answered, then I think I'll expect that we have a more in-depth meeting in December to go over these things. So at our Public Safety committee meeting in I believe it was may 20th of 2010, the gaming administrator made a comment that we should reevaluate whether or not we should give up some of the steps in our process of licensing. And my question is, did we have that evaluation done?

>> City Attorney Doyle: I'm going to -- we came here today to talk about title 16 changes, chair. I'm told that as a result of a recent lawsuit that's been filed, that's one of the reasons the administrator is not here. And I wasn't aware personally whether he was going to be here or not. But I'm just relaying to you that information. Your points are well taken. We will do the best we can, and the assistant police chief is here to address police concerns and we'll do the best of we can to respond to your questions. To the extent we need additional information we can address it. I don't know if we can address what Mr. Tang set and if we need to respond, whether or not his view is still the same without him actually answering that but we'll do the best we can.

>> Councilmember Constant: Well I would have appreciated that reason for him not being there being told us directly instead of after I asked a question specific to him. I think it is very pertinent because the only reason we're here is because of performance issues in the unit and how the impacts that they were having and the whole reason the council decided to make changes to title 16. Now, I guess we could just perhaps take an action and send direction to the council just to ignore everything we've done and say let's just go ahead and implement everything that's in this report. If we don't see that there's any progress made. And I'll tell you, it really upsets me when we spend years talking about stuff. And then we get to a point where we're ready to do something, and we hit a brick wall. So if my frustration is not coming out in my tone, let me say bluntly, I'm frustrated and irritated.

>> Ed Shikada: Councilmembers perhaps I can provide some information that's helpful.

>> Councilmember Constant: I prefer to go through my questions. If you don't have your answers tell us, and we can get the answers at our next monthly meeting. I'm not going to let this go to the council until I feel we have vetted it properly.

>> Ed Shikada: If I might respond to your first question with respect to the permitting process for the committee's background I've been personally involved with the gaming issues for roughly three months at this point, meeting both with Richard Tang, our gaming administrator, Ricky Goethe, Chief Moore, as well as both Garden City and very recently with Bay 101. While I'm certainly no expert at it, I'm getting up to speed and I think have an increasing understanding of some of the issues that have both been in play as well as currently in play. With

respect to the issue of the work permit process and issues around streamlining of the process itself our specific discussion over the last few months have been the timeliness and the existent or somewhat debate about the existence of a backlog, one particular issue that has been a point of discussion has been what has been a practice of preapproval of the application, where police department staff were doing an initial screening of an application before taking the application fee from an applicant, which is on the order of \$400. Based upon the concerns with that prescreening that had been done by the police department that has been eliminated, so, in direct response to your question, Mr. Chair, that that process has been streamlined which has brought the applications directly into the approval process more quickly. I think that there are some other changes that have recently been made and are currently in the works that take that next step. But perhaps I'll end at that point.

>> Councilmember Constant: So one of the things that Mr. Tang also said, we were talking about looking at history of applicants. We had a long discussion about ten years of records versus seven years of records versus five years of records versus three years of records. And there was a quote that was told to us that there is a possibility in fact that we would have no choice but to amend our protocols to better fit into their system, and vice versa, with the "their" referring to the State of California. Has that been done?

>> Ed Shikada: I believe the review process focuses over the previous two to three years, I'm not aware of any situations that have had to go much beyond that. But that said, I suspect there are circumstances in which information leads to additional questions. And I am aware of some of the discussions around that, that particular topic.

>> Councilmember Constant: All right so the question was though are we aligning ourselves to what the State's doing since we referred part of the process out to the state have we sat down and aligned our process with them?

>> I believe we have reduced the length of time for the initial request for information. And for the very few licenses that we're involved with at all and post of the licensing, certainly all the key employee licenses has been delegated to the state. We don't do it anymore. We delegated it over to them. We issue, as soon as they issue an interim,

we issue a temporary. And that's where -- that's what we've been doing, since the report was accepted by the City Auditor's report was accepted by the city council. So we vice president been involved with key employee licensing.

>> Councilmember Constant: But I think as we were talking about this it was all licenses not just key employee licenses. So I would imagine that -- hang on let me finish -- I would imagine I guess since I'm not getting an answer, we don't know the answer, yes or no, have we aligned our protocols with the state, yes or no?

>> I can't say --

>> Councilmember Constant: Okay.

>> -- all the protocols that the state uses. I can say --

>> Councilmember Constant: I don't want to dance all around. We had things that were told to this committee and I'm trying to figure out if they happened or not. Last time we went through this meeting we did a dance quite a while trying to get information. When we were in front of the council we did a dance around issues and I'm trying to find out if things got done or not. If you don't know the answer, a simple yes, no, or I don't know is fine. I'm not going to dance around the issue, we have a lot of things to get through. Deanna Santana had told us that we were in the final stages of an RFP, for a consultant to look at our process of permitting. And I don't remember ever seeing that consultant report. Do we have that report, and has it been distributed?

>> Ed Shikada: Yes, the report was completed, it has not been distributed, it is being evaluated by our office along with the police department.

>> Councilmember Constant: And when did that report come out? Because that was about a year ago that we talked about that.

>> Ed Shikada: I believe the report was sent to our office in February of this year.

>> Councilmember Constant: And when can we expect to see it? Because I think it's pretty germane to this discussion.

>> Ed Shikada: Be happy to distribute it to the committee or to the full council as appropriate.

>> Councilmember Constant: As you know, we've had issues, I know, at least with our incubators and others, where there's been reports that are pertinent to our discussions, and we don't get them. So it's very difficult for us to set the policies by which we're going to operate if we don't get these reports. And I think for us to go forward without having that is, again, an issue. So as we're going with the licensing process, do we know what our backlog status is in each of the categories as we had presented in the audit report?

>> Currently what we've done chairman is to issue -- to address the issue of the backlog, we've added 12 appointments per day for Garden City as well as one for Bay 101, to up it to 48 in the total in the week and giving them those parameters. Now, in the first week they used all of the 48 appointments, in the second week which is currently right now they have not used them all. So we have increased our staff by a police officer, and also overtime, to a civilian, to be able to get us through all of the applicants. We do not have a backlog at this point.

>> Councilmember Constant: My understanding is we have added a process where someone applies and until that application is officially accepted we're not tracking it as to whether it's getting -- going through the process; is that correct?

>> Ed Shikada: That was actually the prescreening I referenced previously, that's no longer in practice.

>> Councilmember Constant: Okay, so that's done. So we're not having the problem with the live scanning delays, and all that? Okay. Do we know how many applicants, through any of our processes, have been denied in the last five years as a result of our regulatory screening and backgrounding?

>> No, we do not know that.

>> Councilmember Constant: I'm going to change a little bit from licensing to enforcement of the regulations. One of the concerns I have, title 16 is pretty thick. It's 77 pages when you print it out from the Internet. The items are a small selection of those and there's a lot of areas for people to be cited on. One of the concerns that we've heard in the past, and I believe it's been continuing to be an issue, is the delay if issuing of administrative citations. And I know, I've spoke to the City Attorney about this Rick before, in regular enforcement of state laws, issues that aren't felonies, you know, usually they have to be issued contemporaneous with the event unless there's a particular reason they're not. But I know of several instances, and one in particular, that took eight months for a citation to be issued to someone. What's the issue with getting contemporaneous citations?

>> First they need to be -- the circumstances needs to be investigated. Second for a lot of situations we try and -- the department tries to provide informal notice and attempts at gaining compliance before we take action. But a lot of these take time to simply investigate, get reports drafted, get them reviewed and make a determination whether to go forward or not.

>> Councilmember Constant: Do we have a specific fine schedule for violations?

>> The -- the fine schedule is set out in the schedule of administrative fines. There is a resolution that the council passes every -- that has all the fines, including the fines for administrative citations under title 16.

>> Councilmember Constant: Okay so they are specified?

>> They are specified.

>> Councilmember Constant: In the I think it was October 20th meeting the mayor had put out a memo that had specific direction to have a written work plan on how we were going to proceed. And I know we've had a lot of actions along the way. Do we know where we are in relation to that work plan that was completed?

>> It's been drafted and it's in the chief's office and we're waiting to look at it. And sign it. So it's not completely finished yet but it is drafted.

>> Councilmember Constant: Okay, that was two years ago. It was October 20th of 2009. It's November 17th of 2011. I think we, as a committee, deserve to at least see a work plan of things that are going forward. And I know, I'm sure I'm not speaking on behalf of the mayor but I imagine when the mayor puts out a memo asking for something, that we should get it. I'm going to move, keep going on the licensing here. So I know we have the issue that was kind of alluded to with the gaming, and we all no that Garden City casino, which is the casino in my district is moving, and we have the whole issue of the landlord's license which is the subject of one of the items in Ed' memo and I know a discussion I've had with the chief, chief Moore that is and with the City Attorney. I know why we have a landlord license requirement because generally the people who own the land are not the people who own the casino. But in this particular case we have the people who own the casino or card room, are the people that own the land. So we have people who have been fully backgrounded, issued license, and renewed license, as recently as this year. And then, we give a bill for \$60,000 to do a background on people who have already been backgrounded and already been licensed. And I don't understand how a person in the landlord position would have greater scrutiny placed upon them than a person who is arguably the most critical person and those were the people that own an entity that performance gambling. And I really haven't gotten a response in my discussions with the police department, specifically the chief, on how we would end up having to do all this extra further work on people who we already know who they are, we already have their background, going ten years back, and then we reviewed it and renewed it. So if I could maybe get some clarification on that.

>> City Attorney Doyle: Mr. Chair, just if I can briefly -- my understanding is that there is some question about what is the resource of the funds. I mean to put it bluntly, you follow the money. There are apparently a number of different entities where the owners are -- have interest. It is not clear where the money is coming from to finance a

very large project, I think. There is an ongoing investigation. I think that's part of a regulator. And I think that's why that investigation is being taken -- being -- or taking place. I think that the point really is that the landlord, there is a relevance to having the landlord checked, even if it is the current owner. It isn't as simple as, it's the same name. It's a matter of tracing what is the source of the funds for the project and I think that's something that's being looked into. I think it's something that, to just get on the record, we understand, there's a time sensitivity to get this project up and going, and open. The police department has told us they are committed to getting it done in a very timely way. They've asked for an up-front fee to help cover that cost of that investigation. They've not received that fee. In spite of that they are going forward with their investigation so they do have a complete and timely manner so that the project can open.

>> Councilmember Constant: I think one of the -- I'll move on to the next topic. I'll stop on that one. But one of the issues I have is, it seems to be we always have a sort of a moving ball, when we're talking about moving along with enforcement or licensing. You know, I know that at least one of the clubs has been required to hire a compliance director. There's nothing in the regulations that I could find anywhere about a compliance director. My understanding is, the state doesn't require compliance directors. And I guess the only -- I guess I'm looking for how we end up with that when that doesn't seem to be anything that I can find tangibly. It seems to be something that was developed.

>> That was one of the terms and conditions of the initial licensing of the current owners of Garden City and it was one that they agreed to. And it was done in order to assist them. They were new to the gambling business, councilmember and it was done in order to assist them in getting used to being in a regulated environment and dealing with a -- that environment.

>> Councilmember Constant: So if we have a compliance director, when a club is out of compliance, why is the action taken against the owner and not the compliance director who is the person responsible for it?

>> It depends -- the compliance director is not responsible for all the operational activity of that card room. And as we go after -- we generally try to -- we have choices under the ordinance of going after the ownership, the permittee, or specific employees, including key employees who are specifically responsible for the violation.

>> Councilmember Constant: In another area where it appears to be a moving ball, I know we're all aware of and Ed it's in your memo about the camera systems and we have on one end the police department saying you have to have a camera system that meets our specifications to get our approval, but we don't have any specifications. I can just imagine if you were trying to build a building and you went to the building official and they didn't give you any specifications, and you had to try to build a building without knowing what the end game is. And as you guys know, I know a significant amount about cameras and technology, and it's pretty simple to know what the quality capabilities of electronics are and how to set a set of standards. In fact, I could probably scratch out a set of standards fairly quickly myself. And it seems like that has been an ongoing problem. I understand that there were very specific engineering diagrams provided to the gaming administrator about the camera system. That were rejected because they weren't understood. Yet they haven't been able to get any specificity on how they would build a camera system. And I know that I'm the type of person that I wouldn't just keep giving you stuff until I was happy with it. I think it's easy to ask the question, what is the purpose of the cameras, and then say if this is the purpose this is what we need to do to achieve that purpose. I think it's pretty easy for anyone to understand with the advances in technology, and we all know how Moore's law works, that the cameras that are available today, and the systems that are available today are probably far superior than any system that is in either one of our card clubs at the current time. So I'm trying to figure out how do we get to a point where we can't say this is a these are the specifications, this is what you must achieve, that is clearly objective, that anyone can understand or anybody who understands the equipment can understand, and not subjective?

>> Ed Shikada: Mr. Chair, let's see, let me start with perhaps the analogy to typical building and development process. What's a bit -- well certainly different about this situation and in fact perhaps to use your analogy, if this were the building department we would be in a very similar situation. The building department would not tell an architect or an owner how to design their building. They would basically allow the owner to submit their plans, and in a code check, in this situation our code is title 16. What title 16 calls for, I don't have the section in front of me,

is to basically observe the play, the cards, the wagers and the actions of the game itself. So the challenge in comparing that code requirement to a request for sign-off on a camera, what was being asked for was a sign-off on a photograph, is to be able to connect that photograph to the, as you pointed out, the technology behind it, the lighting systems, the communication system, the ability to record, the ability to transmit, all of the components that go from an image to being able to confirm the play. That was really the challenge, to a certain extent I think we are speaking different languages, in that the gaming administrator is not in the building business. I think there's been a bit of frustration on both sides in the desire to have interim sign off, to see the finished product and to be able to confirm to your point a pretty well common sense ability to conclude as to whether at the end of an probable system if you can read the cards and be able to see what wagers are being played and the like. But unfortunately we are in that intermediate step that has caused perhaps that as I said confusion on both sides.

>> Councilmember Constant: Wasn't there a set of engineering diagrams presented? That's a far cry from a photograph.

>> Ed Shikada: There were electrical diagrams, basically the plans for the installation of the camera system, once again whether an engineer or much less the gaming administrator could look at those engineering diagrams and determine whether that was going to be sufficient to read the play, is subject to a number of factors including you know, locations of the cameras versus the tables and the columns and the plants and where the lighting fixtures are and the like all of which are ultimately elements that will affect the ability to see what's happening.

>> Councilmember Constant: I'll go back to the analogy that I made that you referred to of the building official. We wouldn't tell someone build a building that doesn't fall down in an earthquake. That's our objective and go figure out how to do it and we'll let you know if you achieved it. There are specifics that we require to do that. But we're asking the same thing here. We want to be able to see the cards, and the wagers. Go figure it out and we'll let you know. That's not objective and it's not like, this is the only video surveillance system ever installed anywhere in the United States. I'm sure there are best practices. I'm sure there are standards. I just don't understand how we can have a system where all of the responsibility is on the side of the applicant, and there is no responsibility on us, other than to say yes or no, try again. And in my discussions with people, I don't get

anyone who seems to acknowledge at a on the administration side. And so if I asked -- we have a video system in here. If I asked someone to build a video system and didn't give them any specifications what would we end up with? So you know, a temporary signoff I don't think is reasonable and I honestly don't see where you have the authority to have that kind of control in this title. Especially when you have two clubs operating right now that have systems that are old, that can't be anywhere near the quality of anything that I could go by at best buy today or quite frankly what we have in this council chambers. So I guess what frustrates me is we don't get any acknowledgment that there is even a problem other than a explanation of oh, that's the way it is. And I know that my constituents are frustrated by it. And I try and put myself in their shoes, just like I do when a McDonald's is opening in my district, and they can't get by health department because the health department keeps giving them a moving target. Our job as policy makers is to make sure that we have policies where people who have lawful businesses, once we determine they are lawful, have the ability to succeed. Nothing more, nothing less. I don't think we should be setting a set of regulations that makes it easier on them or easier on us. It needs to be something that can you read. When I read through this all I see is discretion and no accountability and that's one of the problems I have. So going to the actual title itself, now that it took me an hour to get here, I know, in the verbal update we got, it says that section 1632.110 which is the status update, let me pull it up in my copy here, it basically says that all it is is a status update. Yet we were told verbally that the applicant gets a reason. There's a big difference between the status, your application is still pending, versus a reason why it is pending. So how can we clarify that section, on the memo, on the bottom of the page, it's page 10.

>> Mr. Chairman, it's 1632.110 section D.

>> Councilmember Constant: Right.

>> And we have here, if an investigation cannot be concluded within 180 days after the date of receipt of a completed application and applicable fees the administrator shall inform the applicant in writing of the status of the investigation and the reasons for delay in completing the investigation. Those were added.

>> Councilmember Constant: Keep going. It says, "thereafter" --

>> And shall also provide the applicant with an estimated date on which the applicant investigation may reasonably be expected to be concluded. Thereafter at two month intervals the administrator shall provide the applicant with a written status update until -- that staff's update will include any further reasons for delay. It --

>> City Attorney Doyle: Chair, if what you're saying is that you want specific language in there to say and give the reasons for the delay.

>> Councilmember Constant: Yes.

>> City Attorney Doyle: That is an easy fix. That's clearly the intent.

>> Councilmember Constant: That definitely needs to be added into there. Given the reasons may change over time, and I really want to get this to where it's predictable and understandable for people on all three sides. That means the administration, the applicants, and the policy makers. Moving on to 1632.620. One of the things I'm hearing a little different in what's written in here versus what we were told, it was explained to us that when the state issues a key license, whether it be a temporary or a regular one, that we do the same. But the code doesn't say that. It says, we may issue a license. Again, that puts -- it's on the top of page 13, 1632.620A third word. That brings a lot of discretion into the process. Someone goes through a process, through the state, gets is issued a temporary or a permanent and then we may or we may not issue a license. I think that is an issue that we have to look at.

>> We say in section B notwithstanding subsection A, the administrator shall issue an applicant for a key employee license a temporary key employee license within five working days after receiving written notice that the California Gaming Control Commission has issued an interim state key employee license. That's the operative procedure. The other one would only take place in the extraordinarily rare circumstance that we have an applicant who, for whatever reason, can't be -- get an interim from the state.

>> Councilmember Constant: Well, I don't think that's what A says. I think A and B contradict each other. You guys can look at that further. I'm not going to make you lawyer it on the spot.

>> City Attorney Doyle: That's the purpose of the "notwithstanding" language but, yeah. So noted.

>> Councilmember Constant: I also have an issue on the next page, we're still in the same section, but we're in subsection D. How do we ensure due process, when we have a line that says there's no further right of appeal as to revocation of a temporary, key license? If the person who issues the license is the chief and the chief decides to revoke it for whatever reason how does that get resolved?

>> You take a writ from the final decision. We provided an administrative appeal and then you can take a writ from the final administrative decision. That's how we do it with a lot of other administrative -- all our administrative processes, final designation from the final decision you can take a writ of mandamus.

>> Councilmember Constant: Moving on to 1632.630, is it typical for us to only give five days from the mailing of a notice to give someone the ability to exercise their rights? If I'm at City Hall and I go down and I file -- I go to the post office and I drop a letter in the mail and get a proof of service, and it takes two days to get there, is that typical? Do we use five days everywhere else in the city when we issue notices to people and they have an opportunity to exercise a right?

>> It varies. I mean, it's -- we can make it longer.

>> Councilmember Constant: I'm just trying to figure out how we got the --

>> City Attorney Doyle: It's five working days. That's something that -- if the committee believes that a longer period should be given -- that's an easy fix. We're not wedded to the five days, in other words.

>> Councilmember Constant: That's how -- I'm trying to see how we got to that if it something that appears everywhere --

>> City Attorney Doyle: Title 6 is where you have most of these regulations, whether it's entertainment permits, massage permits, whatever, there are various times and I don't have them off the top of my head.

>> Councilmember Constant: I think that should be reviewed, I don't think five is reasonable. Continuing on down to page 15, section D, I understand that the technical rules relating to evidence and witnesses don't apply to administrative hearings and I think that's pretty standard. But am reading this right, that hearsay evidence may be the sole cause for action?

>> City Attorney Doyle: Hearsay are common procedures in any process like this. As you know you're not wedded to the former rules of evidence for reason and whatever evidence, whether it be hearsay or other evidence, but again, Mr. Chair, if you have a -- if all your evidence is only hearsay, I think you get then to what is the weight of the evidence, what evidence do you have in making a decision? So you give a lot of leeway, in these types of hearings. With what materials you get what evidence you get but it goes to the weight of the evidence. Some obviously is more reliable than others.

>> Councilmember Constant: And we added section E that refers to a hearing officer. Perhaps I missed it. I couldn't find anywhere in the revisions or I don't think even in the title that I could find at least, that does -- that defines who the hearing officer is.

>> The hearing officer is the person designated by the Chief of Police to hear the case. And it's common under title 16 and also under title 6 to have the chiefs designate person to hold the hearing. We do that under a bunch of our ordinances under title 6 and we do that here not just for this one but also for our regulatory action hearings, and this was all -- these are all issues that were discussed and negotiated in the 2008 settlement of the card room litigation. And were agreed to by the-d both card rooms at that time.

>> Councilmember Constant: I'm just trying to figure out where we find that. Because I couldn't find that. We're not all going to be here in ten years and somebody is going to be living with these regulations.

>> Well, we can further define it if you like. We have pretty much the standard of who we appoint to make sure that there are no conflicts and to make sure that fundamental due process is provided and we can further define it if you like, it's defined under the purpose of the regulatory action hearings and if you like we can certainly define it in that way.

>> Councilmember Constant: I just think for -- I don't like things to be subject to vague interpretation. I think there's just without a definition, I searched for it, I couldn't find it.

>> City Attorney Doyle: Well, I think the only reference I see is in 1632.630A, where it talks about the hearing officer designated by the Chief of Police, and so it is somebody designated by the Chief of Police to be the hearing officer. I just want to point out again these changes to title 16, title 16 was painstakingly gone through word for word as part of the litigation and settlement with both Bay 101 and Garden City with their attorneys. It was something that we used the good services of JAMS and former justice pinelli to help us work through and a lot of these things with the exception of these changes, a lot of these things have things that have been negotiated with both card rooms and agreed to. And I would be very concerned to the extent we're looking at making any major changes without having that sit-down with both card rooms and walk it through.

>> Councilmember Constant: I think overall my issues with it is that there are a lot of vagueness and are discretion throughout title 16. And I think it's very hard to know where you stand. When one or two people can change the rules as things go along or interpret them differently because of the vagueness in them. And I know we had an issue of Bay 101 not getting the e-mail or whatever of the requirements which I know went out via e-mail. But I do know that in the title it specifies that everything has to be mailed specifically to people ahead of time. So I just want to make sure that whatever we do we end up doing it uniformly. And if we are going to have expectations for people that they're clearly defined and that we follow up with on our side. My colleagues I'm sure might have a few questions left after I was done.

>> Councilmember Oliverio: Thank you, Councilmember Constant. You covered a lot of areas. Question on the item that I remember being sort of an interesting one at council was the area of counterfeit bill. If there's a counterfeit bill at Walgreen's or rite aid, but in this case, from what I'm understanding, if it's a counterfeit, then San José PD comes out. Is that still the case?

>> Yes, it is.

>> Councilmember Oliverio: And since there's another level of government that would be willing to take that off our hands is that something we could allow them to do and be out of that?

>> I couldn't answer that for sure. We could check into it and find out though.

>> Councilmember Oliverio: Okay. As we prioritize calls for service this probably doesn't rank up there in terms of other calls. Secret service would probably do it for us and has more ability to investigate fraudulent bills, for example, then we may have --

>> And you could be right. I just need to find out for sure.

>> Councilmember Oliverio: No sweat. And then, chief, since you're here, do we make the assumption, pure assumption, that anyone applies for these jobs we make some assumption that there is frankly a criminal background?

>> Do we make an assumption of that? Absolutely not. There are a lot of people who work in the gaming industry but the fact that there could be criminal background, the fact that there could be, just like anything else. You want to make sure you do a thorough vetting.

>> Councilmember Oliverio: But I guess, suffice it to say, the general population that has a criminal element could apply for any job in society, outside of gaming, you know.

>> You're asking me if somebody with a criminal background could apply for anything? Sure.

>> Councilmember Oliverio: Sometimes it just seems like when we get into this -- I feel there's almost an assumption sometimes the way we put all the layers on it that we assume everyone who applies has something to hide or something in their background. I think it's a perception. Then you clearly stated no, so that's fine. And then do we know, are there X number of cases of things such as loan sharking? Do we have arrests in that regard?

>> Associated to gaming?

>> Councilmember Oliverio: Yes.

>> Yes.

>> Councilmember Oliverio: And one a year is it three?

>> I couldn't tell that you.

>> Councilmember Oliverio: And anything related to other things that you often hear gaming, you put -- you put things together like loan sharking and prostitution.

>> Right you're asking the type of criminal behavior that sometimes is associated to gaming I mean it's everything you talk about extortion, loan sharking, prostitution, embezzlement a host of things.

>> And those are generally done by the people -- so you're saying there are incidents for all of those involved in San José?

>> You mean within San José gaming? I can't speak to -- I can't speak to specific cases but all of those occur in San José.

>> Councilmember Oliverio: Got it. In relation to a physical location of a card club?

>> Yes.

>> Councilmember Oliverio: And then to go about that further the people partaking in that activity are not people that go through and get gaming licenses. They are people that don't work for these facilities?

>> Would you hope so, I mean, yes. I don't know, you mean asking if those people might apply for a gaming license? I'm not sure I understand the question you're asking.

>> Councilmember Oliverio: So we have the process for employees or prospective employees, but then we have crimes that occur in society, but to some extent you say they occur in these facilities. But the people in the activity, they are typically not the actual employee that goes through the application or permitting process, it tends to be a non-employee?

>> Yeah, I -- I don't think that you can draw that conclusion. I think it's happened in cases where it could be an employee and it might not. I don't know that you could draw that conclusion, you know.

>> Councilmember Oliverio: How about something specific like prostitution, has there ever been a case of prostitution that has been an actual gaming employee?

>> Not to my knowledge, I can't say or the sure, to my knowledge I do not know.

>> Councilmember Oliverio: I think Councilmember Constant covered quite a bit so I'll take a break.

>> Councilmember Nguyen: Thank you. Just a couple more questions. I remember when I was the chair of this committee, we used to have a regular verbal update, from either Richard Tang or someone from the police, about illegal activities related to gaming. We haven't seen that in the last year so I was just wondering why this stop and will we be able to bring that back again sometime in the near future?

>> City Attorney Doyle: That's a good question Vice Mayor. There used to be an annual report. I mean I can remember going through at least 2006, 2007 where we would have an annual report on the activities associated with gaming and criminal activities specifically, I don't know why that stopped.

>> Councilmember Nguyen: That would be good because obviously a lot of this ties in, we wanted to know what activities related to gaming, if we could bring that back on either a semi annual or annual basis.

>> City Attorney Doyle: It might be a staffing issue but we can check into the department.

>> We will definitely look into that. We can't say for positive obviously being new to the process but I think it was staffing related.

>> Councilmember Nguyen: Okay. In regards to the life gaming, on the ground floor, you had mentioned earlier that if a card room wants to apply for this this permit, which department does it go through who has the ultimate authority?

>> City Attorney Doyle: The police department.

>> Councilmember Nguyen: And that's just the chief pretty much?

>> City Attorney Doyle: That is what this proposal is. The proposed change is to put it in the Chief of Police.

>> Councilmember Nguyen: Okay and then I wanted to get both the chief's opinion and maybe Ed Shikada's opinion on the potential removal of the gaming oversight from the police department over to the City Manager's office. Can I see your perspective on that?

>> Ed Shikada: Thank you, Vice Mayor. Really haven't formed an opinion as to what the right answer is, with respect to where that unit belongs. I would say that you know, again, to a certain extent I'm still getting up to speed but I will say that the connection, and the interaction with the police department activities, in particular the investigatory roll that the police department ensures in compliance with the card room activities is a very important role so we would not want that to be lost. I think to Chair Constant's earlier question on the consultant report was done, it was primarily focused on the question of civilianization versus sworn. Staffing is the best method by which to perform those duties. I think we could have a debate on that, beyond that the gaming staff the gaming staff have made the point to me that having a sworn officer doing the interviews that are associated with both the permit, permitting as well as the ongoing investigations, or review of operations, is very effective in being able to both understand and to follow up on questions known areas to pursue for additional investigation and the like. So I think to respect that role, whether it makes sense in long term to put in the City Manager's office I think ultimately is a policy call. But one that we'd want to look more deeply at before we give you a recommendation.

>> And I would just add because I'm too coming up to speed on a lot of this. But to Councilmember Oliverio's earlier point about some of the illegal activities, you would definitely want police department and police officers who understand that to want police department and police officers involved in that to be involved in that process.

>> Councilmember Nguyen: Is Mr. Tang the only gaming administrator now?

>> He is the gaming administrator and he works with sworn police officers.

>> Councilmember Nguyen: Right. And does he have anybody working under him to help him with this issue in terms of compliance, enforcement, permitting, dealing with the violations?

>> Right, he has the one senior auditor plus the officers, the two officers.

>> Councilmember Nguyen: That's what I have.

>> Councilmember Constant: Kind of following up on that I think that personally, I think that licensing and permitting should be separate from the enforcement side, and I know that in the city attorney's office, you have officers from the police department that work with you to help you do the investigation. So there could be a similar modeling for a program through the City Manager's office. Because I really feel like we haven't gotten very far on the licensing and permitting portion. I know we have people who want to speak. So probably haven't filled out cards but that's okay. If you want to just line up, you can come right up and state your name for the record and then we'll take your testimony. You each have two minutes.

>> Councilmembers, Ed McGovern representing Bay 101. I actually wasn't going to speak to the change. I think Councilmember Constant, you asked a lot of great, great questions. I know we've worked with the staff on some of the issues that have been raised in the report. I just wanted to comment frankly on this last exchange about crime, et cetera. You know, quite frankly, this is a public meeting. The public's watching this. The notion somehow, at least I was left with the notion that these kind of crimes that councilman Oliverio talked about are somehow condoned, somehow we look the other way. I think that's obviously not true. These are two of the biggest taxpayers in your city. They employ close to a thousand people. The notion that we would, at all, condone that kind of behavior, look the other way, is just absolutely false. And I want the public to understand that. I was really quite taken aback by that exchange and I just wanted to make sure that that was on the record. Other than that, we had, I think there is a lot of good in these amendments, and generally, we support them. Thank you.

>> Councilmember Constant: Thanks Ed and just so you know we do have Ron's letter that he provided to us that was given to the committee members. And on your point about the crime, it was pointed out in the auditor's report that most of what was pointed out in there was actually self-reported 50 two card clubs. Ma'am, you can just come forward, just make sure you state your name for the record.

>> Good afternoon, chairperson as well as members of the council. My name is Antoinette McGill and I'm outside counsel for Garden City Casino. I would like to echo the remarks of Mr. McGovern. And to state that, as far as my experience dealing with Garden City, there have been no instances of this alleged criminal conduct. One of the concerns we have is when a charge or an allegation is submitted it involves conduct that has occurred perhaps six months to even a year, or longer. And so it makes it very difficult for the casino to defend itself against basically what are baseless allegations. And unfortunately, what we found is that Garden City is target of being, quite frankly, shaken down for money. Any time there is an issue with the Department of Gaming where they require additional funds, miraculously a charge is submitted to Garden City with a request that certain moneys be paid or enforcement action is going to be taken. One other issue with respect to the landowners license, members of the council, is that Garden City was requested to pay \$60,000 for a landowner's permit. Now, number 1, the state of California does not require that a fee be paid. And a request was made to the state to make a determination as to whether or not it's required. In meeting with Mr. 10, as well as chief Moore, there was no reasonable basis for the imposition of a \$60,000 fee. When I personally asked Mr. 10, why would the fee -- why is the \$60,000 fee or deposit necessary he basically pulled that figure out of the air and said well that's what I'm going to charge you if I conduct the investigation. Or, if it's submitted to a third party vendor, that's going to be the fee as well. I simply think there is not a reasonable basis for this unfettered exercise of discretion. Garden City is a business that is an honorable business in the City of San José. I believe last year --

>> Councilmember Constant: Sorry your time is up. Any other speakers? To other members of the public wishing to speak? Okay. So any final comments or questions from the committee or does anyone want to take a stab at a discussion on what action we might take? Any comments, Vice Mayor?

>> Councilmember Nguyen: I'm not sure if we are ready to make any take any actions and move this to the full council. I think there's some work that needs to be done still. I think some of the questions that were raised by the chairman have not fully been vetted and have not answered in the way that would I like to see it answered. So and then in terms of just moving forward I would really like to focus a little bit more on potentially moving the responsibility from the particularly to the City Manager in terms of the oversight by the division of gaming. We got to hear the perspective of the assistant City Manager and the assistant Chief of Police. So I would like to hear

more of that discussion from the Chief of Police and also the gaming administrator when there's an opportunity. So I'm not sure we should sort of push this back and maybe we can hear the part we want to hear next month when the gaming administrator is here to answer some more of the questions in more relevant manner.

>> Councilmember Constant: I agree. I want to go back to my opening comments is the reason we're here is because of this audit. And you without knowing if any of the changes have made substantial changes to the specifics that were here, specific issues that were outlined in this report. I don't know if I feel comfortable passing this forward, either. I would like to know if we've made any progress. It's been a considerable amount of time. We've had multiple discussions here at the committee level. I feel like -- personally if we can't feel confident that there's been significant progress made in getting things in and out of the police department, then I'm more inclined to go towards the full auditor's recommendations, and just let the state handle it because they seem to do it much more efficiently. I never thought I'd say that the state does something well. But in this case, perhaps that might be the best. So I'm going to take that as a motion to continue this to the next meeting and hopefully get some answers to the questions we provided to staff and input from the City Attorney on some specific language in 16 that I pointed out.

>> Councilmember Nguyen: I will make that motion.

>> Councilmember Oliverio: Second.

>> Councilmember Constant: Any further comment? All in favor? Any opposed? That motion carries.

>> City Attorney Doyle: And Mr. Chair, if I can get clarity, this to come back next month?

>> Councilmember Constant: Yes, and be prepared. Next month will be a long meeting, everybody, because we had several things -- we have a long agenda, we've had a few things --

>> Councilmember Oliverio: Understand we're deferring but I just want to understand is there anything we're deferring that's going to hinder the opening of the new Garden City?

>> Councilmember Constant: Actually we were continuing it, not deferring. So maybe the city attorney --

>> City Attorney Doyle: Well, the only concern would be the provision that allows the chief to make a determination on anything above the ground floor. Gaming above the ground floor. Right now it's limited but it is the committee's prerogative in we come back. By the time an ordinance is actually goes to council, is adopted, you need to have that 45-day period just from first reading to final adoption of an ordinance. There could be some time sensitivity on that issue.

>> Councilmember Oliverio: Maybe have a time line available? I have no idea where they are on construction.

>> Councilmember Constant: Maybe that's something we can ask from Garden City. We know we have representatives here. We want to get this right but we don't want to unnecessarily hold up your project, either.

>> I'm Brian Turpin with Transglobal Development. I'm running the development and construction of the casino matrix. We are currently scheduled for a February 1 opening. So working back from that not knowing your process.

>> City Attorney Doyle: I didn't hear the date. Good February one.

>> City Attorney Doyle: There's a certain time sensitivity. If you want that one provision to come forward and the committee wants to refer it back, we could -- perhaps it would be the December 6th meeting.

>> Councilmember Constant: Do you want to change your motion so we don't hold up that part?

>> Councilmember Nguyen: Yeah, that would be fine.

>> Councilmember Constant: Just to be clear, the motion is to continue the majority of the discussion, but to forward the changes to the ground floor gaming sections to the council for action. And then the other thing, I just make it clear, I think we really need to address the camera issue sooner rather than later.

>> City Attorney Doyle: I think that's noted. I think chair I would note also for the record, even though the ordinance changes are not going forward, the recommendations made by the City Auditor insofar as they relate to key employee licensing and running it through the state and pretty much accepting the state's process, that's as a matter of practice being implemented without the change in the ordinance just because that was the direction.

>> Councilmember Constant: Thank you. Amended motion clerk you have that? Okay. All in favor, any opposed, that motion carries. Thank you. So we will see you all again next month. Our next item is the monthly report on public safety communications initiatives. And chief Gauthier, are you going to present that one, or -- never mind, it's Public Safety communications. Welcome Michelle, we'll give you a minute to get settled. Welcome Chris and Michelle. The floor is yours.

>> Thank you, Mr. Chair, members of the committee, the BayRICS joint powers authority has, as of late yesterday, concluded its negotiations with Motorola. As I had updated you last month, they were in the process of negotiating for the build, own, operate, maintain agreement for the bay web Public Safety system. This is the system for which Motorola received \$50 million in American recovery and reinvestment act funds, and to which it has committed \$20 million in required matching investments. And additionally, Motorola has committed to pay 16 million in site remediation costs such as building towers and monopoles for the system. As a member of the JPA's negotiation team, I can state that there were significant concessions made by both sides and the next steps are as follows: First, technical exhibits to the boom agreement will be finalized by November 28th. The boom agreement and exhibits will be circulated to JPA board and their membership jurisdictions. The agreement hopefully will be circulated tomorrow. The draft system funding plan for the joint powers authority will be updated to include additional projected costs that the authority and its member agencies may incur. And the for comment in accordance with the terms of the joint powers agreement. So on or after January 16th of 2012, the joint powers

authority board will meet to vote on the system funding plan. The boom agreement. And any other related agreements. Because of those critical dates, we will be agendaizing the following items for review by the San José city council on December 13th. First our City's comments on the system funding plan. Second, our policy direction to our city's BayRICS representative regarding the boom agreement. And third, agreements for site access and use with Motorola which would allow equipment for Bay Web to be placed on four of our city's public safety sites. The City Manager did send a letter, on bring to council a potential agreement for use of those four sites, and the conditions under which they would be made available. And space would be made available to Motorola. We did restrict use to Public Safety only. The public access system that Motorola is looking to build is not something that San José was willing to have equipment due to concerns with Telecommunications law. Staff is and will be reviewing the funding plan and the boom agreement carefully looking at the benefits and risks of the plan to San José. And to the JPA as a whole. As I reported to the committee last month, the board of directors of the JPA had voted to concede on several key items that San José's representative voted no on. Including taking responsibility for providing the central back haul network for the system and taking responsibility for billing functions. Staff will also be analyzing guarantees for performance coverage and system design especially with respect to San José's role as one of the original holders of the waiver to use the FCC 700 megahertz spectrum. With respect to the FCC waiver the three core cities of Oakland, San Francisco and San José are working to correct the issues with the waive release. We will need to file a new waiver petition that allows the BayRICS JPA to hold the lease. We may need to bring this to council to grant authority to the administration to file the amended waiver petition, and that may be something that we ask to cross-reference from this committee report.

>> Councilmember Constant: Chris, anything to add?

>> Locally nothing nearly as exciting as what's going on regionally with Michelle's work. SVRIA had no working group meeting in November. Next meeting will be on December 12th in preparation for the joint meeting with the SVRIA governing board. I would mention that they did convene a successful BayRICS briefing for public safety officials to explain the system to our local public safety representatives and many members of governance in the Santa Clara operational area which was very successful. Locally, our narrow banding is completed, the fire department mobile data computer project is going ahead well, with halfway installation of the computers in the fire

engines themselves. We're going to be issuing the RFP for software within the week. And then we are also pursuing a long-term strategy of obtaining UASI grant funds in FY 11-12 and may be used to support whichever interoperable communications systems regionally and locally we think are of critical importance. The key being that we've identified interoperable communications as being one of four strategic investment areas for the regional UASI funds going forward.

>> Councilmember Constant: Great, thank you. And just to highlight one of the things you said, Pierluigi and I sit on the SVRIA board, and we are looking forward to that joint meeting between the board and the working group, because there's as I've mentioned before you guys know a whole lot more about what we're doing than vice versa from the perspective of the collective board. So I think it's going to be helpful. And I sat with the executive director and talked to him about instituting a formal training process over the next 12 to 18 months for the SVRIA board where we will have specific topics to cover to make sure that everybody on the board understands the critical nature of what we're doing, and more importantly how all these different systems should work together when we're done. And I want to provide an update from the national league of cities. I serve as the vice chair of the public safety and crime prevention committee, and the NLC board had asked all of their committees what should be the top 3 priorities that they focus all of their efforts on in the next 12 months? And it was the unanimous consent of our policy committee that we not give three, and that we give one, and its interoperability and broadband, because the critical nature of it and how it impacts every community in the nation. So we don't know what the board ultimately will select. But we sent a very strong message from the committee saying, forget everything else. Right now, this is our priority. It's been too little for too long and we need to make great strides. So of course I'll use this opportunity to keep you guys updated on those NLC activities as well. Questions from my colleagues? So we're looking for a motion, and you requested a cross-reference. Is that correct? Or how? Help me clarify that.

>> I think in consultation with the attorney, we might want to bring it through Rules to have, if they believe we need to bring this FCC issue to the council earlier, which would be on the meeting of the 29th.

>> Councilmember Constant: Okay, well I know that three of the three of us sit on Rules so we are duly advised, so we will consider it when it comes forward at that point. So we'll just take a motion to accept the report. I have a motion and second. Anyone want to speak on this particular topic? Need to get some speakers here today. All in favor, any opposed? Thank you both very much. We'll move on to our next item, D 4 which is the police department's report on operations and performance update on the City Manager's plan for maximizing officers on patrol. Chief we do have the memorandum that Chief Moore put out on the 15th. As part of our motion -- before we get started can I get a motion to waive sunshine on this memo?

>> Councilmember Nguyen: Motion to waive sunshine.

>> Councilmember Constant: All in favor? Now you can proceed.

>> All right, good afternoon again. As you know we're trying to maximize the patrol officers out in the field and you should have a memo in front of you regarding the verified response which is one of the ways that we're looking to do that. Last year we had 16,000 alarm calls in the City of San José. Of those 16,000, 98.5% were false. So that is the second highest call volume -- or the calls that we respond to on a day-to-day basis, that's the second highest next to disturbances. So it's creating obviously a vast drain on our resources to respond to these alarm calls which less than 1% have any kind of criminal element attached to them. So what we are proposing to do is to move forward with a verified response system very similar to what some other large agencies across the nation has done, Salt Lake City, Las Vegas, Detroit, closer to home Fremont police department in which you respond to an alarm call only when you have verification that there is a crime. What that would happen is something to the tune of if there was a broken window, if you had a neighbor, somebody who actually saw somebody to go into the house. A lot of times your Sonitrol alarms will be able to tell you somebody is inside. Also the new digital alarms will be able, so if there's some kind of verification that there is a crime occurring. Those would be the ones we would respond to. We would still obviously respond to silent alarms at banks, the panic alarms, the duress alarms, those type of alarm calls, as well, they would not be affected. And as also what we would do in this is we would put a broadcast over the radio that the alarm had come in. Even though we didn't respond and it didn't have a verification there would be an announcement that there was an alarm at a certain address. That would be done in

the sense that if an officer had a specific knowledge about maybe there's a burglary string going on or some type of crime or maybe that house is associated they would still have the ability to respond and make that determination themselves. What this will do I think when you are thinking about 16,000 calls a year and less than a 1% chance that there's any criminal activity applied to that freeing up that amount of time out of a police officer's day gives them more time to do community policing activities, gives them more time to devote to different crime problems that are occurring within their beat and I think we've had some challenges coming up ahead of us with some of the sex registrant issues we're going to be dealing with but more important, what realignment is going to bring to our city and I think this is going to give us a chance to increase our free patrol time.

>> Councilmember Constant: If a verified response, if you have a situation where a perimeter door went off and an interior motion alarm and another interior motion alarm, would you consider that a verified response?

>> Not necessarily. Because a lot of times we will have that now in an alarm call, and animals in the house cause that as you well know. There would have to be still another indication of some kind of crime occurring.

>> Councilmember Constant: Okay, any questions?

>> Councilmember Oliverio: Chief, on the 1 or 1.5% of actual calls that are in that, what actually ends up being arrests? Because my assumption is as soon as the alarm goes off, whoever is in there gets out very quickly and is probably good chance of not being around by the time the patrol car comes.

>> That's right. A lot of them don't -- the arrests that are made for burglaries primarily in the city have to do with when you actually have a neighbor calling in, I see somebody breaking in or the ones we do with the alarms are the ones like the sonitrol, most recently, the digital alarms sitting in their offices look ton computer and in fact the last three in progress we've had have been the result of digital alarms.

>> Councilmember Oliverio: So if you have 16,000 calls and 1 to 1.5% are accurate then how many calls do you think that were actually successful having the opportunity to be successful to actually arrest someone on those?

>> I don't know, it would be hard to say but it would be very small.

>> Councilmember Oliverio: 10% maybe?

>> I'd say less than that.

>> Councilmember Oliverio: Okay and of course it's all about timing?

>> Absolutely, timing and the witnesses. Because like you said, if you break in and you're going to get something especially if it's an audible alarm, it's usually out there pretty quickly.

>> Councilmember Oliverio: And chief, there's a limit what police officers can do if a court system doesn't really give the penalty necessary to keep a burglar off the street, especially if they're miles an hour and getting released out again and residents you know the person's been arrested before, their property was found at the house and they actually know that this is the house where they strongly believe and they're willing to testify that this person, in that house, has prone into a series of homes, and they tell the police that it's this house I'm pointing at it I'm giving you the address what's really the due process at that point?

>> As far as what's going to happen to them or what we would do in our investigation?

>> Councilmember Oliverio: The responsibility of the police officer you know having to presume innocence but at the same time being told that this person in this house is stealing things what is the protocol for that officer to approach that house or not approach that how based on law?

>> Well, in order to approach that house, I mean, this happens a lot, where someone will say, I believe my neighbor's the one who vandalized my car, I believe my neighbor's the one who broke into the house. There has to be some kind -- just like everybody has their rights there has to be some supporting proof some type of

evidence to give some kind of probable cause to that officer to be able to go to that house. Nothing precludes especially with kids we have a lot of truants that commit burglaries in the city. There's nothing to prevent that officer from going and knocking on that door and making contact, but pushing it any further, you're going to have to have some kind of evidence or proof to be able to do anything further.

>> Councilmember Oliverio: Thank you chief.

>> Uh-huh.

>> Councilmember Constant: Thanks, just have a question unrelated to this memo but overall on the operations and performance, I know over the last couple of months there's been a significant number of critical incidents not only in our city but in the surrounding cities that have required our attention. Can you share with us the strain factor on the department? I know I've spoke with chief Moore a little bit about it but I think it's important that we continue to raise those points here and that's the reason I want this as a regular agenda item. Budget season is upon us and it's not looking good and I think it's important for not only those of us who are sitting here but the rest of my council colleagues that have staff monitoring this committee to know the strain in these critical incidents and what resources you are left without during those times, so if there's anything you could share with us at this time.

>> Well I'd say most recently what comes to mind as you all are aware the occupy. We've had to send twice on two different of occasions, two entire motor teams to assist Oakland in their actions. That obviously deprives our city, and we have serious need of traffic control in our city we didn't have that available to us. I can point to the incident of the officer involved shooting with the sheriff's deputy and within three minutes we had a homicide occurred down in western division I think in the Alma and vine area. That right there wiped out our city resources. I mean there basically were no officers. You had a handful of officers left to be able to handle calls throughout the city. Any time you have a shooting a stabbing or a homicide as you well know Councilmember Constant that requires a minimum of eight to 15 officers depending on how extensive the scene is to be able to control, do your witness checks, to canvas, write the reports and just taking people downtown and then when you add in an officer-involved shooting which we've had three weekends in a row in which that occurred you have to

assign people to the affected officers. So with our resources, and they are slim, out there in the field at times, it doesn't take but one or two critical incidents, and we're pretty much -- we're pretty much wiped out.

>> Councilmember Constant: You know what I'd like and I briefly spoke with Chris about this, but I'd like perhaps you and Chris can have a discussion with the City Manager and figure out an appropriate way to bring this to us. But when you have those days, which we know come all too frequently, if there's a way we could get a synopsis here, not necessarily the incidents, we can read about that on the watch commander log or whatever, but really, the resource constraints and what you've been left with in the pending call back you had as a result or a couple of specific incidents like you know, because we had this and this and these number of officers deployed, we had these serious things that took one hour, 45 minutes, whatever the case is, I think if we got a regular report of those type of things here, it would be very helpful, as we move into budget season. Because you were here, you heard my rant on the budget, as it related to the staffing, I'm very concerned about what might happen in the next six months as we work on the budget, and I want to make sure that you and the chief have every opportunity to bring those things here, publicly, so that we can have the discussion, so that we make sure that that doesn't fall by the way side.

>> Appreciate that.

>> Councilmember Constant: Can I have a motion on accepting this report?

>> Councilmember Nguyen: Motion.

>> Councilmember Oliverio: Second.

>> Councilmember Constant: Anyone here like to speak on that topic? All in favor? Any opposed? That passions. We'll move on to the D-5, airport police services alternative service delivery discussion. I see Mr. Sherry coming on down and Kim and chief, come on down and join us. Bill, are you leading this? It's all yours.

>> Bill Sherry: Thank you, Mr. Chair, committee members, Bill Sherry, director of aviation for the City of San José. To my left is Kim Aguirre, assistant aviation director, Dave Cavallaro, deputy chief, and Assistant Chief Goody. Before I start with the presentation itself, I've got to convey many, many thanks. I think we have a very good recommendation for you. There's been a tremendous amount of work performed over the course of the last year and a half, but more focused in the last six months to nine months. It's brought really strangely enough the airport and the PD department much, much closer. And I think we all understand better the challenges each department face. But this recommendation could not be made if it weren't for Chief Moore, the city manager's office, the budget office, and certainly the City Auditor's office. So my thanks go out to all of those individuals in those units. On to the presentation itself. The goals of our recommendation are to ensure airport safety and security. And to reduce airport cost to meet the competitive CPE target that the council approved some time ago, be at a cost per emplaned passenger of \$12. The recommendation specific is to keep the San José PD at the airport, and I'll go into a little bit more depth as to why we are making that recommendation. To increase San José PD staffing levels in the current budget. When we worked with chief Moore we last year reduced the staffing of the PD airport unit down to 22. And when we did that, we all recognized that that was a pretty severe cut. And we agreed that if after experimenting with that for some time, if it was too deep a cut we'd have to augment it, and we've since made that decision that it was too deep a cut. So we think that 27 FTEs at the time airport is the appropriate staffing for the airport. Also to develop budget solutions to contain future airport costs and to hit that CPE target, and authorize possible future restart of negotiations with the sheriff's office. So again I'll explain that a little bit more detail. Airport law enforcement services, what if specific recommendation is, is to have 11 full time officers, dedicated to the airport. Those 11 would be comprised of one lieutenant, six sergeants and four canine officers. And then, provide 16 FTE positions through the use of overtime. And what that specifically does for the airport is, we don't have to pay the overhead on those 16 positions but we still get the services from those 16. And then, it would also prompt the elimination of 11 positions from the PD department but I'm of the understanding that those 11 positions can be absorbed through attrition. The potential budget solutions and how we do this, we want to concentrate on savings from the fiscal reform plan, continue the airport competitiveness strategy, ongoing expenditure controls, both on the city as well as the airport, identify potential revenue generating measures, specifically for the airport because the more revenue we get the less reliant we have to be open the airlines, and possible adjustment of overhead charges and a cap of cost to reach the sheriff's proposal. What that says is,

through cost containment if we are not able to meet those targets then we might set an IOU account to pay back when it's fiscally and financially able to do so. So the next steps would be to defer negotiations with the Santa Clara County sheriff's office, reevaluate the outsourcing again in early 2013, and to develop solutions to keep the CPE at or below \$12 in future years. So here's my summary and what we're recommending to the committee. We would also appear next week before the mayor's ad hoc committee and we would respectfully request a week turn around so we can get on the council agenda the following week. But essentially what staff has come to the conclusion, we have enough tools in our tool box, between what we have at the city, both at the airport, that we can keep San José PD for approximately AOL another 18 months and still meet our goal of \$12. What we are also recognize egg with this is the future cost particularly as it pertains to pension and bargaining unit negotiation are uncertain. And so if those costs in the future continue to rise, and were unable to meet that CPE target then we may have to come back and reexplore the potential of outsourcing. But at least for now, our recommendation is to retain San José PD through June 2013. And that concludes my presentation Mr. Chair.

>> Councilmember Constant: Thank you. The only thing I think -- I'm very happy with the direction we're going. The only advice or concern I have is under recommendation number 4 which is the automatic discussion of outsourcing and my concern is not that we move to have that discussion. My concern is the trigger of the overall CPE and not the CPE that's associated with the police department. And what I don't want to happen is, pick any one of your other line items that contribute to CPE, goes up and because that goes up we trigger outsourcing of the police department. If -- so what I'd like to see by the time this comes to council, and I'm sure the airport competitiveness committee might give some other input, I'd like to see this recommendation changed so that it reflects a target of airport-PD CPE, not total CPE, and I think that that's really important to me. Because I do think that keeping San José police department, is the right decision out there. And I want to make sure that they don't pay the price for some other issue that comes up. I know that's not your goal, but the way it's written these things always outlast the folks that are here. And someone may go back and read this and have a different interpretation than I know what your intent is.

>> Bill Sherry: If I can respond to that.

>> Councilmember Constant: Uh-huh.

>> Bill Sherry: I understand your point of view. And let us certainly pow-wow and see what we can do to meet that challenge. The cost per emplaned passenger is made up of many things at the airport. Police is just one of those things. It has to do with both the revenue side of the ledger as well as the expenditure side of the ledger. We've made no secret and chief Moore has said in a meeting, he finally got it, we are the highest in in the nation in terms of debt per emplaned passenger, and that was because we just completed the modernization program at a time when we lost about close to a quarter of our passenger count. So when you have high debt cost, almost every other cost center has to be below the average. Much to the credit of the PD, when we started this we had 52 officers assigned at the airport, we were second out of all the nation's airports in terms of police cost per emplaned passenger. Now with the actions taken by PD and the City Manager's office I feel very confident to say we are right in kind of the median. We're not high, we're not low and so we've done a very good job of reducing those costs and getting them in to where you could consider them respectable. But that said there are so many other variables that come in. For example if in the course of the next 12 months if our traffic went up substantially, this issue goes away or could very well go away. Converse if traffic were to decline it puts even more pressures on all those cost centers. So I think we could come up with a cost per emplaned passengers per Public Safety cost but all those things have to be kept in consideration in order to keep the overall CPE down below 12.

>> Councilmember Constant: I understand that. And I want to make sure that the only lever that gets pulled is not the PD lever.

>> Bill Sherry: I understand that.

>> Councilmember Constant: On the comments on the debt cost that contributed to CPE, I can only imagine where that would be if you hadn't come here and focused our council's direction when we were going to the airport. Because our CPE would have been putting that out of business. So thank you because that was your work that did that and we don't forget that but in the grand scheme of things when you calculate out the CPE I'd

much -- I'm very happy knowing that \$2 of my \$12 for my emplanement goes to the PD, that's only a buck each way. That's a pretty darn good deal for being safe. And I just want to make sure that stays a part of the discussion. Any comments from my employees?

>> Councilmember Nguyen: Thank you. Just two brief questions. I too am very happy with the recommendations, not that I doubt the work of the sheriff's office but having the San José PD continue to provide law enforcement services at the airport is crucial. This is just for my own curiosity. If we were to move forward with negotiations with the County's office in terms of outsourcing, how much money would we save compared to our current recommendations?

>> Bill Sherry: I'll let Kim Aguirre address this in more detail, but I'll cover a couple of things. In this current fiscal year, fiscal year 12, we would be assuming \$445,000 additional which goes along with this budget recommendation for the remainder of 2012. 2013 is still uncertain, obviously the City Manager has to compile that budget and it's the moving parts, but right now we're forecasting about 650, \$700,000 of additional cost. But again, there's a lot of moving parts in that. The airport's CPE right now, the goal is \$12. We're currently at \$11.67. We've got a number of moving parts there but we think we can absorb that cost for both fiscal year 12 and 13 and still keep the CPE below 12.

>> Councilmember Nguyen: Thank you, I think that's sufficient. And then in regards to the Airport's obligation to pay back what we're going to accumulate you had mentioned in the memo that the airport needs to exceed 12.2 million total annual passengers, which is the level we reached in 2001. Again, just out of my own curiosity, do you think we will ever reach that number? I mean, I know that airport staff has been working really hard trying to entice more flights, more airlines to come to our world class airport. But do you see that happening in the next couple of years?

>> Bill Sherry: I certainly hope so, councilmember. Back in 2001 we were just over 14 million total passengers, with what I would call antiquated facilities. Today we have the most modern technologically advanced airport and we have a catchment area surrounding the airport of roughly 4 million residents with the highest per capita

disposable income and a tech sector of the economy that's outpacing other industries in terms of growth. So I think it's very possible and then you also have to look at the fact that San Francisco, now, is one of the most constrained airports in the nation. The FAA just put them on a level 2 advisory, and they may even move into slots similar to La Guardia and JFK and so on. So with San Francisco's congestion, with our modern airport, I'm very bullish on this airport and I'm very bullish on the fact that this thing will grow. We just kind of have to weather this economic downturn and take the appropriate steps which the council has done and the airlines are very appreciative of it. Year over year we're up 2.5% so the airlines are adding flights into San José. The 12.2 million total passengers was our best guess that, if we got into that IOU situation which right now we're not in. That is just being teed up as a possible tool. But if we were to go into that where we were accumulating cost that we owed back to the city, the City Manager's office said if we did that when do you think you would be able to pay that back, our best guest is when the 12, 12.2 is when the airport would be financially capable of repaying that loan.

>> Councilmember Nguyen: Thank you, I appreciate your leadership and optimism.

>> Councilmember Oliverio: I'll echo the confidence for everyone here, thank you. Question Bill, related and unrelated. What are the other things the airport is considering outsourcing that is not as core as police, obviously janitorial, what else is out there?

>> Bill Sherry: Much to the administration's credit and council credit, we have actually already accomplished over \$50 million in cost reductions which equate, just kind of an interesting note, equate to \$12 on the CPE. So if we had not taken those measures our CPE right now would have been \$24 and not 12 or 11.27 or 11.67. I also have conveyed both to the manager's office as well as the council that I think the cuts we have taken so far are about as severe as I think I'm prepared to recommend to go. So any further cuts I would really be in the fear of possibly cutting into critical services. There's one work unit that we are exploring, that we think there is PTCOs that's the work unit that manages and polices our curb both in terminal A and terminal B and we're also exploring the possibilities of giving those to the PD and there are a number of different scenarios and we're working through possible cost savings and outsourcing in that work unit, and that will be incorporated in the City Manager's FY 13 budget.

>> Councilmember Oliverio: Okay, I appreciate it, but I think it's always important that it's not necessarily cutting services, it's just you know, the airport's just as clean as it was before but it's just delivered through a different group of people and so everything's done, you just save money so if there's other things like that that can be done that are non-core I would certainly like to explore those.

>> Bill Sherry: Yep.

>> Councilmember Constant: Anything else you folks would like to add? Anyone here from the public like to speak? I heard a motion to accept. Thank you. We have a motion and second. All in favor? Any opposed? Great, so I will be at the airport at 6:00 a.m. boarding a plane, paying my \$12. If we get out of this meeting any time soon. Our next item is D-6 which is the fiscal year 201112 first quarter financial reports.

>> Yes, Mr. Chair, members of the committee item number 6 is as you mentioned the first quarter financial reports, detailed presentations are provided on the second and fourth quarter reports so given that this is the first quarter, rather than going through a detailed presentation staff is available in case that you, the members of the committee have any questions.

>> Councilmember Constant: Wonderful. Do I have any questions from the committee?

>> Councilmember Nguyen: Motion to accept the report.

>> Councilmember Constant: We have a motion and a --

>> Councilmember Oliverio: Second.

>> Councilmember Constant: Second. Anyone here like to speak? You guys sure you don't want to speak? You've been sitting here so quietly for so long. All right. We have a motion and second. All in favor? All

opposed, that carries thank you very much. We'll now, now that you got up there Bill, can you come back down. Quarterly performance report first quarter results ending September 30th, 2011.

>> Bill Sherry: Boy, got to that fast. I thought I was going to have a rest but I didn't get it. Again, Mr. Chair, committee members, very happy to be here. Joining me on my left is Jeanette Sutton our chief financial officer and Megan Horrigan, our PIO, public information officer. You have our first quarter results in your backup. I think overall, you should be very pleased with the results that we've been able to drive. In summary, we grew revenue 1.2 million over the adopted budget for the quarter. As a result of operational success gross operating profit for the quarter which was estimated to be \$1.9 million loss to go to the T.O.T. actually is only 1.8 million loss. Transient occupancy tax, T.O.T revenue which supports our operations, exceeded the budget by 5.9%. As a result of increased local hotel room night bookings and our operational success, the T.O.T. revenue generated to support city services, in the city General Fund. While attendance was down for the quarter, and I'll address that in just a minute, visitor spending was actually up, and we generated \$10.6 million in economic impact. Consumer -- customer service continues to be very strong. That's a trademark and really one of our best strengths. So our customers continue to talk about the great level of service that they get from us. Turning to page 3 of the report, if you look at that box, it shows first quarter goal, first quarter results and the percentage achieved, you can see that just about everything is up, particularly gross operating revenue, 172% of budget, gross operating profit 104%, performance days, 107, occupied days 110, estimated economic impact, 116%. The two that were down were hotel room nights, and I'm not overly concerned with that. Again, this is the bookings, the future bookings that we're taking during that quarter. Can you see we were just right about 97%. We, over the course of the last six months, we've really redesigned our sales staff. I think the fact that we dropped a little bit there is a reflection of changing staff and changing roles and responsibilities and getting different people into the organization. But I have very high confidence that those organizational changes are going to drive even better results. I think in future reports you'll see that the hotel nights rooms bookings will be up. The event attendance being down, can you see that's the one performance measurement I think we're all concerned about. 76% of goal. Is really for three reasons. Or two reasons. Overall, business is up, attendance is down. But the reason that the attendance is down is because a lot of our arts partners are pulling back on performance days and attendance and they're not getting the attendance that they originally had programmed or thought that they would. I think that's a reflection of

the economy. While corporations and businesses are doing better and they're booking more events, the individual and their disposable income and their willingness to use that disposable income to attend a ballet, symphony, opera, Broadway or whatever, just isn't as strong as we would like to see it. Additionally the goal itself, the 130,000, was a bit high, and it was anticipated that we would have a number of events that really were either delayed, cancelled, or rescheduled. So for all of those reasons, the attendance is down. The good news of that is just like we did with our sales staff, we kind of reorganized and brought in some significant resources and some very high powered people in those positions. We're doing the same with the theaters, and so hopefully, when I report back next quarter, I'll be able to tell you and speak more specifically about what we're doing in order to beef up our resources for the theaters and get those things moving in full direction. Additionally, last but certainly not least one of the reasons why attendance is down is of course the civic has been under construction, renovation, that's been a protracted renovation. But by year end we think that all the construction is going to be done both inside the building as well as outside, loading docks and various other things. And I think that that's really going to beef up the number of events that we're going to be able to bring in that facility. So I think in future you'll see better hotel bookings. And with that, that he completes my presence.

>> Councilmember Constant: Thank you Bill. I want to publicly acknowledge the progress you guys made. I know we had last time we got your report and we had a brief discussion at council about it. But beyond the fact that you know I really think hotel room nights you hit it, 97% is pretty darn close. But I think what's really important, that we can't highlight enough, is the institutional changes that have been made at the board level and the executive management level and I know you have been one of the driving factors there as well as Chuck Toeniskoetter, the chair. I just want to take a second to kind of review what I think are some of the more salient important things that have happened just so we have them on the record. And leading the list is the changes in the board, that really drove not only the efficiencies, but pretty much forced engagement of all the board members. By streamlining it to one chairman, so you have a direct line of accountability, making sure that you are a direct report to that chairman of the board, making the board smaller, more efficient, getting rid of the executive committee, so that the board is forced to have the discussion on all of the big issues. And the increase in the financial oversight by the board of directors, I think, is very significant. With really clarifying what the CFO and the treasurer do and the accomplishments you've made in getting the IRS standards implemented and making sure

that everybody is accountable, I think that the changes that you've made to the bylaws specifically in the board structure and the board leadership are very, very important. The communication between the executive management and the board, with city staff and with me, as council liaison, I think is much more structured and efficient now. And I'll tell you, it makes my job as the council liaison much easier to do. The establishment of the audit committee changing the term of the board of directors chairman to two years, having the personnel committee, the finance committee, those are all things that you've taken that were sort of loose before, and codified them. And I know that gives me a lot of satisfaction and confidence knowing that we know how things are going to proceed forward. And I just want to say that those things don't go unnoticed. And I know that we, our intent is to make sure that the entire council is kept fully informed of these changes as they go along. Vice Mayor, did you have something to add?

>> Councilmember Nguyen: Yes, thank you. I wholeheartedly concur with the chair's comment. Bill, since you've really -- once you came on board, things changed significantly. And we continue to see that on a quarterly basis when you make a presentation here. I completely enjoy reading the report. It's very thorough. Two of the things that I really enjoyed looking at was the hotel room bookings. Just the total numbers of room nights that you provided and also the first quarter events for 2011, it's nice to see some of the events that took place and then who from the outside is coming to San José and hosting their events at the convention center. I really appreciate seeing that. I'd like to make a motion to accept the report and also cross reference this, because I really want the full council to be informed of the wonderful accomplishments and performance that Team San José has been able to accomplish. That would be the motion.

>> Councilmember Oliverio: Bill, you had mentioned you had brought on for the lack of a better words heavy hitters in sales. What did you find some veteran people that have been really well established that have relationships that will close some deals? What are you mentioning here?

>> Bill Sherry: We took a very hard look, any time you have -- first off if I may indulge for just for a minute and go back on some comments that were previously made, I want to be very clear that it is not one person that was responsible for this, not to just part of our name but it was a team effort. And it started absolutely at the board

chair position, engaged all our board members, 15 of them and went all through the organization. The best way I describe it is, the city shot a shot across our bow and it caught the attention of the organization and significant change has been made from all levels right at the very top all the way throughout the organization. Part of that to answer your specific question, councilmember, we looked at the entire organization. And how it was functioning, what the key measurements are, what each individual's job performances are, how they fit into the organization, what's their contribution to the organization, how are they achieving in terms of the goals set for themselves. And there's been a number of changes we've made organizationally. And I think when we look at our sales staff we have sales staff deployed in both Sacramento, Chicago as well as D.C., we saw that there was opportunities to try get more experienced, more heavy-hitter type of horsepower in those positions. And we have done that, and I'm very confident, I'm very excited about the capabilities and the qualifications skills, knowledge that have come with those individuals. Yet, to see results, we need to see those results. But I think that you're going to start seeing some very positive results in the months and years to come.

>> Councilmember Oliverio: All right, thank you.

>> Councilmember Constant: Does that equate to a second of the motion?

>> Councilmember Oliverio: I second.

>> Councilmember Constant: Okay anyone here would like to speak to the issue? Anything to add? All in favor, all opposed thank you very much. And our final item is item D-10, follow up report on supplemental military pay recommendation and Alex are you leading that?

>> Alex Gurza: I will kick it off and turn it over to our team. As the committee might recall this item is a follow-up item from the City Auditor's report on supplemental military pay and benefits. It was referred back to the administration to do further work and analysis. We've had a team working very diligently since that time on this very complex issue. Keeping Sharon and her staff, they're involved in helping us and the finance department and

the city attorney's office. So you have a memo in your packet, and I'll turn it over to Sharon to summarize the recommendations that we've developed.

>> Sharon Erickson: Very briefly. At your August meeting, at the August meeting -- at an August 9th meeting of the city council the city council did accept the City Auditor's report. But it also accepted modifications outlined in a memorandum dated August 5th from Vice Mayor Nguyen, councilmembers constant, Kalra and Liccardo. The council adopted the recommendations and directed the City Manager to report back to the finance committee on the analysis of any potential obstacles to implementation of a modified military pay policy. So we're here today to talk to you about that. In the memo you'll see basically three parts to the analysis. There's a review of the current supplemental pay program, there's a review of the escrow account program that was recommended, and that we considered. And then an analysis of the flat-rate program again recommended by the City Auditor. If I could point out, on page 3 of the report, it does go through a few of the issues that we identified with the escrow account pay program. We did identify issues with the fact that what would be deposited into an escrow account would be net pay. Which would be substantially less than gross. And could lead to large overpayments that would need to be paid back at the end of a tour, and/or the end of a year. We also identified what we think were significant issues with W-2 reporting. The IRS does require cash basis reporting on W-2s, and there could be issues depending on the level of someone's pay of having to report two sides of pay or at least full city pay. The third issue on fourth page of our memo was the issue of federal and state tax withholding. Those issues, again, we've addressed in this memo, W-2s are prepared on a calendar year basis and we were concerned about how that would work out. As the third part of this memo, we did talk again about the flat-rate program that we proposed. And I wanted to point out on that -- on page 4, kind of in the third or fourth paragraph there, it states that for example, if an employee's salary in the month prior to the leave of absence was \$4,000, and their military salary in their first month of the tour was \$3,000, the flat rate supplemental pay would be \$1,000 a month. The city would fix the supplemental -- the monthly supplemental pay amount at that amount and -- this would provide consistency to reservists to know exactly how many they would be receiving each pay period. I did want to point out that under the current system, which works excellently well, under the current system your pay does fluctuate. In the City's attempt to get everything exactly right. So there is a fluctuation, and we felt after hearing from reservists that the main thing they wanted was certainty that the flat rate would give that to them. Finally on the fifth page of the

memo it does compare the different scenarios. So what would have happened to a reservist under the current program, what would have happened under the escrow account program and what would have happened under the flat rate program. With that, we're happy to answer any questions. I did want to pay out on the pay exclusion issue, staff and I feel pretty strongly that the pay exclusions that have been agreed to over the years were appropriate. What we're concerned about is things like housing allowances, things that could be interpreted as reimbursements that we felt strongly have not been an issue since those things have been hammered out and we would strongly recommend that we keep those pay exclusions in place for both the types of city pay and military pay. And I think that with that we're happy to answer any questions.

>> Councilmember Constant: So I just had a question for Alex. I have no problem with what we're seeing here. But based on the council action on the memo that was put out, by me and Madison and a couple others back in August, all the other issues would stand, just the reconciliation is all that's substituting out, is that correct?

>> Alex Gurza: That's correct.

>> Councilmember Constant: Okay, I just wanted to make sure that it wasn't -- nothing else was going to get lost because there were other important areas in that. Questions or concerns by my colleagues? Would any of the other people here like to speak? Can I have a motion?

>> Councilmember Nguyen: Motion.

>> Councilmember Constant: Motion to approve the recommendation and cross reference it for action? Is that what you said?

>> Councilmember Nguyen: Yes.

>> Councilmember Oliverio: Yes.

>> Councilmember Constant: All in favor, opposed, that passes, that brings us to open forum. Would you like to speak to us? We're adjourned. Thank you.