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>> Councilmember Constant: Under review of the work plan I guess. And we are now going to go straight into our consent calendar. Which is C 1 and D 6, I have a motion.

>> Vice Mayor Nguyen: Motion to approve.

>> Second.

>> Councilmember Constant: Motion and second, all in favor, any opposed? That passes. D 1, police department's report on operations and performance. Verbal report. As you're coming down chief, we have several items in a row. So we really only have -- we don't have to take action on any of them unless we choose to so I'm going to just let you flow from one to the other and we'll stop you if we have questions in between. Not that I'm in a hurry but I'm in a hurry.

>> Okay. Thank you. Assistant chief Ricki Goede. We will start if we have -- thank you. Okay. The report on police operations and performance. Just very quickly, to go over each of these. Most of you are aware of all of the different things that we've been doing but just kind of give you an update with our license plate recognition cars also known as our LPR cars. We recently changed to a new system which is working out very well. It's upgraded. We currently have five cars that are out there right now collecting data. It's been a very useful tool for us. Both from an investigative standpoint as well as obviously auto theft recoveries. It's been utilized already in many investigations including a couple of homicides. So that's a good thing we're continuing to use going forward. As you know we did at shift change we went down from four divisions to three divisions. We have foothill western and southern. Effectively we eliminated the central division and parceled out the different districts among the three divisions. The way we did that, we wanted to try to keep it evenly and keeping in mind trying to avoid splitting current radio channels as much as possible, making sure the calls for service were evenly distributed, and obviously maintaining the adequate staffing levels for each of the divisions. And the primary reason as you know, for us doing that was, we've a reduction in the lieutenant numbers over the past couple of years, and we wanted to have better watch commander supervision and focus out in the field. This is something we're looking at, see if it works. We're continuing to evaluate it. It's working okay but with everything else there's been a few

glitches with coverage, but so far it seems to be working. With our Versaterm AFR RMS, we're three months into the automated field reporting records management system training with BFO. There have been the expected to be expected growing pains that come with change and learning a new system with our officers. But once fully implemented we really do believe that this AFR RMS system is going to effectively improve efficiency and it is going to allow for greater access to data in the field. For the officers as well as the investigators. However those department members that have not been trained are continuing to write their reports or type their reports so those still have to continue to be entered into the records management system by our OSSC staff hand in, so that has caused some delays in indexing so it makes that up to the minute time data analysis that a lot of times we get request to hard to do because we're about three months right now behind. So that in turn keeps our crime analysis department personnel pretty busy because they're obviously having to use a lot of other data sources from which to mine some of the requested information. We are still on target for completion of AFR RMS with all the bureau of field operations by March of 2013. For CSO, the community service officer positions, we've been working very hard with Sarah Noonan, she's been doing a great job. She's ready to come to council with the PSNs forward, as well as salary recommendations in November. Obviously it is a meet-and-confer, as Alex knows, so we're still dealing with that. But we are still moving forward on the CSOs. New hires, we currently have 14 direct entries and one lateral that are in our field training program right now, they are doing very well, progressing. It's been a little bit of an injection of good energy in our police department to have new people around and having that energy that comes with that and the eagerness so that's been a good thing. We have -- we started with 51 people that were going to go into the academy. As you know five accepted employment elsewhere prior to the academy starting and we had one who just resigned last week due to family issues so we are down to 45 in the academy. For resignations in August we had five retirements and four resignations and in September we had four retirements and six resignations. So for the last two months nine retirements and ten resignations. The outsource offing background. We had a recent court ruling in which it said that we were not to continue with the outsourcing until October 30th when we could have a hearing with the arbitrator. So that is on hold. Nevertheless we have -- are continuing our efforts in identifying going through the RFP process so that if the arbitration rule goes in our favor we're ready to move forward to that or forward with the outsourcing. But that has not slowed us down. We are still continuing to do officer backgrounds in anticipation of the upcoming academies where it is causing a little bit of problems is with our civilian backgrounds, we are still having to temporarily assign

officers obviously all come from patrol to backgrounds to do these but they are continuing even with the outsourcing being put on hold. So that is pretty much it for the report on police operations and performance. If you have any questions specific to that otherwise can I move on.

>> Councilmember Constant: Any questions. Vice Mayor.

>> Vice Mayor Nguyen: Thank you chief. I have a very brief question about the resignations. So the numbers of resignations, so far, would you say is that pretty relatively normal, is that no, can you just probably a little bit of explanation?

>> The resignations are not normal. The retirements are. The resignations are not. We have never seen --

>> Vice Mayor Nguyen: Is this really high compared to what we've seen in previous years?

>> Yes, it is. For the last two years councilmember our resignations have surpassed our retirements and we've never seen that before so --

>> Vice Mayor Nguyen: Thank you.

>> Councilmember Constant: Thanks and just before you go on to the next topic, Mr. Wall I didn't realize you had cards on the two plan, the work plan and the legislative updates D-6 that we already handled. Would you like to share with us?

>> With reference to the work plan I would like to recommend that the auditor's work plan be modified, to place the plant master plan agreements as a very high priority. This is in reference to a very big loss of taxpayer money that was \$453,971 for a CEQA agreement for three gas turbine engines, and under one building, which I think is a folly. I think it should be in separate buildings. That's another issue but the CEQA agreement should have been incorporated with the plant master plan, if there was competent management within the environmental services

department, if not office of City Manager with reference to a prior master agreement for the study of the electrical generation capabilities, at water pollution control, that occurred somewhere between 2002, 2003. And that's significant in my book. I think the auditors work plan should be modified to look into these things. To find out if there's any more looming substandard management activity. As far as the legislative aspects goes, I'd like to thank Betsy Shotwell for her work. I would like to see in the future a little bit more different type of format because the issues are all over the board. I think they should be consolidated for your ability because of the time constraints to look at all the issues and to focus on what can be accomplished. Other than that, thank you very much.

>> Councilmember Constant: Thank you, sir. I just like to ask Alex going back to the police report and sorry for the diversion there, can you clarify the background status?

>> Alex Gurza: Yes, on the issue of the outsourcing of backgrounds, as Chief Goede indicated, we are headed towards grievance arbitration, and the goal was to have it completed by October 30th. There has been an arbitrator selected, it's in the process of scheduling. There currently isn't a restriction preventing the city from moving forward on the outsourcing. However we don't anticipate all the steps will be done prior to arbitration if it occurs at the end of October. Contracts have been executed and the department is in the process of going through the backgrounds of the backgrounding firms.

>> Councilmember Constant: So it's safe to say they're parallel paths right now?

>> Alex Gurza: Yes.

>> Councilmember Constant: Okay, great. So that will close out that section and we'll move into the next section which I see Chris Godley is there as well for the Public Safety communications initiatives.

>> Good afternoon, Chris Godley office of emergency services with the monthly interoperable communications update. Very brief report this month. Regarding the Silicon Valley regional interoperable authority, San José city

staff is continuing to work on the transfer of the e-com microwave assets from the city to SVRIA. Our target date for council action is November 20th. The SVRIA working group committee has approved the transfer on their side. Regarding BayRICS, the Bay Area Regional Interoperability Communications System, the request for BayRICS for special temporary authority to the FCC to make use of the 700 megahertz frequencies needed to complete the Btop grant-funded Bay Web wireless broadband system, that application was denied by the FCC last month. The BayRICS board is now seeking to request that authority directly from the first responders network or first net governing board, however it is unclear if or when that request might be addressed by the First Net governing board. In terms of First Net itself as a system, by the end of the month the State of California office of technology who is lead agency now for the state of California will reach out to some 3,000 potential stakeholders as a first step in developing a California First Net executive governance board. The state will host three statewide forums in November and December, and at this time, appointment to the governance board will be through a competitive process. And I'm personally engaged in attempting to clarify and understand that process, so the City of San José's interests, whether directly or indirectly, are adequately represented. And that completes the report pending your questions.

>> Councilmember Constant: Thanks and I'd just like to comment from the SVRIA side, I think I mentioned it before, we put in place a budgeting strategy and a reserve allocation strategy to meet the needs of the equipment replacement and maintenance as we start to get all the equipment transferred to us from all the different agencies into SVRIA, and that will cause members like us and all the other entities to continue to continue to fund SVRIA every year, and make sure that we are putting away enough money so we don't have multimillion dollar deferred maintenance and replacement issues in the future. SVRIA is also started talking about what it's going to take in dollars and logistics to raise the money to fully build out the infrastructure. And that is something that the board will continue to work on, it's pretty clear that if we want to have an interoperable radio system there's going to be a significant commitment of money from all agencies, either directly from the agencies or directly from the residents, whether that means some form of assessment tax, whatever the case may be. So the board's continuing to explore that and as they make progress, either I or Pierluigi will update when we have these regular updates. Any questions for Chris?

>> Councilmember Oliverio: Chair Constant and to Mr. Godley, perhaps maybe at the next city-county meeting in Fall 2013, we should agendaize this item per the things we're talking about, SVRIA to decide because we're going to need local government to make a decision on how to go forward and fund this. Do you think that would be a wise decision?

>> Councilmember Constant: Yeah, I think one of the issues we have identified is SVRIA, per the JPA agreement, does not have a taxing or funding authority. So one of a couple of things would have to happen is if SVRIA plans to go forward in a plan to build the infrastructure. And it would either have to amend the JPA with all of the partners, which based on the amount of time it took to get the JPA, might be a mountain not worth climbing, but we should look at that. Or it would have to go under the county of Santa Clara under their taxing authority and a transfer. So I think it is something, so we should perhaps just refer it to the City Clerk, and we'll make sure the mayor knows bit and that's something that we can look forward to as we build out our agenda for the next time around.

>> Councilmember Oliverio: I think it's important that we get everyone on the same page because not everyone is a member of the SVRIA, and make sure our colleagues, both the county and the city level, understand what the initiative is there and how it would actually go forward, so thank you.

>> Councilmember Constant: Great, anything else from my committee? No. Thank you Chris. We'll move on to the body camera project for SJ PD.

>> Okay, the body camera pilot project. So what we are doing is we are using the taser axon flex, is the one we selected. This is a pilot that's basically evaluating this particular product. It is something that the council and judge Cordell has brought forward that both chief Moore and I are very much in favor of the body cameras. So we're looking at the taser Axon flex pilots to evaluate basically the effectiveness of the product, the ease of use the most optimum place to wear the camera. Clearly the way this particular camera is set up is they can wear it on the glasses, it can be on the head, some of the officers don't really like it there so they also have the ability to wear it on the shoulder or on the collar. Couple of them are on the -- one of the officers that's doing it has it on her

lapel. This is why it's a pilot project. As it points down so taser has worked with us to be able to adjust it so we're working out some of these kinks but so far it's been very well. We have six officers who like I said are voluntarily using the camera. They're on their second week with the device. We're using evidence.com for storage. It is a cloud-based storage that's run by taser. Thus far it's working very well. Sergeant Harsney out of our research and development is the system administrator. He's the only person that has the ability to erase images, he can only do that with command approval, obviously. Several county agencies are currently using body cameras, as well, Los Gatos and Campbell to name a couple of them. So as a process we just had our county chiefs meeting last week which I attended and it is the intent of the county chiefs to put together a county protocol regarding the cameras for things like officer involved shootings and different incidents that occur and it's also the county chiefs hope that we're going to be able to do down the road believing that these are going to be the future of police work that we are able to get a cloud storage that ultimately can be used by all of the county overseen by the D.A.'s office and they have a collaborative work group working with both the DA's office as well as the defense attorneys, with regard to the body camera. So that's pretty much an overview of our pilot project unless you have any questions.

>> Councilmember Constant: My basic question is: What's the difference between this pilot and the first pilot?

>> Well, this one is a -- this one was a little bit more flexible. The other one was that if you remember it is the one they wore on their head, it was kind of bulky, this one is a much smaller one, more compact, it has the magnetic, event stand by, they've upgraded a lot of the things and also the cloud storage is another big improvement.

>> Councilmember Constant: Great, great, any question. Pierluigi.

>> Councilmember Oliverio: Hi, would the team be working with Vijay of our staff on cloud storage?

>> I that's a good idea.

>> Councilmember Oliverio: I just don't think they are as in tuned as a city CIO when it comes to cloud storage.

>> No I think it's a great point. I think one of the things they're looking for is have one -- because it's evidence they have one place that the D.A.'s but it's a great point you make.

>> Councilmember Oliverio: Whether it's the county's chief person who understands this stuff or the City's, I think we should bring in the experts for this one that are already on staff.

>> Sure.

>> Councilmember Constant: Anything else? Okay we'll move into item 4, report on burglary rates by police district for year-to-date compared to last year.

>> Okay now one of the things as I mentioned earlier with the indexing we're still three months behind so we're up to August in our indexing it's also been a very lengthy process to do year to year of course we don't have the year data complete for now. Crime analysis is working very hard to do it not only for the request of this committee but also we have some PRE, public record act that has been submitted as well. For the burglaries what I did is August of 2011 through August of 2012 so you can see radio little bit of the change. We are currently January through July of 2011 compared to the same time this year. We are about 35.4% higher rate of burglaries than we were the same time last year. There is good news to report however on this because our officers are doing a lot of good work which I'll talk about in just a second. But if you can look at the reported incident, district Edward had a 240% increase from August of 2011 to August of 2012 from 5 to 17. So while sometimes the percentages can be starting the numbers are -- startling the numbers aren't as high as you think they are. The bigger thing to point out from August of 2011 to August of this year we only had citywide a 3.8% jump which is a good thing. Now you were handed out comparisons of June 2012 to July 2012 and July 2012 versus August 2012. And this is where I'll get into some of the good work that's being done with our officers with regard to this. From June of 2012 to July we had a 19.2% increase in burglaries overall citywide. And I'll highlight Adam and -- or foothill and southern division obviously are two of the divisions that were getting the most hard hit. From July of 2012 to August of 2012 however we almost had a 1% decrease. Citywide in burglaries. And I'll just give you a couple of differences because as you know we've been doing our program contact to completion out in southern division which is the

pilot program in which our officers are taking as far as they can the incident from the time they make contact and get the evidence to the completion. So if they're able to develop leads, any type of information that they can follow up on, they're doing that and they've had some big success. I'll talk about that in just a second. But from June to July in district Adam for example there was a 47% -- 40 -- almost a 48% increase in burglaries from June to July. From July to August there was almost a 27% decrease. In burglaries. For district Charles there was a 53% increase from June-July, a 6% increase from July to August. Same thing with district Mary. You had 53%, and now it's a 15% decrease. So there's a lot of good work being -- the basis you can read the chart and see for yourselves where it's gone down. There's a lot of reasons for that. That we can surmise, and other things you know that we can -- we know are happening with regard to what our officers are doing. But we continue to look at the realignment issues, what that brings to the table with regard to burglaries. But we just had our impact meeting yesterday and if you're not familiar with impact that's basically our department's version of comstat for lack of a better way to describe it. With impact what I have is the captains identifying through crime analysis what the issues are and that can be anything from quality of life issues to burglaries to gang violence and what are they doing drilling down for the lieutenants at each command level and the sergeants from a team perspective to combat what's going on. And in southern division just to highlight some of the things that have been going on that are having a huge impact on the rates from for southern division is on August 17th, we had two officers, Richard Martinez and Mike Roberson, were doing the contact to completion. They were able to follow up on information that they had obtained from one of the burglaries and as a result of their follow-up they did search warrant they came in worked early did overtime on this and they were able to, 38 victims clear crimes that had 38 victims in southern division based on a contact to completion case. Then on September 27th, zero 236 hours in the morning they started working a case of a hot prowler and Mike Roberson again, there were 11 victims that they were able to identify based on one of the individuals that they arrested. So they're taking these -- they're taking different tactics, anything from probation searches to going out and serving warrants, warrants that have been not served to this point. Collecting -- collecting fingerprints, they were able to solve a hot prowler in western division. They had three or four hot prowlers that had been occurring, the officers went out collected the fingerprints at one of the cases, they weren't able to get fingerprints at some of the other places. They were able to do canvass, collect witness, kind of put two and two together, still ongoing case, without going into too much detail they were able to get a hit off of one of the fingerprints and have identified they think an entire crew that was doing some of the hot

prowls. But that's the efforts being done by the officers. So there's a lot of emphasis on, because we don't have a burglary-fraud unit to be able to do the follow-up on the back end, the emphasis has really been with the lieutenants and sergeants and the officers to follow up. And they're giving them the time that they need to do it. While at the same time you know we're dealing with the gang issues that we have as well as the violent crime because violent crime has if you read the paper today it's starting to creep back up again nationwide so these are all things we have to continue to do with the resources that we have. But there's been some incredible work being done by the officers throughout so. And I'll take any questions.

>> Councilmember Constant: So I missed the percentage you gave in the very beginning, the increase year-to-date. Versus last.

>> It's 35.4%. And that's just from January through July to January through July.

>> Councilmember Constant: Okay. So I have a series of things because I-d it's great to hear the good stories but it's also important for you to hear the bad stories. And my office and a couple of other offices have just been getting pummeled with stories. I want to go through with them because it's a continuing issue that I've had about communication. Poor communication in the field and the absence of what I've seen to be documented communication within the police department. We hear that people are being talked to, but no clear messaging from my point of view. And we saw back when we had our meeting here in August, that burglaries were overall up 33.8%. Today you told us that they're up 35.4%. Back when we had the public safety study session, we had this chart here. That showed half a year. It was extrapolated out that you know if it were to continue and double it would put us up into the 48 hundred burglaries which would represent a significant increase. But I want you to hear some of the stories that the constituents are hearing from officers. I'm just going to read out from the e-mails. I'll leave out the names but sergeant X told me that the department is not investing burglaries, period. They do not have investigators doing anything. Officer X, from who used to be in the burglary unit says the San José police department no longer investigates burglaries. Officer X repeated, we are not investigating burglaries. Let me get through all these here. Officer X police department is no longer investigating burglaries. The burglary unit is closed and there are no investigations on burglaries. When the person asked the dispatcher, if they were an

officer, the dispatcher responded that he isn't a police officer but he's been hired to tell callers that the burglary unit has been eliminated. She spoke to officer X who said know burglary units no investigations period. Spoke to officer Y. Blaming the mayor and some members of the city council for SJPD's limited resources. She specifically noted that officer Y doesn't like me. With a quote: Ugh, I can't stand him. We used to work together. Unquote. I have more. I met one police officer badge number blank, who came to our area to investigate some other burglary cases. And told me that the number of burglary cases have gone up by more than 300%. Which is ten times what we're being told. And I took the statistics and that would mean if we were up 300% that there would be 12,500 more burglaries this year than last year. The same constituent said that this officer said that they were not investigating burglaries. Went on to a captain who, a captain who said, officer X whom you previously spoke to was not incorrect in telling you how much burglaries have gone up. So we have a captain who confirmed they were up 300%. And I know it's not true. Because I have a great relationship with the captain in my district, captain Siaburro, we talk about what comes on and he talks about the contact to completion and the status of burglaries in my district. But we continue to get pummeled with this information and I know it's happened to officer -- Councilmember Herrera, who is getting pummeled in a number of ways. But I've seen dozens of e-mails from her office that say specifically the same thing. I was at a meeting in my district, just a couple of nights ago, Tuesday night, where there was a sergeant there. Who, and the meeting was specifically about burglaries and graffiti. And the sergeant who was there from the district told people on the graffiti, well, you're just going to have to figure a way to clean it up. He doesn't mention that we have a graffiti app. He didn't mention that we had an 800 number. He doesn't mention that district 1 has their own graffiti app. He made it sound like the city just doesn't care and won't clean up. I actually had to interject into the meeting to say that these are the resources and what our city policy is. There was also a comment made that night that you have to understand that the western division is everything west of highway 101. And we can't do everything. Well, the southern division and the western division represent everything West of highway 101 but that's not what the residents were being told. And again, I had to interject to correct the information. So we have this where it keeps going on and on. And we read it in the parent, we've heard it in council meetings. We've heard it in public safety meetings. That San José has this huge problem with burglaries. Which I agree, we do. And somehow, it's just because of staffing. Yet you can look at the city of Sunnyvale and they're up 48% which is significantly higher than us, or the city of Palo Alto that is up 64%. The city of Palo Alto has had a public information campaign called lock it or lose it working with residents to

help them deal with the issues. Instead of placing blame, and arguing, and inflating the statistics, to scare people, they're actually doing something about it. What really caught my eye, and I was kind of shocked to see this because we've had presentations from you, from other deputy chiefs, from the chief talking about all these issues and never once has it been put in the context of what's going on in our county. And I find out that the county chiefs association which I know you just briefed us are dealing with other issues and coming up with a protocol for video cameras, that the county chiefs have had this on their agenda because of the rise of burglaries in our county and are discussing proactive steps to deal with issues. Yet none of that was brought to the council to talk when we're getting our updates. And what upsets me is this misinformation, I guess that's the nicest way I can put it is misinformation. Quite frankly I think a lot of it is flat-out lies for political purposes. We get this misinformation going out to the residents and the residents are scared. I have residents that want to move to San José. Maybe they'll move to Palo Alto and find out the burglary rate is twice as high there. But it's just we're not responding to the residents' needs and I think sometimes we forget who we work for. And I know that the chief has the right to allocate resources based on the money that we give them. But I think just as equally the council has a right to know how those resources are being allocated. It wasn't that long ago that we had the V set unit disbanded and we found out about it in the press. The burglary unit when it was shut down I found out in the press. I sent a text message to the mayor asking if he knew bit. It was a surprise to him. I sent a text message to the City Manager and asked her if she knew about it and it was a surprise to her. And I think that this kind of poor communication has got to stop. We have to remember that we work for the residents. And I think that, like I say, I think we as councilmembers we as the public safety committee, we have a right to know where those allocations are. And every time we hear about something whether it's backgrounds, whether it's whatever issue, the burglaries, whatever, it's always the same, we're going to take resources out of patrol to deal with it. That's the only pot we have to go to. So what I would like, this is a specific request, is I would like to know how specifically the police department is deploying all the officers. I'd like to know where they're assigned. I don't need to know by name. But we have 1093 or whatever the authorized strength is, we have this many officers here, there, this many in patrol. We only seem to get the patrol number and I think we get a picture that is very skewed and very one-sided because while I'd like to say when we have discussions like we had in the budget arguments about well, let's put officers in patrol and the chief told us that's not the right thing to do and you told us it's not the right thing to do, that we need to put them other places, I'd like to have faith that those decisions are being made right. But we

don't get the information. And I don't know where all the units are. And I don't know, maybe it's better to take two bodies out of R&D, and put them to do burglaries. Or maybe the people in the criminal intelligence unit that have the time to monitor my political activities maybe they could be investigating burglaries. But those are things that we don't get the information. So I would like, it's a very specific request, I would like to know where all the FTEs, officers are deployed in the department. So that we quite frankly can hold the chief and the City Manager accountable. Because our citizens are afraid, and I don't feel they're being served and they're being misinformed. And I think that there's a lot of things going on that don't have to go on. So none of that requires a response. It was a statement. But I just felt I had to get all of that out there. I'd like to open it up to my colleagues. Vice Mayor.

>> Vice Mayor Nguyen: Thank you. I just wanted to chime in, in regards to the e-mails and the phone calls that we've been getting from the residents regarding the increase in the burglaries. We receive similar e-mails. And it's really unfortunate because we understand that the increase has happened for a while, for many, many months. But it's just really disappointing to hear residents talking about the responses they get from the police officers. And it's pretty -- it's very similar response and it's coming from different people, people that traditionally would not write or send e-mails from the various council offices. I have received e-mails from residents I've never met before and most of these e-mails would say this is the first time that I've written to a councilmember. And so you know, I'm glad that chair constant brought this up. Because I think that the police department, chief, the assist chief really need to look into this and see how we can communicate better with our residents. It's one thing to understand that we have limited resources and that we can't do everything. But it's another thing for you know officers to go out there and saying we just don't have the resources when in actuality we do. And so I'm just hoping that kind of communication will improve and that the poor communication we just have to stop. The other things that I wanted to follow up on is that with -- with chair constant request, I'm not sure if you want this to come back at the next public safety meeting or how is this -- how is the information or the response going to be dispersed to the councilmembers?

>> Councilmember Constant: Well, I'd like to not wait a month to get the information. So I would request it just get sent to all the councilmembers and the mayor. And you know we get this update every month so we can talk about it, since it will already be agendaized.

>> And I'm confirming this is where the full time employees are in the department?

>> Councilmember Constant: And that would include TDYs as well, where people actually are working.

>> And with regard to what both of you brought up about the professionalism, I just want to say one thing about that: We have been dealing with this and we have been hearing about this. And what we have asked and we have asked through the City Manager's office and I know this request has been made that when these particular situations occur that you get us as much information and I know you did that, Vice Mayor Nguyen announced we were able to than incident that you brought forth. If you know there are specific people we need to know who the officers are not dealing with it. I would ask one thing from all of you as well as the council, is to understand that we are -- we are a group of human beings like everything else and we have 1040 officers right now working on this police department and there may be a handful that are not showing the professionalism that I would like to see that the chief would like to see and that all of you would like to see. But there are also a whole lot of the other ones that are doing their job and doing it very well under some very difficult circumstances right now. And I don't want to paint a broad brush that we have an unprofessional police department when we might actually have just a handful of officers that we really do need to deal with. And so any help you could give us with regard to that would be greatly appreciated. But that's just what I wanted to say because I believe just as you do that we want to have as professional police department as we possibly can.

>> Councilmember Constant: So I would just say I appreciate that. But chief Moore told me quite frankly, I gave a lot of information, and I was told, tell your residents to call the IPA. Or internal affairs. So I did want to let you know, that was his mouth face to face to me. So you guys got to get your messaging straight. Because I have been told and I have been telling my residents that, I will let the City Manager go and Deb Figone gets a lot of e-mails from me. The chief told me I have to tell them you have to complain to the officer about the officer to the IA

or the IPA which I don't like doing. And so I suggest you have a discussion with the chief when he gets back about that. Because that's not what I've been told. Anyone else? Pierluigi.

>> Councilmember Oliverio: Chief, I very much agree with your last paragraph. I think we're -- I mean, I am I think others are cognizant of the stress and strain of the current situation. And I think regardless of the time, there's always someone, in any organization, that spoils it for others. And unfortunately, the spoiling effect, I don't think it's getting what they intend to do. Meaning, that to disparage individuals and blaming problems on these individuals, in fact what the residents are telling me is that they are upset and scared. That their own people that they've historically trusted, that they've had their faith in, that they don't feel that level of confidence anymore. And that they don't even feel that -- and you know this is from them. And you know, they don't want to contact you because they're afraid, and these are people, to the Vice Mayor's point that would never really call. And sorry, it just gets emotional, because it's emotional for them, it's emotional for me, because I've tried to be a very -- outside of pension reform I try to be a proponent for what the police officers do on a daily basis. But if those bad apples continue to do that they are going to take people that used to have confidence and trust in the police and build a massive amount of distrust. And if they're ever selected on a jury trial I could not count on them to be confident in the police, as San José jury trials have been confident in the police in the past. And I think it brings out things that they don't understand, that would, will hurt law enforcement in the long run. So on the other side, I'm grateful for those that are truly working the best and coming home safely each night and catching those that are doing these types of crimes, issues in our city and I'm forever grateful and if they don't feel that I am that grateful I don't care because I am and that's what matters and that's what I convey to my residents that you know, we do have a good police department, we are trying. But unfortunately, we will have those situations. So you've heard it. You know it. I mean, and you know if it's really a personal issue, I have no problem sitting down with those individuals. And they can yell and they can be upset. But let's get it reasoned where it's actually solving their frustration versus disparaging the entire law enforcement group. Again, on the other side I'm extremely happy with those that are continuing to work their best and appreciate all those efforts. Question related. On contact to completion, since you've seen good results, in retrospect do you feel that was something the department should have experimented more with in years past or had we always been doing a little bit of it?

>> I think you have a lot of proactive police officers that historically have always done that. I mean, I know I've always done that when I was out there. I mean, I think the majority of police officers that were proactive were doing contact to completion. I think the difference was, that now, you have to make a concerted effort as a department to give them the time to do it when you have less resources. So I think that -- the only difference is I think a lot of good officers were already doing what we're talking about, but we're telling people we still want it and it's a priority to give the time to be able to do it.

>> Councilmember Oliverio: Thank you.

>> Councilmember Constant: I'll just add, what I've been asking for a number of years since the measure V debacle is to see some concrete communication from the command staff about how people should or shouldn't behave. And I know you weren't here during the operation rescue times. But I was. And the messaging was clear, both in written and verbal form, on how people were to behave. I haven't seen that in the entire time, since we've been dealing with all this animosity. And you know, it doesn't help when command officers, lieutenants and captains, further the situation. And I know you know that that happens. I've heard myself, people with gold on their collars making disparaging remarks. I've heard it in briefing and there needs to be some firm communication about this because you know what, if they're mad, let them be mad at me, the mayor, Pierluigi, the Vice Mayor -- we'll spare Kansen because he didn't vote with us. But let them be mad at us but it's not the residents' fault. It keeps going time and time again. I was called this morning by a school district superintendent who is dealing with a problem that you'll probably become aware of soon with an embezzlement. And he told me we're not going to call the police department. I said why? He said well because they're not going to do anything about it. And I said well I think they will. And he said no. We've talked to some of them and they told us they're just not going to do anything. And when you have someone like that, another government agency, who doesn't have faith in our city, and I'm going to share with you afterwards the case number from that particular case, because I was shocked to find out that other government agencies have heard from our employees that we don't care, we're not going to do anything. And it's just not right. So I hope you see this as us pleading for a change. Pleading for communication. And like I say, when you have a captain confirming misinformation in writing, and I'll share that e-mail with you if you would like to see it, that's a problem and we need to deal with it. Because our priority is to

serve the residents. And like I say, I don't care if people don't like me. I'm a big boy, I can handle that. But my residents, my residents of all the other districts, deserve to be treated better. And communicated to. And a little bit of empathy, it's one thing to say, we're not going to do anything, don't bother us I'll take a report but nothing's going to happen and another thing to say I've taken your report, we'll let you know if we have any leads and make an arrest. There's a big void. It takes the same amount of time to say the same thing. When you read some of these e-mails and the fear in people, I hope you'll understand. With that we have one speaker.

>> Alex Gurza: Mr. Chair if I could. I wanted to reinforce a couple of things that Chief Goede indicated. The vast majority of our police officers are doing excellent work every day. But as chief Goede indicated, there are issues and concerns that will be followed up on. And there are a variety of resources for residents or anyone that has a concern to raise a concern. That could be through the IPA, it could be directly to internal affairs it could also be through the City Manager's office of employee relations which accepts complaints and we follow up with the police department and ensure that those are looked into. If councilmembers, any councilmember you or some of your colleagues have the specifics please feel free to also provide them to me, we will work with the police department and ensure that those are followed up on because the more information that the department has about specific officers, incidents, they will follow up, and address those particular issues.

>> Councilmember Constant: I think the important part is we don't want complaints. We're not trying to make complaints. If I wanted I would have named all these people by name because they're public e-mails. What we want is to avoid the complaints. We want to change in the way things are communicated. Mr. Wall.

>> With reference to the statistics up there, I think those police districts should be broken down by council districts next time, and from then on. Because not many people understand police districts where they live. As probably the only citizen here that will speak today, I guess I'm the boss here. And I don't like anybody picking on the San José police department. I don't believe there's bad apples, because if these officers say what they have said, truth is an absolute defense. The resignation level is based on council's breaking of promises to a very valuable and pristine police department. Our police department is grossly understaffed. Then we get to the issue of ministerial duty by elected officials. Why do we have the increase in burglaries? Because there is no deterrence for bad

conduct or criminal conduct so how do you as legislators make the necessary changes by legislation to create deterrence so this stuff doesn't occur? Furthermore, I think it's time to not only applaud our police department, but also, start discussing a new and progressive way of dealing with crime in this city and regionally is by asking the president to send in the requisite number of United States military police to have stockades and other ways to process undesirables. Secondly on ministerial duty this council has a track record of protecting and shielding illegal aliens from deportation. So I'd like to know with statistics here how many of these burglaries are from illegal aliens and other crimes by illegal aliens and repeat offenders for these crimes that take up our police officers' time and take away from our community. But I'd like to thank the committee because you do a very good job for the resources that you do have. Thank you, and thank the San José police department for an outstanding job.

>> Councilmember Constant: I was going to cut you off, but since you were thanking me, I let you go an extra few seconds. I would let you know that the police department did provide a map overlay of the council districts, and the police districts. And I don't know where it's posted but if you e-mail me I'll send you one. We all have one of those. Anything you want to add before we move on to the next item. Okay, thank you. Our next item is review of relevant 2013 legislative guiding principles.

>> Betsy Shotwell: Thank you, Mr. Chair, members of the committee, Betsy Shotwell, Director of Intergovernmental Relations. Before you is the draft 2013 legislative guiding principles. This will be going to all the council committees and the rules committee and the full council. This is the foundation and framework for staff review of policy proposals, legislation, regulations, and forms the alignment for taking positions to the Rules Committee and the full council in the course of the legislative year. And in the interests of time I'll be happy to answer any questions.

>> Councilmember Constant: Thanks and just to point out what we pointed out at the Rules Committee, some folks were questioning why we take positions on some items and not others. And it's because we establish these priorities every year as a body. Any questions? Pierluigi.

>> Councilmember Oliverio: Chair, if we want to suggest additional words or another point, is that -- do I voice that now? Do I have to write a memo specifically to that? How does that work?

>> Betsy Shotwell: In the past it has been accepted at the committee and then it goes forward in the memo that will go to rules. So there are stages of where input from the committee will be made available to the next level. So that that body can then review the proposal.

>> Councilmember Oliverio: Well I'll verbally give a suggestion and if you could put that in the words that you feel comfortable with under local control. The ability for the city to have more flexibility or control in regards to transportation. What I mean that is not having to do traffic studies when you want to put in a crosswalk or a stop sign or the flexibility to have some leniency on lowering the speed limit where appropriate. I think that would be an area that I would clearly be interested and my community would, as well. Is that something you could see fitting in some type of wording under number 6?

>> Betsy Shotwell: I think this would have to be subject to review by the relevant departments in the city attorney's office.

>> Councilmember Oliverio: If you could suggest it to the relevant department of D.O.T. and see what they say prior, that would be great.

>> Councilmember Constant: Anybody else?

>> Move to approve.

>> Councilmember Constant: I have a motion and second. Wait, Mr. Wall. Thank you. We have a motion and second. All in favor, opposed, that's the first time I've ever heard you pass. Thank you sir. We're going to go -- we're going to go on to number 7, monthly report of City Auditor's activities.

>> Sharon Erickson: Sharon Erickson City Auditor. You have in front of you the monthly activities for the month of September 2012. You do have on your agenda today our report on fire department injuries and last month you heard the status of open audit recommendations. I did want to point out that during the month of September the council did add to our work plan an audit of the airport taxi dispatch system and services model. We will be prioritizing that. I expect to begin that work sometime in January with an ETA of sometime early summer. With that I'm happy to answer any questions.

>> Councilmember Constant: My only question was, on the overhead reimbursements, when do you think we'll get to that? Because my concern is before budget time.

>> Sharon Erickson: It's going to be after budget time.

>> Councilmember Constant: Oh, okay. Not what I wanted to hear but okay. Any questions? Can we have a motion? We had a motion and second. All in favor, oh wait, Mr. Wall.

>> First I'd like to give my unswerving support, adoration for the office of the City Auditor. I'm very much concerned that council has not thought of the environmental services department as a very complex and very mismanaged department. Therefore, in my opinion, the auditor should be able to have the flexibility to step into ESD at any time, without any work plan adjustments from the council, in order to stop what I hopefully will never see or happen, is a potential for a spill of raw sewage. Environmental services department, I captain tell you how gross -- can't tell you how grossly mismanaged that place is. At rules, what we saw yesterday, were to add an item to the T&E committee to discuss energy generation on a monthly basis. T&E should have done that a year, two years ago. Now, with this, though, comes a hidden agenda that you have to be wary of because I'll let you know what's going on but you may not understand it. And it's a fall-back position like hey we warned you, okay? So I think the auditor should be given far more leeway, and be able to step into ESD at any time without your consent. For the purposes of just getting the information to you of what's actually going on versus the amount of brown-nosing that you get from that department and from the office of City Manager. Thank you.

>> Councilmember Constant: Thank you, sir. So we have a motion and second, all in favor? Any opposed? Okay. We'll roll right into our second to the last item. Audit of Fire Department injuries.

>> Sharon Erickson: Thank you again, chair and members of the committee. You have before you our report on fire department injuries. We concluded that a more coordinated response and better follow-up is needed to employee injuries. Although the number of injuries of fire department employees has decreased over the last few years ago, costs continue to be high and are high compared to other jurisdictions. With at least 30 full-time equivalent to firefighters off duty for the entire year. The most common types of injuries are strains. This is one of a series of audits. We began this series in 2009, with an audit of the workers compensation system. Where we found that city costs were higher than other jurisdictions. We also found interlocking that the claims were interwoven with the disability retirement system. So in 2011, we followed up with a citywide audit of the disability retirement plans. We found that employees in the fire department retired on disability at a rate higher than other departments in the city specifically two out of three firefighters were retiring on a disability or in other words, were permanently disabled, while working for the City of San José. This audit then focused on our hand -- on the City's handling of workplace injuries and the timeliness of treatment and recovery in the fire department. Our first finding was that better coordination with physicians is needed to ensure timely treatment, and effectively manage time off, and to get employees back to work in a timely manner. Although the City's process appears to meet legal requirements for timeliness delays may be affecting treatment. We found that the city may be able to improve treatments within the first 30 days as allowed by state law, and is implemented by other cities. We also found that San José's return to work process may be limited by external physicians who may or may not be fully aware of physical requirements of our fire department employees' regular jobs and/or the modified duty positions. In contrast we found that some other cities aggressively monitor employees who were out on disability leave. In our opinion a more aggressive disability leave program and a review and update of job descriptions that could needlessly hinder getting employees back to work is also needed. We also recommend that the department's wellness programs be better coordinated to ensure appropriate follow-up and efficient use of resources. We further recommend that sworn employees returning to work after long absences be assessed by our own city physician and employee health services, for their physical capability to do the job. Finally, the cost of back-filling employees who are out of work is significant. We conservatively estimate it at more than \$5 million a year and

believe this should be tracked to show the costs and benefits of early comprehensive treatment of injuries, and a more aggressive modified duty program. Our second finding is that the fire department's follow-up on injuries and accidents has been inadequate. The city is required by state law to maintain an illness and injury prevention program. The fire department recently began a review and update of its IPP. In that plan supervisors are required to file supervisory accident investigation reports. But when we requested those reports we found many were not filed. We also found that state mandated safety committee meetings appeared to be ineffective at monitoring injuries. Moreover the department never implemented an agreement to hold employees accountability through their performance evaluations for safety violations. And at the time of our review was not regularly monitoring injury trends. That was particularly true after the elimination of the department's safety officer. We recommend that the fire department prioritize improving its safety culture by dedicating the appropriate personnel with the right authority to enforce and coordinate changes and to raise awareness about injuries and injury prevention. Our third finding is that premium pays to police and fire employees who are out on disability cost the city about \$600,000 a year. Under state law, the city is required to pay employees a full year of disability leave, and the city is required to pay them 100% of salary, but the state law does not require payment of premium pays to fire and police employees while they're out on a disability. We recommend the council consider changing that. Our report includes a total of 15 recommendations to improve the City's management of fire department injuries and accidents and costs. I really want to thank the -- the police department -- the fire department's staff, Department of Human resources workers compensation staff, the city physician, the office of employee relations and the city attorney's office. This is a difficult subject and they were all extremely cooperative during this review. I'm here with Gitanjali Mandrecar from my office and Ron Dacioli from the fire department to answer any questions. The department and the administration does agree substantially with the recommendations in our report.

>> Councilmember Constant: Thank you. Any committee members have comments or questions? Pierluigi go ahead.

>> Councilmember Oliverio: On premium pay sit pay for doing that specific job on an hourly basis or on assignment or is it premium pay to have the skill set? And I don't know who should answer this question.

>> Sharon Erickson: I'll take the first shot. Some premium pays are specifically for a job duty. Others are more broadly applied so it varies. And I believe that would be addressed during meet-and-confer over such an issue.

>> Councilmember Oliverio: And could someone, portray -- Alex Gurza maybe two examples one where it's on both sides of the spectrum?

>> Alex Gurza: Yes, for example there are a variety of premium pays that are -- that firefighters receive. An example might be a holiday in lieu pay, they get an extra pay for the fact that they have to work holidays at some point. Others that may be skill based or be our paramedic pay as an example. So there are some pays where virtually all firefighters receive and then others that are more skill based.

>> That's correct. Ron Dacioli, fire department. And others in that example would be hazardous incident team, certification pay, USAR, search and rescue pay, those types of premiums.

>> Councilmember Oliverio: Question for the auditor. Is there anyone that's in disability that gets holiday in lieu?

>> Gitanjali Mandrekar for the auditor's office. Yes, they do.

>> Councilmember Oliverio: So even though you're not working because you're disabled, you'd still get a holiday in lieu pay?

>> Yes that's correct.

>> Councilmember Oliverio: Thank you.

>> Councilmember Constant: Just a couple of comments. I appreciate the audit. I know there's some areas where I know where we have latitude that I don't think we use. I think you point out the utilization review guidelines allow some precertifications by adjustors. In my experience in talking to a lot of people who go through

the system they don't use that authority, and it ties up treatment. So I'm really looking forward as we change things, I know we're going to have that discussion next and there's a lot of changes in workmen's comp as a whole. That, and the 30-day managed care and all that, I think we have a lot of things. But the one thing that stuck out to me most was the fact of the comparison of what D.O.T. does, versus what the fire department does, in the follow-up. And I would hope that as we go forward we can come up with a standard follow-up that every city department uses regardless where they're at, and I know the fire department agrees and will be moving in that direction. But I would like to see that become just a citywide blanket this is what we do and then try and improve upon that as we go forward.

>> Alex Gurza: Mr. Chair, we absolutely agree. Although this particular audit was focused on the fire department, there are many issues that the audit discusses that really are really are things that we are looking at throughout the whole city.

>> Councilmember Constant: Great. Okay any more questions? Mr. Wall were you on this one? Yep. Oh yes you are. Well, maybe you are on the next one. We'll take you on the next one. You don't have to say anything, trust me but if you want to you're more than welcome to.

>> Vice Mayor Nguyen: Motion to accept.

>> Councilmember Oliverio: Second.

>> Councilmember Constant: Motion and second.

>> Sharon Erickson: Excuse me will this be cross referenced?

>> Councilmember Constant: Yes I heard her. All in favor, opposed, carries, thank you. I see Mr. Wall it's a 9 not an 8. Okay. I said workmen's comp and I thought workmen's comp and I read workmen's comp. All right so we are now on the verbal report for workmen's comp. Alex.

>> Alex Gurza: Yes, Mr. Chair, members of the committee. We do have a significant update this month on our reform efforts. As the committee is aware we have been working on an RFP that is analyzing both the contractual services that we already use which is things like utilization review, bill review, but also look at claims administration and actually there is some correlation to the discussion we just had with some of the items that we are looking at. There were three options that we have analyzed and we also wanted to make sure the committee is aware that we issued a memo to the entire council, yesterday as part of the early distribution packet for the October 30th council agenda. And it provides an analysis of the three options, before we move forward to the next step of awarding a contract depending on whether the city council accepts our recommendation. The three options again, all of them have the element of continuing to use contractual services for the cost containment portions. But they vary in terms of how we would handle our claims administration. Option number 1 would be to continue with in-house claims administration personnel. The other option would be to outsource all of the claims administration to a third party administrator or a TPA. The third is the option we were actually recommending is to engage in a two year pilot program where we would outsource a portion of our claims administration approximately 40 to 50% of our claims for a two-year period to be able to analyze how successful it is. And part of that pilot we are looking at doing what we're calling bundled services. So one provider would do all of the services, not just claims administration, but utilization review, which chair constant you mentioned before, and the other cost containment elements. One other element that I wanted to discuss, that was discussed a little bit in -- related to the audit is the issue of which doctor does an injured employee go to? Currently an injured employee can go to any doctor. The auditor talked about one option would be where an employer can limit it for the first 30 days and you have to go to a certain doctor. There's also what we have been exploring which goes beyond the 30 days which is called a medical provider network. Which there is an ability for an employee to opt out. But we have talked to a variety of people who have utilized an MPN and have found it to be successful. So we are taking it one step at a time. If the council accepts our recommendation to utilize a TPA, many TPAs have already a preestablished medical provider network which would avoid the city having to design its own or create its own or even have to do a separate RFP of that. We think it's a very important element of our reform efforts we look forward to answering any questions you may have on the memo and the discussion at the council on October 30th.

>> Councilmember Constant: Thanks, so first of all I think the medical provider network would be a great way for us to go. The only question I have, because I haven't read the memo yet since it just came out yesterday, how do you term determine the 40%? Is it going to be certain departments or is it going to be every other one or how?

>> Alex Gurza: Yes, excellent question, Mr. Chair, in the memo we do not describe it other than to say we have thought about it. And rather than having it randomized we are proposing that we would do it by department. So we would take departments, who in total represent about 40 to 50%, and they would participate in the pilot.

>> Councilmember Constant: Great. That makes a lot of sense. I think that's it. Any questions? Mr. Wall.

>> Mr. Chair. I just wanted to report from the city attorney's office, we did do an RFP for outsourcing the legal work related to workers comp. We terminated or we concluded that process probably about five or six weeks ago. What we determined was that the cost of outsourcing would be significantly higher than using the current attorneys assigned to that. The lowest hourly rate offered by most of the firms was \$150 an hour. Our highest rate fully loaded with all benefits was \$122 per hour.

>> Councilmember Constant: Great, thank you.

>> Alex Gurza: If I could add just one thing I forgot to mention, sorry. In our memo to the council on October 30th one of the things that we tried to emphasize is in our workers comp program our overall goal, obviously in addition to the most important one, is to prevent injuries in the first place, which is to reduce the overall cost of the program. So what we're trying to analyze is not just the cost of whether -- of how much in-house employees cost versus a TPA but overall, can they result in an overall improvement in the program. And that's how we're trying to analyze it and that's why we're looking at a pilot. Because sometimes you have to really have experience with it to see does it reduce for example the overall cost of a claim? Does it get medical treatment quicker? Does it get our employees back to work sooner? You've heard the fire department in part of the audit talk about the cost of a

firefighter being out. Not only is it the loss of that particular employee but the cost of back filling their position. So we are looking at it globally versus just the separate elements.

>> Councilmember Constant: I appreciate that because I remember when we first started these discussions when we talked about claims administration and I talked about how we treat the employees meaning the treatment so that people get put back together in a quick and efficient way. Now, Mr. Wall.

>> I as a citizen taxpayer I reject the TPA assessment I reject the report in its entirety. I believe the city is well served by retaining workers comp but redesigning it to include human resources and the attorneys office, in a more bundled service with appropriate compensation which means pay amendments and benefit amendments to the attorneys, the workers comp people and the human resources people. If anything, that should be outsourced in my opinion without causing any consternation is, perhaps some portions of the office of City Manager. We've wasted a ton of money on this issue and I believe the TPA approach opens the door very widely to corruption and long term costs to the city, once you've dismantled our efficient workers comp unit. And so that corruption, and great cost, as mentioned by our honorable City Attorney, no. I suggest that we re-look and retain workers comp and human resources and the attorneys. Because this also is integrated into the civil service protections and the civil service system that guards against corruption. It may not be cost-effective in your eyes but the overall cost to reduce corruption and outside hidden cost is well worth the investment of retention. I'd like to thank everybody involved with this, especially deputy City Manager Gurza for all his efforts. Thank you.

>> Councilmember Constant: Thank you. I forgot, did we get a motion yet? How about a motion.

>> Vice Mayor Nguyen: Motion to accept.

>> Councilmember Constant: Motion and second. All in favor? Any opposed? Mr. Wall, open forum. All yours.

>> I would like to firstly thank this committee. I think it's the most efficient committee that I have had the privilege to discuss matters of the city. It's very well run. Councilmember Constant, I believe it's due to your leadership and

the leadership of your contemporaries. I would like to really address this homelessness business. This city is going down the wrong path on how you're addressing it because you're creating an entitlement program. This entitlement program through vouchers or putting people in apartments off rivers and creeks or wherever you find them is going to open a flood gate of vagrants, criminal element and undesirables to this city that's going to be petitioning for free housing in our neighborhoods as a result of that inclusionary housing ordinance. Once the taxpayers find out how the city is moving that you're giving out taxpayer money when you can't support an adequately staffed attorney's office, fire department, police department, all other departments in the city, this is basically, you're creating the foundation for the storming of the Bastille. And the councilmembers that look for reelection that have done this or will go down this path, I don't see them being reelected because of the outcry of injustice to deal with this. Now, how do you deal with it? I've said before, you're going to have to ask President Obama to send in the requisite number of United States military personnel, including medical personnel, to address the needs of the mentally ill, and then to address the criminal element, the vagrant element, illegal aliens, and to position yourself not to have this issue that Oakland have with these occupiers disrupting the economy. Other than that you've done an outstanding job and thank you very much.

>> Councilmember Constant: Thank you sir and I voted against the inclusionary so I agree with you.