



January 19, 2010

Honorable Mayor and City Council
200 East Santa Clara Street
San Jose, CA 95113

RE: Retirement Board Governance
Response to the January 12, 2010 Memo from City Manager Deb Figone **and**
the September 2009, Revised Report from Cortex Applied Research, Inc.
City Council Agenda 01/26/10

Dear Mayor and Council,

Our organization strongly **opposes** Recommendation 1 included in the January 12, 2010 Memorandum from City Manager Deb Figone. This recommendation is based upon a consultant's report that is rife with incomplete information and missing facts, includes faulty analysis and contradictory logic, and capitalizes on a worldwide economic crisis to disingenuously denigrate our current retirement system.

We support adding additional perspectives to the board. This is an admirable goal and we support a governance model that would achieve this goal. Our proposal is to expand the board to 9 members. As per the current City Charter, the Council would appoint board members in relatively the same manner in which they do now. A list of qualifying criteria for potential public candidates would be created. Potential public candidates would be recruited, vetted and if they were qualified, placed on a non-ranked list.

The make-up of the board would consist of:

- One active police officer, one active firefighter, one retiree (either police or fire) and these three would recommend a qualified public candidate from the approved list to the council for a fourth appointment. Total of 4.
- One City Council Member, one City Manager representative, and two qualified public candidates from the approved list would be recommended to the Council for appointment. Total of 4.
- Once these 8 were seated they would recommend to the Council an additional public candidate from the approved list for appointment.

This governing model will ensure that all stakeholders are adequately represented and involved in the important decisions made by this board. It is important to note that of all the members on the current board, Councilmembers are the only members entrusted directly by the public to oversee public funds, which include the City's General Fund, Capital Budgets and the RDA budget.

In addition, we will demonstrate that the perceived "conflict of interest" argument is a smoke screen intended to play upon your very high ethical standards. This argument is unfounded and not supported by fact.

Cortex and City Management tout the San Diego model liberally in their respective September 2009 Revised Report and January 12, 2010 Memorandum. With regard to "conflict of interest" the San Diego pension board was recently advised by its legal counsel as to pension board member's fiduciary responsibilities. Most germane to San Jose's discussion was the advice focusing on primary duty and secondary duty.

Primary Duty and Secondary Duty

SDCERS Board must act in the overall best interest of all members and beneficiaries with respect to funding of promised retirement benefits

- Exclusive benefit rule applies
- Primary duty rule applies (Constitutional duty to "minimize employer contributions" is secondary to primary duty)¹

Thus, the model most often cited by Cortex and City Management encourages board members to not only act in the best interests of all members and beneficiaries but to also perform their constitutional duty to minimize employer contributions. We strongly believe that our elected City Councilmembers are best equipped to perform this very important role.

The reality is that these so called "conflicts" are perfectly acceptable and expected as part of the governance process. This is because by California law, all pension plan members owe their fiduciary duty to the plan first. That's the law.

The consultants hired by City Management, Cortex Applied Research, have authored several easily accessible articles and white papers with regard to pension fund governance. Based on our review of one such writing, they enthusiastically endorsed the conclusions of Philip R. Lochner and Richard H. Koppes on the subject of governance and reference their work extensively.

¹ Fiduciary Considerations Regarding Actuarial Funding Decisions. San Diego City Employees' Retirement System, July 17, 2009 Board meeting. Presented by Ashley K. Dunning, Manatt, Phelps & Phillips, LLP.

In the Cortex white paper titled, *Good Pension Governance: An Advocate's Guide for Improvement* published in February 2001 by the National Association of Public Pension Attorneys Report and written by John Por (Founder of Cortex Applied Research, Inc.) and Tom Inannucci (President of Cortex Applied Research, Inc.) they wrote:

“Based upon our experience providing management consulting services to large public funds, we share the views of Lochner and Koppes, and we support the authors in urging public funds to be proactive in improving their governance practices.”²

So what did Lochner and Koppes write in the white paper cited by Cortex, *Good Corporate Governance and its Advocates: The Governance of Public Pension Funds and the Governance of Public Companies?* They wrote:

“The power of the ideal of good governance, of course, has proven to be substantial, whatever its limitations as an empirically verifiable model linking internal corporate rules to economic success. This is to some extent in spite of the misuse to which the idea has been put, and the sometimes unsavory nature of a few of its supporters. A number of rogues and scoundrels, as well as some just seeking to get rich, have chosen to make use of the rhetoric of good governance to support whatever short-term and self-serving goals they may have had. Few things can cause an idea or a slogan to be discarded faster by the public, as well as those who purport to lead the public, than finding that some of those who march under the same banner are mere opportunists or worse. In our society it is nearly impossible to prevent those who ill-serve a cause from taking it up; but to avoid contamination, the well-intentioned are best advised to create as much distance in tone and practice as they can from their shadier allies. Again, the criticism of some public funds is that they have been—in the best American tradition—opportunistic in their choice of allies. But there are long-term costs in so proceeding, and those costs may to some extent undermine the good governance cause as well as the ultimate effectiveness of some public funds.”³

It is unfortunate that in San Jose the idea of “good governance” with regard to the P&F Retirement Board, an idea in which we strongly believe in, has been harmed by a high-priced consultant report that is based in many areas upon zero facts and data and limited review or assessment of relevant information.

On Pg. 4 of the January 12, 2010 Memorandum titled; Retirement Board Governance it states:

Consultant Review of Retirement Board Structure

² “Good Pension Governance: An Advocate's Guide for Improvement.” Por, John & Iannucci, Tom; *The NAPPA Report* February, 2001. Cortex White Paper

³ “Good Corporate Governance and its Advocates: The Governance of Public Pension Funds and the Governance of Public Companies.” Lochner, Phillip & Koppes, Richard; *Corporations, Securities & Antitrust Practice Group Newsletter*, Volume 3, Issue 3, Winter 2000; February 1, 2000.

“The City of San Jose retained Cortex Applied Research (“Cortex”) to review the fiduciary governance models of both of the City’s retirement plans. The scope of the review was limited to the governance models of the City’s retirement systems including the composition of the retirement boards, the authority of the boards and of the City, and the necessary skills and experience of board members. **The scope of the review did not include a review of the retirement benefit design or benefit level.**”

What the Memorandum fails to disclose is that the scope of the Cortex review **also did not include:**

A review or assessment of any specific actions or decisions of the City, the retirement boards, or any board member: i.e. it was not an investigation of any type.⁴

What exactly did the City pay for? Based upon Cortex’s admittedly lack of any investigation, review or assessment of any actions or decisions of the City and/or retirement boards, they conclude on Pg. 4 of the January 12, 2010 Memorandum the following:

“Based on their review of relevant documentation, interviews with stakeholders, and research into industry best practices, Cortex concluded that the current governance models of the retirement plans do not support the long-term effective management of the plans and therefore do not effectively serve the interests of the plan stakeholders, i.e. members, retirees, and taxpayers.”

This of course begs the question: What body of evidence, analysis, and/or relevant facts and data did Cortex review to base their recommendation upon? It appears to us that these cottage industry pension board consultants have a cookie-cutter approach that aligned with the preconceived goals of City Management, and were hired to cook up a document to support those preconceived goals. This was never, in our opinion an open, honest and transparent process intended to promote “good governance” but rather, a well choreographed, bait and switch intended to stack the board with unelected and unaccountable outside “financial experts”. The very same “financial experts” that hurled our world economy into chaos.

At the bottom of Pg. 4 and continuing to the top of Pg. 5 of the January 12, 2010 Memorandum, City Management goes on to write:

- “Cortex identified a number of weaknesses in the current retirement governance models and identified two as particularly noteworthy:
- The governance models do not ensure that the retirement boards on balance will possess sufficient and relevant expertise to effectively guide and oversee the retirement systems, and

⁴ Cortex Applied Research, Inc. presentation; “A Review of the Governance Models of Police & Fire Department Retirement Plan & Federated City Employees’ Retirement System,” August 26 & 27, 2009.

- The governance models do not ensure that the retirement boards will be free of significant conflicts of interest and able to focus freely on the administration of the systems and the best interests of the members and beneficiaries.”

What the Mayor and Council are being asked to assume is that a restructured retirement board stacked with outside/independent financial experts will improve fund performance. This is a false assumption being peddled from city to city by consultants feeding at the trough of fear and despair brought about by a worldwide economic crisis. It’s shameful, and the assumption is about as likely as a hole-in-one on a Par 5.

In the Lochner and Koppes white paper praised by the Cortex consultants and referenced above, they write:

“For example, some of the corporate concern arises from the genuine inability to correlate good governance and economic performance. Certainly the academic studies of the relationship are both numerous and inconclusive.”

They go on to write:

“It is worth considering whether some advocates of good governance have allowed themselves to be fundamentally distracted from more crucial matters by continuing to pursue the grail of the relationship between governance and performance.”

“The power of the ideal of good governance, of course, has proven to be substantial, whatever its limitations as an empirically verifiable model linking internal corporate rules to economic success.”

There is no data presented by either Cortex or City Administration that supports the Cortex conclusion that the *“current governance models do not ensure that the retirement boards on balance do not possess sufficient and relevant expertise to effectively guide and oversee the retirement systems”*.

Quite to the contrary, the current and past boards that have guided and oversaw the P&F Department Retirement Fund have an excellent and proven track record of performance. When compared to the funds identified by Cortex as possessing superior governing models, San Jose has done very well.

For example, the Yale University Endowment/Corporation Fund, detailed on Pgs. 27 and 28 of the September 2009 Revised Report from Cortex, recently experienced one of the largest fund meltdowns in the nation, losing 25% for the fiscal year

ending June 30, 2009.⁵ San Jose's Police & Fire Department Retirement Plan lost 18.4% during the same timeframe, 7.4% better than Yale.⁶

We dare to venture that there is no better qualified, educated, and experienced governing board in the nation when compared to Yale's. The former Chairman of J.P. Morgan Chase & Co., Chairman and CEO of Time Warner Inc., President of Yale University, Editor of Newsweek, a United States Court of Appeals Judge, Managing Directors of Bain Capital and Sutter Hill Ventures, Chairman of Irwin Financial Corporation and Greylock Management, Vice-President Finance & Administration for Yale University, with a Ph.D an MBA and an LLB to boot.

Smart, expert bunch. Yet, in a white paper published in November 2009 titled; *The Yale Endowment Model of Investing Is Not Dead*, the author wrote:

"Until very recently, it seemed to some that the Yale Model was invincible. This all came to a grinding halt, however, in the past year when the largest university endowments—those of Harvard and Yale—stunned the investment world when they announced losses of 27% and 25% respectively, for the year ended June 30, 2009. This shocking news led many to declare that modern portfolio theory, the intellectual underpinning of the Yale Model, was dead. Upon closer inspection, however, it becomes clear that the problem is with neither modern portfolio theory nor asset allocation, but rather with the endowments' policies of holding shockingly small amounts of cash in their portfolios relative to the amounts needed to finance the day-to-day operations of their respective universities"

The white paper goes on to point out:

"So bad did it get that the cash-strapped Ivy League universities were humbled into actually borrowing money by issuing bonds just to pay for their daily operating expenses. This is because Ivy League schools rely on their endowments to fund more than 25% of their day-to-day operations, compared to the average 5% for all colleges, making liquidity especially critical for the daily operations of the Ivies."

The November 2009 white paper dissecting how Yale went wrong concludes:

"Given the immense and ongoing cash needs of the large university endowments, it is shocking how little cash they actually had in their portfolios. The fault, however, is not that the endowments invested too much in alternatives like private equity, but that they invested far too little in cash and liquid assets.

Modern portfolio theory and asset allocation are not dead, and alternatives can and do play an important role in a well-constructed and well-diversified

⁵ "The Yale Endowment Model of Investing is Not Dead"; Keating, Timothy; November 2009.

⁶ Cortex Applied Research, Inc.; "City of San Jose Retirement Systems—Governance Review," pg. 10; September, 2009.

portfolio. **The difficulties the large endowments faced this past fiscal year do not reflect a breakdown of the principles of asset allocation, but rather a failure on the part of the endowment managers to properly diversify their portfolios and plan for extreme events.** In the future, the endowments must model and prepare for extreme events, evaluate whether the classification of their assets genuinely reflect true diversification, and perhaps most importantly, appropriate a much larger portion of their portfolios to cash and other liquid assets.”

The Yale “experts” were unable to weather the recent economic storm as well as the current San Jose Police & Fire Department Retirement Board was able to. In the year ending June 30, 2009 our fund outperformed the Yale fund by 7.4%. Not bad for a retired cop, a street cop and a firefighter, a civil service commissioner, two city councilmembers and a city department head.

Sound asset allocation strategies, investing for the long-term, excellent government accounting and financial reporting, and implementing a plan design and administering the plan in a transparent and open manner have been recognized achievements of the SJP&F Department Retirement Board.

The Public Pension Coordinating Council, a confederation of the National Association of State Retirement Administrators, National Conference of Public Employee Retirement Systems and National Council on Teacher Retirement bestowed the Public Pension Standards 2007 Award to the SJP&F Department Retirement Fund. On the award certificate it states:

“In recognition of meeting professional standards for plan design and administration as set forth in the Public Pension Standards.”⁷

On June 30, 2007 the Government Finance Officers Association of the United States and Canada awarded the SJP&F Department Retirement Fund its Certificate of Achievement for Excellence in Financial Reporting.⁸

And in an August 24, 2007 News Release sent to the media, by the City of San Jose, the headline reads: **San Jose Police & Fire Department Retirement Fund Gains 19.3% for the Fiscal Year.** The City then explains these exemplary results with the following quote:

“A majority of the return was derived from asset allocation,” says Russell Crosby, newly appointed Director of Department of Retirement Services. “This indicates that ***the Trustees’ asset allocation decisions were the***

⁷ San Jose Police & Fire Department Retirement Plan, Comprehensive Annual Financial Report, 2007-2008, pg. 9; Certificate of Achievement presented by Government Finance Officers Association of the United States and Canada.

⁸ San Jose Police & Fire Department Retirement Plan, Comprehensive Annual Financial Report, 2007-2008, pg. 10; Certificate of Meeting Professional Standards in Public Pensions; Presented by Public Pension Coordinating Council.

driving force to the portfolio's outstanding performance." (emphasis added)⁹

To further illustrate the steady performance of the SJP&F Retirement Fund, we have included for your review the May 18, 2009 Memorandum to you from Russell Crosby. On Pgs. 5 and 6 are the yearly Gross Investment Returns since July 1, 1956. These returns demonstrate the ability of the board to navigate through recessionary periods and maximize returns while minimizing risk.

We do question the veracity of Table 3 on Pg. 2 of Mr. Crosby's Memorandum. He attempts to demonstrate that post-recessionary periods are not economically robust enough to support the current assumed rate of return.

This is not accurate. First, if one takes the **actual versus the average** gross rate of return for each year captured in the eight recovery periods the rate of return is 8.5% versus the Memorandum's 8.1%. If one excludes the Eisenhower years of 1958-1960 from this chart the return goes up to 8.8%. And if we start in 1981, nearly 3 decades ago, the return would be 10.8%. Each of these rates of return surpasses the current assumed rate of return of 8.0%.¹⁰

San Diego & Other Pension Models

City staff draws heavily from the recommendations included in a task-force report used to develop the City of San Diego's revised pension governing board, however, it speaks little to what actually occurred or what is being practiced in San Diego. Likewise, in evaluating other models, little to no mention is made of other nearby governing board structures in the Manager's Memorandum, the Council was simply provided a few Excel spread sheets.

With regards to San Diego, it is important to note that the push for reform came not because of poor returns, but due to alleged illegal behavior by some city officials and board members. Further, governance was one of many issues studied by a task force established to evaluate San Diego's system (of the 17 recommendations, only 2 focused on "governance"). The Manager's report fails to point out that San Diego's task-force had significant disagreement with regard to changing the board structure, with nearly half of the task-force believing that the City's chronic underfunding of retirement benefits were to blame for the Fund's problems, not its structure.

The disagreement on the composition of the board and their method of appointment pitted the two union representatives and the committee member with legal expertise specializing in retirement planning and the committee member with

⁹ Crosby, Russell; "San Jose Police & Fire Department Retirement Fund Gains 19.3% for the Fiscal Year," August 24, 2007 Press Release.

¹⁰ Crosby, Russell; Memorandum: "Response to Councilmembers M. Nguyen and A. Kalra's memo dated April 13, 2009," May 18, 2009.

experience in designing defined-benefit plans and fiduciary due diligence for a private sector company versus a 5 vote majority.¹¹

The other reality is that not all of the San Diego task-force's recommendations were implemented, especially with regard to governance. We point this out because the Manager's Memorandum quotes liberally from the report in San Diego, but does not provide much detail into how the actual system changed.

Specifically, in San Diego the Mayor and Council rejected the recommendation to eliminate all employee and employer representatives—a recommendation made to eliminate “conflicts of interest.” The current model maintains not only active plan members, and a retired plan member, but it also maintains a City management employee who is appointed by the Mayor. The San Diego plan never had any Council representatives and has always had “independent members.” In fact, the board structure didn't change much.

With regard to conflicts of interest, the San Diego pension board was recently advised by its legal counsel as to the pension board member's fiduciary responsibilities. Most germane to San Jose's discussion was the advice focusing on primary duty (ensure that the board adopts funding methodologies and polices to “ensure the retirement system is funded sufficiently to pay for promised benefits”) and the “secondary duty” which is to minimize employer contributions provided it does not compromise the system's ability to pay for promised benefits.

The reality is that these so called conflicts are perfectly acceptable and expected as part of the Governance process. This is because by California law, all pension plan members owe their fiduciary duty to the plan first. That's the law.

Further, we wish to remind the Council that despite the reformulated San Diego board, the San Jose Police and Fire plan outperformed it on a 3-year basis and is essentially equal on a 10-year basis.

We caution the Council from adopting the Manager's/Cortex's definition of conflict on governance issues as it creates an internal inconsistency for other City Council policies and activities. **For example, the City Council also acts as the Redevelopment Board of Directors, with its own fiduciary responsibilities to the City, RDA, taxpayers and its bondholders.** The Council makes decisions that impact both the RDA and City General Fund (such as diverting RDA funds for City services). Sometimes the Council sits *simultaneously* as the Redevelopment Board and the City Council.

Additionally, five members of the City Council sit on the VTA Board of Directors. As such, they have their own fiduciary responsibility to the communities and taxpayers served by the VTA, which may conflict with the best interests of the

¹¹ “City of San Diego Pension Reform Committee's Minority Report of Members,” Italiano, J. & Elmore, S., September 21, 2004.

City or its residents. The same could be said regarding ABAG and MTC representation.

Council vs. Retirement Board in San Diego

It is also important to note that currently in San Diego a conflict exists between members of the City Council and the Retirement Board (San Diego does not have any council representation on the retirement board, and never has). A war of dueling press releases and public fencing has occurred around the Board's decision to agendize and "discuss" what other public pension plans in California and around the country are considering in light of FY 2009's investment returns.¹² Some Councilmembers believed that even discussing what other pension plans were considering was a slippery slope toward lowering City contributions and unnecessarily putting the General Fund at risk.¹³

However, based on the current model propagated by Cortex and City Management, the Council would have zero ability to ensure this point of view is taken into account on the retirement board. As our City Manager and Cortex have pointed out, the City taxpayer is responsible for 100% of the risk, yet the council has zero ability to protect the taxpayers interests. This makes little sense to us. To hand over to an unelected, potentially non-local taxpayer with zero accountability to the residents of San Jose the power to control our general fund is an abdication of responsibility and should be opposed. City Councilmembers are the ultimate protectors of taxpayer dollars and their service on the SJP&F Retirement Board has been an important component of the board success.

Other California Board Structures

The reality is that there are plenty of different governing board structures that serve the needs of individual communities. In fact, there's no one best practice recognized by any authority and absolutely no evidence that board structure leads to improved investment results. Further, despite the conclusion that may be drawn from the reports the Council has received, many governing boards have elected officials serving on them. Consider the following examples:

- **City and County of San Francisco:** 3 elected members (2 active employee members; 1 retiree member) elected by active and retired members; 3 "professional members" appointed by the Mayor; 1 member from the Board of Supervisors.
- **County Employees Retirement Law of 1937 Communities:** 4 elected plan members (3 active members, 1 retired member); 4 appointed members who are not connected with the County Government except 1 may be a County

¹² Sullivan, Mark. "Statement Regarding Board's Hearing of Actuarial Implications of FY 009 Investment Results." July 17, 2009.

¹³ Frye, D & DeMaio, C; Memorandum to SDCERS Pension Board, "Educational Overview of Other Public Pension Plan Actions," July 16, 2009.

Supervisor; 1 Ex-Officio who is the County Treasurer (please note that County Treasurers are *elected officials* in these communities).

Thus, under this model, there's a possible scenario, which in fact exists, where the Board majority has a direct connection to the plan/County (3 employee reps + 1 retiree + 1 County Supervisor + 1 County Treasurer = 6 of the 9 board positions). While we did not research all counties covered by the 1937 Act, at minimum this is the case for San Diego, Santa Barbara and Sonoma Counties.

- **City of Fresno:** Has a 2-2-1 model: 2 members elected from the employees; 2 members from City Management; 1 City of Fresno resident who is independent and who is elected by the previous four members.

Cortex Identified Plans

In addition to the California plans described above, we also would like to bring to the Council's attention the plans that Cortex identified as having superior governance models when compared to San Jose's which can be found on Pg. 27 of the September 2009 Revised Report from Cortex:

- **United Mine Workers of America Combined Benefit Fund:** Seven-member board (2 union representatives, 2 industry representatives, three other members selected by the 4 union/industry trustees). No discernable criteria for qualifications to serve on board.
- **Ontario Teacher's Pension Plan:** Nine-member board appointed equally by the Union and Ontario government (4 union, 4 government, 1 chosen by both union/government).
- **National Railroad Retirement Investment Trust:** Seven-member board (3 union representatives, 3 railroad company representatives, 1 chosen by both union/management).

The conclusion we wish the Council to draw from the different models above, and the San Diego experience, is that most other systems have both plan sponsors (elected officials, city management, owners for private sector) and plan recipients (employees & retirees) on their boards.

The newly raised issue of "conflict of interest" with regard to plan structure is curious. Based on public comments by City Administration, the impetus behind governance structure changes was the performance of the plan. It appears that "conflict of interest" is the newest rung to grasp for to achieve so called "reform." The reality, however, is that almost all of our peers, in the public and private sector, have the "conflict of interest" that Cortex and the Manager speak of.

Manager's Proposed Structure Lacks Taxpayer Accountability

The Manager's recommendation that four members of the plan be completely independent from the City effectively removes all accountability to the public and places it in the hands of purported "experts." However, what makes matters worse is that the Manager is recommending that board members can reside within a 90-mile radius of San Jose—eliminating the normal residency requirements of City commissions.

What does this mean?

It means that the "expert" individuals need not be San Jose taxpayers. This is in direct conflict with what Cortex and the Manager repeatedly state throughout their respective recommendations: City taxpayers bear all the risk, thus they should have majority representation on the board. So, are we to conclude that non-San Jose board members would vote in the best interests of San Jose residents?

Second, it presents a scenario where a majority of the board could be non-taxpayers. Now if the goal is to eliminate all conflict of interest by these four board members, including eliminating the criteria that the board members actually be taxpayers, then mission accomplished! After all, taxpayers would have various interests at stake such as, funding of city services, tax proposals to offset increased pension obligations, etc.

We also ask that you reject the 90-mile radius requirement. Otherwise, this effectively would mean that residents as far away as Napa County, Tuolumne County, and King City in Monterey County would be eligible to serve on the retirement boards.

We question the wisdom in appointing members who have no stake in the actual outcome of the plan's performance. We believe that does not serve anyone's interest, certainly not the taxpayers.

Further, we continue to dispute the notion that City Councilmembers are not recognized as representatives of the public in general and the taxpayers specifically. Of all the members on the current boards, Councilmembers are the only members entrusted directly by the public to oversee public funds which include the City's General Fund, Capital Budgets and the RDA budget. Weekly, Councilmembers are asked to make decisions on complex financial issues including various bond offerings, tax increment financing, revenue anticipation notes and so on.

Although the January 12, 2010 Memorandum opines about the respective retirement boards being independent, it rings a little hollow when further along in the Memorandum it discusses the process for removal of Board Members.

On Pg. 7 and 8 of the Manager's Memorandum under the heading Authority of Retirement Boards it states:

Regarding control of the retirement funds, the San Jose Municipal Code specifies that the retirement systems and the retirement funds shall be managed, administered and controlled by each board. The Municipal Code further specifies that the retirement boards have exclusive control of the administration and investment of the retirement funds.

The boards possess broad and flexible investment authority and make significant decisions related to how the retirement funds are invested. The authority and responsibility to control the retirement funds will not change with a modification in the composition of the boards: the retirement boards will retain that authority and responsibility.

It sounds pretty independent to us, until we read Pgs. 15 and 16 under the heading: **Removal of Board Members**, where it states:

Currently, the San Jose Municipal Code, Section 2.08.130 provides that any person appointed to holding the position of member of any board or commission may be removed from appointment, at any time, by the council, with or without prior notice, and with or without cause.

Without cause a board member could be removed. No reason needed. How beholden will Council majority appointees be to management initiatives or special interest influence knowing they could be removed for no cause? The current process would be expanded from the City Manager or Union submitting a written request for removal to the City Council to anyone under the sun being able to request removal.

This is not a recipe for independence, but rather a look over your shoulder after every vote recipe. We believe that once appointed, a board member should only be removed for malfeasance or breach of fiduciary duty, period.

It is our hope that a compromise can be reached that achieves our respective goals. We believe our proposal outlined on Pg. 1 of this letter is the best course of action. Turning over the board majority to a group of unelected, unaccountable, outside financial experts is a risky scheme that is unsupported by the available facts, data and analysis. Cortex failed to make the case for their recommendation.

Sincerely,

Jay Wendling
President