



**MINUTES OF THE
RULES AND OPEN GOVERNMENT COMMITTEE**

SAN JOSE, CALIFORNIA

WEDNESDAY, JUNE 11, 2014

The Rules and Open Government Committee of the City of San José convened in Regular Session at 2:04 p.m. in the Committee Rooms 118-120, Council Wing, City Hall.

PRESENT: Mayor Chuck Reed, Vice-Mayor Madison Nguyen, Councilmember Pete Constant and Councilmember Pierluigi Oliverio.

ABSENT: All Present.

STAFF: City Manager Ed Shikada, Assistant City Manager Norberto Duenas, City Attorney Richard Doyle, City Clerk Toni Taber, Assistant City Clerk Tom Graves, Mayor's Agenda Services Manager Ahmad Chapman, Agenda Services Manager Gloria Schmanek, and Deputy City Clerk Suzanne Guzzetta.

CITY COUNCIL (CITY CLERK)

- (1) Review June 17, 2014 Final Agenda**
- a. Add New Items to Draft Agenda
 - b. Assign "Time Certain" to Agenda Items (if needed)
 - c. Review of Items that Meet Exception Rule (if needed)

Public Comment:

- David Wall objected to the number of items pushed through on the last agenda of the year. He pulled Items 2.23 and 2.37 and offered comments.
- Susan Landry spoke on the second reading of the medical marijuana ordinance.

Action: Upon motion by Councilmember Constant, seconded by Councilmember Oliverio and carried unanimously, the Committee approved the agenda including the following sunshine waivers, additions, and changes (4-0.):

- Sunshine Waivers:
 - o 10-day waivers for Items 2.9, 2.14, 2.19, 2.31 legal documents, 3.3, 3.4(c), 3.7, and 3.9.
 - o 14-day waivers for items 2.19, 2.22, 2.26, 2.27, 2.28, 2.29, 2.33, 2.37, 2.38, 2.39, 2.40, 2.41, 3.3, 3.4(c), 3.7, and San José Financing Authority Item 2;

(1) (Cont'd.)

- Additions of and Sunshine Waivers for 1.x, Presentation of a commendation to Erika Hull; 2.x, Mayor and Council Excused Absence Requests; 2.x, Councilmember Constant's Travel to Saint Paul, MN and Austin, TX; 2.x, Canadian Independence Day Flag Raising; 2.x, Sister Cities International Flag Raising and Conference Opening Ceremony; 2.x, District 1 Leadership BBQ; 2.x, Terms of an Agreement with the Association of Building, Mechanical and Electrical Inspectors; 2.x, Terms of an agreement with the Association of Maintenance Supervisory Personnel; 2.x, Actions Related to the Parking and Access Easement Agreement for the Vintage Towers Apartments; 2.x, Actions Related to the Agreement with the County of Santa Clara for the 2013 Emergency Management Performance Grant; and, 9.x, Approval of a Cooperation Agreement Between the City of San José and the Successor Agency for Operating Expenses.
- Change Closed Session Start Time to 8:30 a.m., Open Session to start at 11:00 a.m., and schedule a Lunch Break from 1:00 – 1:30 p.m.
- Assign a time certain of "To be heard no earlier than 3:30 p.m." to Item 3.9
- Agenda Order to be heard as Budget Items, San José Financing Authority, Consent Calendar, and remaining agenda items in order. Ceremonial Items to be heard at 1:30 p.m.

(2) Review June 24, 2014 Draft Agenda
No Meeting.

REVIEW OF UPCOMING STUDY SESSION AGENDA(S)

None.

LEGISLATIVE UPDATE

- (1) State – None
- (2) Federal – None

THE PUBLIC RECORD

Documents Filed: Memorandum from City Clerk Toni Taber to the Mayor and City Council dated June 6, 2014, transmitting the Public Record for the Week of May 30, 2014 – June 5, 2014.

THE PUBLIC RECORD (CONT'D.)

Public Comments: David Wall pulled Items A and B, thanking retiring staff member, Kathy Carrillo, for her service to the City, and speaking on the discriminatory rate structure for sewer service and use charges.

Action: Upon motion by Councilmember Oliverio, seconded by Councilmember Constant and carried unanimously, the Public Record was noted and filed. (4-0.)

BOARDS, COMMISSIONS AND COMMITTEES

(1) Appointments – None.

(2) Work Plans

Airport Commission Fiscal Year 2014-2015 Work Plan and Fiscal Year 2013-2014 Annual Report (Airport)

It is recommended that the Rules and Open Government Committee approve:

- a. The Airport Commission Work Plan for Fiscal Year 2014-2015 recommended by staff and unanimously approved by the Commission; and
- b. The Annual Report on the Fiscal Year 2013-2014 Commission Work Plan.

Documents Filed: Memorandum from Director of Aviation Kim Becker Aguirre to the Rules and Open Government Committee dated June 4, 2014, entitled "Airport Commission FY 2014-15 Work Plan and FY 2013-14 Annual Report".

Director of Government and Legislative Affairs Jim Webb and Deputy Director of Aviation John Aitken presented on the Airport Commission workplan and were available to answer questions from the Committee.

Public Comment: David Wall offered comments on perimeter access and airport security.

Action: Upon motion by Councilmember Constant, seconded by Vice Mayor Nguyen and carried unanimously, the recommendation was approved. (4-0.)

(3) Annual Reports – None.

RULES COMMITTEE REVIEWS, RECOMMENDATIONS AND APPROVALS

(1) Workload Assessment for Council Requests and Referrals. – None.

(2) VTA SR-85 Express Lanes Project. (Khamis/Kalra/Rocha)

- a. Request that the City Council take a "support" position on the SR 85 Express Lanes Project as presented to the public in early 2014.
- b. Direct staff to submit a letter of support to the Santa Clara Valley Transportation Authority for the SR 85 Express Lanes project.

Documents Filed: (1) Memorandum from Councilmembers Johnny Khamis and Donald Rocha to the Rules and Open Government Committee, dated June 5, 2014, entitled "VTA SR-85 Express Lanes Project"; (2) Letter from Berg & Berg Developers, Inc. to Mayor Chuck Reed & Council Members in opposition to the recommendation.

Public Comment: David Wall noted that residential growth needs to be addressed prior to addressing this project.

Councilmember Khamis was available for comment and answered questions from the Committee.

Action: Upon motion by Councilmember Constant, seconded by Vice Mayor Nguyen and carried unanimously, the Committee approved the recommendation, placed it on the June 17, 2014 City Council Agenda, and directed staff to submit a letter of support to the Santa Clara Valley Transportation Authority for the SR 85 Express Lanes Project. (4-0.)

(3) Bird-Safe Building Design (Liccardo/Chu)

Place an item on the June 17, 2014 City Council Agenda directing the City Manager to return to Council in six months with development guidelines that promote bird-safe building design city-wide.

Documents Filed: (1) Memorandum from Councilmembers Sam Liccardo and Kansen Chu to the Rules and Open Government Committee, dated June 4, 2014, entitled "Bird-Safe Building Design"; (2) Twelve (12) letters from the public in support of the recommendation.

Motion: Councilmember Constant moved to approve the recommendations in Councilmember Liccardo and Councilmember Chu's memorandum. Vice Mayor Nguyen seconded the motion.

Councilmember Liccardo was available for comment and answered questions from the Committee.

Public Comments: Mike Ferreira, Conservation chair for the Loma Prieta Chapter of the Sierra Club, Shani Kleinhaus, Audobon Society Chair, Michelle Harris, Jodie Sonntag, Joshua McCloskey, Christine Slocomb, Rachel Beck, Cindy von Ofenheim, and Linda Ruthruff spoke in support of the recommendations.

Committee discussion ensued.

Mayor Reed offered an amendment to the motion to forward the memo to the Transportation and Environment Committee workplan in the Fall. Councilmember Constant and Vice Mayor Nguyen accepted the amendment.

(3) (Cont'd.)

Action: Upon a call for the question, the amended motion carried unanimously, the Committee forwarded the recommendation to the Transportation and Environment Committee workplan in the Fall. (4-0.)

(4) **November 2014 Ballot Measure to Hold Union Negotiations as Public Meetings. (Oliverio)**

Direct the City Attorney to draft a ballot measure for review at the June 17, 2014 city council meeting which allows members of the public to attend union negotiations.

Documents Filed: Memorandum from Councilmember Pierluigi Oliverio to the Rules and Open Government Committee, dated June 5, 2014, entitled "November 2014 Ballot Measure to Hold Union Negotiations as Public Meetings".

Councilmember Oliverio was available for comment and clarified that the item should come forward on August 5, 2014.

Public Comments: David Wall spoke in support of the recommendation.

City Attorney Rick Doyle offered comments on the recommendation and answered questions from the Committee.

Committee discussion ensued.

Action: Upon motion by Councilmember Constant, seconded by Vice Mayor Nguyen and carried unanimously, the Committee referred the matter to be discussed in Closed Session on June 17, 2014. (4-0.)

(5) **Process to Fill an Unanticipated Vacancy on the Federated Retirement Board. (City Clerk)**

- a. Direct the City Clerk to initiate the appointment process for the unanticipated, unscheduled vacancy for an employee member on the Board of Administration of the Federated Retirement System (Federated Retirement Board) to appoint a new City employee to the end of the resigned member's term, November 30, 2017.
- b. Forward the recommendation to the full Council for action on June 17, 2014.

Documents Filed: Memorandum from City Clerk Toni J. Taber to the Mayor and City Council, dated May 30, 2014, entitled "Process to Fill and Unanticipated Vacancy on the Federated Retirement Board".

City Clerk Toni J. Taber was available for comment and to answer questions from the Committee.

Action: Upon motion by Councilmember Constant, seconded by Nguyen and carried unanimously, the Committee approved the recommendation, and forwarded the recommendation to the full City Council for discussion and formal action on June 17, 2014. (4-0.)

(6) Wage Theft Policy. (Kalra)

Refer the following item to an upcoming Council Agenda:

Direct City Manager to:

1. Establish a Wage Theft Task Force to meet for six months to develop recommendations for an effective ordinance to combat wage theft. The Task Force should consist of representatives from city departments that issues business licenses, collect business taxes, the City Attorney's office, members from the business community, community-based organizations, workers, and labor unions.
2. Analyze and report back to the Wage Theft Task Force on the feasibility of possible wage theft enforcement mechanisms including but not limited to:
 - a. Implementing a system for flagging those businesses that are "wage theft violators" based on noncompliance with state and federal wage and hour law (i.e. judgment recorded in Superior Court by the Labor Commission) in the last 3 years.
 - b. Revising all City of San Jose contracts to permit revocation of contracts with wage theft violators and require all businesses that contract with the City to disclose all wage theft judgments or findings by a government body on an ongoing basis during the duration of the contract.
 - c. Authorizing departments that issue business licenses or city issued permits to suspend those licenses issued to wage theft violators.
 - d. Tracking all interactions that a business has with any City department using a single customer identification number (i.e. business license). The City should verify that the business entity listed on licenses and permits is a legal entity and that the same legal entity is listed on all interactions with the City.
 - e. Directing each City department to identify points of interaction with businesses or workers (especially low wage workers) within its routine business and provide "know your rights" information that pertains to wage theft.
 - f. Screening all businesses receiving a City benefit or recognition to ensure that wage theft violators are ineligible.
 - g. Ensuring, to the extent permissible by law, that tax credits or tax exclusions are not granted to those businesses that are wage theft violators.
 - h. Implementing wage theft training and education programs with police officers to enable them to appropriately respond to workplace disputes.
 - i. Assessing what resources would be needed in order for the City Attorney to affirmatively pursue wage theft cases.
3. Upon conclusion of the Taskforce's work, report back to the Rules Committee on the Taskforce recommendation for a Wage Theft Ordinance.

Documents Filed: (1) Memorandum from Councilmember Ash Kalra to the Rules and Open Government Committee, dated June 5, 2014, entitled "Wage Theft Policy"; (2) Santa Clara County Wage Theft Report.

Councilmember Kalra offered comments and answered questions from the Committee. He requested the item appear on the City Council Agenda of August 5, 2014.

City Attorney Richard Doyle answered questions from the Committee.

Committee discussion ensued.

(6) (Cont'd.)

Councilmember Constant expressed concern regarding the time and resources required to support the recommendation and noted that other agencies already exist for this purpose.

Public Comments:

- Martha O'Connell spoke against creating a redundant agency.
- David Wall opined that Parts 2.b and 2.c should include punitive measures, but does not support the recommendation.
- Dennis Raj, South Bay Labor Council, Brian Wheatly, President of the Evergreen Teachers Association, Julie Tran, Working Partnerships USA, Marisol Durani, Alexander Community Law Center, Huy Tran, Justice at Work Law Group, Ruth Silver Taube, Lam Diep, Legal Aid Society – Employment Law Center, and Michael Tayag, Pilipino Association of Works and Immigrants spoke in support of the recommendation.

Action: Upon motion by Vice Mayor Nguyen, seconded by Councilmember Oliverio, the motion carried and the Committee approved forwarding the memorandum to the full City Council for discussion in the August Priority Setting Session. (3-1. Noes: Constant.)

(7) **Downtown High Rise Incentive Program & Establishment of a Downtown Parks Maintenance District. (Mayor/Liccardo)**

Place an item on the June 17, 2014 City Council Agenda directing the City Manager to return to Council in September with a program that:

- a. Provides a unit extension of the 2007 Parks Specific High Rise Incentive Program, to add 50 units to the maximum limit; and,
- b. Establishes a Downtown Parks Maintenance District for High Rise and Mid Rise residential projects.

Documents Filed: Memorandum from Mayor Chuck Reed and Councilmember Sam Liccardo to the Rules and Open Government Committee, dated June 5, 2014, entitled "Downtown High Rise Incentive Program & Establishment of a Downtown Parks Maintenance District".

Mayor Reed and Councilmember Liccardo offered comments and answered questions from the Committee. Councilmember Liccardo noted the listing of a 1000 projects under "Other High Rise" in Attachment 1 should be deleted.

Public Comments: David Wall offered thoughts on high rise development and spoke against incentivizing development.

Scott Knies, San Jose Downtown Association, spoke in support of the memorandum.

Deputy Director of Parks, Recreation, and Neighborhoods Services, Matt Cano, answered questions from the Committee.

Action: Upon motion by Vice Mayor Nguyen, seconded by Councilmember Constant, the motion carried, the Committee approved the recommendation, and forwarded the recommendation to the full City Council for discussion and formal action on June 17, 2014. (3-1. Noes: Oliverio)

Items (8) – (11) were heard together

- (8) **AB 1826 (Chesbro) – Solid Waste: Organic Waste. (Environmental Services)**
- a. Adopt a position of support for AB 1826 (Chesbro).
 - b. Recommend a one-week turnaround to the City Council so that the City's legislative representative can advocate the City's support for AB 1826.
- (9) **AB 2145 (Bradford) – Electricity: Community Choice Aggregation. (Environmental Services)**
- a. Adopt a position of oppose for AB 2145 (Bradford).
 - b. Recommend a one-week turnaround to the City Council so that the City's legislative representative can advocate the City's opposition to AB 2145.
- (10) **SB 270 (Padilla) – Solid Waste: Single-Use Carryout Bags. (Environmental Services)**
- a. Adopt a position of support for SB 270 (Padilla).
 - b. Recommend a one-week turnaround to the City Council so that the City's legislative staff can advocate for the City's support for SB 270.
- (11) **AB 1147 (Bonilla, Gomez, Holden): Massage Therapy. (Police)**
- a. Adopt a position in support for AB 1147 (Bonilla et al) Massage Therapy; and
 - b. Recommend a one-week turnaround to the City Council so that the City's Legislative Representative can advocate the City's support for AB 1147.

Documents Filed: (1) Memorandum from the Department of Environmental Services to the Rules and Open Government Committee, dated June 4, 2014, entitled “AB 1826 (Chesbro) – Solid Waste: Organic Waste”; (2) Memorandum from the Department of Environmental Services to the Rules and Open Government Committee, dated June 4, 2014, entitled “AB 1826 (Chesbro) – Solid Waste: Organic Waste”; (3) Memorandum from the Department of Environmental Services to the Rules and Open Government Committee, dated June 4, 2014, entitled “SB 270 (Padilla) – Solid Waste: Single-Use Carryout Bags”; (4) Memorandum from Chief of Police, Larry Esquivel, to the Rules and Open Government Committee, dated June 5, 2014, entitled “AB 1147 (Bonilla, Gomez, Holden): Massage Therapy”.

Director of Intergovernmental Relations Betsy Shotwell was available for comments and to answer questions from the Committee.

Public Comments: David Wall spoke in opposition to Items (8) and (10).

Action: Upon motion by Councilmember Constant, seconded by Vice Mayor Nguyen and carried unanimously, the Committee approved the recommendations for Items (8) – (11), and forwarded the recommendations to the full City Council for formal action on the Consent Calendar on June 17, 2014. (4-0.)

MEETING SCHEDULES

A short discussion ensued on the August City Council Priority Setting Session including setting the date. Tentatively, August 26th, during the regularly scheduled City Council meeting, was held, with August 22nd or 29th as reserve dates.

OF ADDITIONS TO COUNCIL COMMITTEE AGENDAS/WORKPLANS

- (1) Community and Economic Development Committee – None.
- (2) Neighborhood Services and Education Committee – None.
- (3) Transportation and Environment Committee – None.
- (4) Public Safety, Finance and Strategic Support Committee – None.

- (5) Rules and Open Government Committee – None.
 - a. Approval of the Rules and Open Government Committee workplan for the period from August through December 2014 and setting its meeting schedule as every Wednesday at 2:00 p.m. in the City Hall Wing Committee Meeting Rooms 118-120. (Mayor)

Documents Filed: Memorandum from Mayor Chuck Reed to the Rules and Open Government Committee, dated May 29, 2014, entitled “Rules & Open Government Committee Workplan”.

Motion: Upon motion by Councilmember Oliverio, seconded by Vice Mayor Nguyen and carried unanimously, the Rules and Open Government Committee workplan for the period from August through December 2014 and meeting schedule were approved. (4-0.)

OPEN GOVERNMENT

- (1) Appeals of Public Records Act Request – None.
 - a. Ms. Mou (City Clerk)

Documents Filed: Memorandum from Director of Communications, David Vossbrink, to the Rules and Open Government Committee, dated June 6, 2014, entitled “Public Records Appeal by Karen Mou”.

Karen Mou spoke on the appeal of her Public Records Act Request and asked for clarification from the Committee.

Public Comments:

- David Wall spoke in support of denying the request.
- Martha O’Connell encouraged the Committee to apply the same rules for denying appeals to everyone.

City Attorney Rick Doyle offered additional background and concurred with Staff’s recommendation to deny the request.

(1) (Cont'd.)

Action: Upon motion by Councilmember Constant, seconded by Vice Mayor Nguyen and carried unanimously, the Committee denied the appeal of Karen Mou's Public Records Request. (4-0.)

OPEN FORUM

Documents Filed: Letter from Jason Tanko, Tanko Lighting, to the City Council, dated June 11, 2014, asking the City to reconsider part of the agreement with Chevron Energy Services.

David Wall thanked staff for addressing some of his complaints, and expressed additional concerns.

Karen Mou offered additional comments.

Joe Bollinger, Tanko Lighting, presented a letter to the Committee and asked them to put street light conversion back on the agenda for additional review.

ADJOURNMENT

The meeting adjourned at 4:04 p.m.



Mayor Chuck Reed
Rules and Open Government Committee

CR:slg