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>> Mayor Reed: I'd like to call this meeting to order. This is Rules and Open Government committee meeting for November the 10th, 2010. Any changes to agenda order? Okay. First item is the November 16th agenda for the city council meeting. Anything on page 1? Closed session starting at 9:00 a.m. Anything on page 2? Or 3? Anything on page 4 or 5? Makes 6 or 7?

>> Excuse me mayor on page 7 the item that was deferred yesterday, since I ran here, is the park funding the new park funding item that was deferred from yesterday coming back under section 5.

>> Mayor Reed: So it will be added under section 5.

>> City Attorney Doyle: It will and we wanted to note to be heard last not before 2:30 about.

>> Mayor Reed: 2:30 sounds kind of optimistic for last.

>> Yes, we went through it this morning and they didn't look like there were major items on the agenda before that. You could say 3:00 but --

>> Mayor Reed: Not before 2:30 I think is fine. I haven't had a chance to look at the rest of the agenda but you're right, there's nothing that looks lengthy, only two ceremonials unless we're adding some, we're adding a couple. All right. So last not before 2:30. Anything else on page 6 or 7? I have a note about high speed rail. There may be some language change but since we're going to defer it to December 7th we'll have a chance to fix whatever needs to be done.

>> (inaudible).

>> Mayor Reed: Right. Anything on 8 or 9? 9 be joint financing authority meeting, property exchange. I have some requests for changes to proclamations, GIS day, family week, and a request for excused absence for

Councilmember Campos due to training at state legislature. And then an item on supplement retiree benefit reserves adopting a resolution finishing the work that we've already started or is this a different --

>> City Attorney Doyle: There are two items. The resolution, that resolution will come back, it went to the Federated retirement board today. With respect to the Police and Fire, the SRBR will come back on second reading next Tuesday as well.

>> Mayor Reed: Do we have to add that?

>> City Attorney Doyle: That is automatically.

>> Lee Price: That will show up on your amended agenda on Friday.

>> Mayor Reed: Any requests for changes or additions?

>> Councilmember Pyle: Move to approve. With changes.

>> Second.

>> Mayor Reed: Motion is to approve with changes. All in favor, opposed, none opposed, that's approved. Council agenda for November 23rd, that's easy, no meeting. Thanksgiving week. Another little thing to be thankful for. Redevelopment Agency, November 16th agenda, anything on page 1? Page 2 or 3 or 4? If I changes or additions, Gary?

>> No, sir, not today.

>> Mayor Reed: All right.

>> Councilmember Chirco: Move approval.

>> Councilmember Pyle: Second.

>> Mayor Reed: All in favor, opposed, none opposed, that's approved. Upcoming study session agendas, November 18th agenda, and binder is out, so that's -- everybody's got that. Anything we need to do on that agenda?

>> City Manager Figone: Mayor we intend to issue a supplemental report today to augment the labor negotiations discussions.

>> Mayor Reed: Okay.

>> Councilmember Chirco: Move approval.

>> Councilmember Pyle: Second.

>> Mayor Reed: It's an awfully shored agenda for such a long meeting, it is complicated.

>> Lee Price: I would note this is a special meeting not a study session.

>> Mayor Reed: All right, special meeting. All in favor, opposed, none opposed, that's approved. Nothing on legislative update. Meeting schedules, approval Rules and Open Government meeting schedule changes for November and December. City Clerk got a memo on that.

>> Councilmember Chirco: Move approval.

>> Councilmember Pyle: Second.

>> Mayor Reed: Motion is to approve the changes reflecting the fact we have some dates where we have no council meetings. We have a rules in lieu meeting on November 23rd. Motion is to approve, all in favor? Opposed? None opposed, that's approved. Public record, anything in the public record committee would like to pull? And discuss? I have one request to speak on the public record, David Wall.

>> David Wall: Good afternoon. (inaudible) public record was a little light this week and I provided you with the 15 independent letters to you Mr. Mayor, and the council. In your packet.

>> Mayor Reed: I don't think that microphone is on. I can hear you fine but I'm not -- account people in the back hear on that mic? I just want to make shirr it's pick up.

>> David Wall: Anyway I just thought I'd bring them to your attention. It has this report in it. Because I wanted you to be aware of it but I'm not sure that you are aware of it.

>> Mayor Reed: That sounds right.

>> David Wall: So I cleaned it up in Microsoft word a little better than it was before. 15 pages or 15 independent letters to you. And it didn't get even reference in the public record. Kind of makes open government look a little bad. And the continuation of the suppression of this public record for what I believe is very sinister and nefarious means. I believe this whole outfit, the Consortium for Police Leadership in Equity is nothing more than a political front to give illegal aliens preferential treatment in San José. This report is not a scientific by any means analysis of the San José police department with reference to the contract scope of work. It's a demonstrative political agenda. It's very well stated. And its basis is in racism. They're basically propagating racism not trying to analyze it. And I don't understand why since the taxpayers are paying for this in kind, and it's a public record why the taxpayers can't look at it and make up their own decision whether or not in this tough budgetary time they want their police department to be fooling warned this political group. And so I bring it to your attention again. Thank you.

>> Mayor Reed: That concludes the testimony on the public record. Anything the committee would like to talk about? Councilmember Pyle. Cuss can you just pull the microphone down.

>> Councilmember Pyle: Yes Mr. Mayor I'd like to talk about H-3.

>> City Attorney Doyle: Mr. Mayor, I'd like to address the concerns that were just raised just for the record. This is the CPLE report that was contained in those letters. As requested by the Public Safety and finance committee or whatever they call themselves, the -- that was not to be posted online. I still owe a memorandum per the Vice Mayor's request to this committee to explain the background on that and I will get that to you by next week. But the reason it has not been posted is the committee made an agreement or requested that it not be posted and No. we get that resolved that's been the protocol. There really isn't any conspiracy or anything nefarious here it's just that I've been late in getting that to the committee and we'll respond by next week.

>> Mayor Reed: Okay. It is nevertheless a public record publicly available in hard copy, it's just not posted on the web.

>> City Attorney Doyle: It is not posted on the web.

>> Mayor Reed: Anything else on public record?

>> Emotion to note and file.

>> Second.

>> Mayor Reed: All in favor? Opposed, none opposed, that's approved. The next item would be City Auditor's monthly report of activities for October.

>> Sharon Erickson: Good afternoon, Sharon Erickson City Auditor. You have before you our report for October 2010. We issued three reports during the month of October. Our semi annual follow-up report on open audit recommendations, the audit of take home vehicles and the audit of airport concessions. During the month of September we also did a number of presentations on our pension sustainability audit. To the General Fund structural deficit elimination plan stakeholder group. I have that name memorized at this point. Both of the retirement boards and we did a brown bag session for city employees. What's going on now and in process is the annual external financial audit which is a major production for the City's finance department for the retirement systems and everybody else involved. The anticipated release is sometime either late November or early December. We have -- we're working on getting that completed, and to you. Then we're working on the audit of Team San José, at this point we do expect to release that report November 24th, in anticipation of a city council meeting on December 7th. And then we're still working on our audit of police management. We are also shooting for a date there of the December Public Safety, Finance and Strategic Support committee. We're also gathering information for the annual service efforts and accomplishments report and hope to get that to you in December as well. I do want to let you know that we've started another audit which is the personnel cost audit so if any of you have questions or concerns about the scope of that review we'd be happy to sit down with you and get those concerns. The tentative scope is a review of labor costs, including overtime, premium pay, step increases, and leave costs. And that's my report.

>> Mayor Reed: Comments or questions from the committee? Thank you very much, good job yesterday on the report that was in front of the council.

>> Councilmember Chirco: This just verifies what Madison Nguyen says is that every week there is an audit report. So with that I'd move to accept the report.

>> Mayor Reed: Motion is to approve. All in favor, opposed, none. H, that was H-2. H-3. It is a memorandum from Councilmember Pyle asking to direct the staff to conduct a workload assessment for drafting of a social host ordinance. Councilmember Pyle do you want to speak to your memo?

>> Councilmember Pyle: Yes, thank you mayor. This memo was submitted with the intent to mover the issue forward without demanding huge amounts of staff time. And it is when I submitted it at the time because of the number of fatalities of adults in alcohol related traffic accidents. San José does not need to reinvent the wheel. We have seven cities, nine cities rather in Santa Clara County who already done so, also have a social host ordinance and we also have a county version and another for higher learning colleges. The youth commission has already been provided information regarding the social host ordinance from Voices United and is very interested in supporting this work. District 5 and District 7 youth commissioners have already scheduled a forum in early December to discuss the social host ordinance. This should also be presented to the neighborhood commission. Gabrielle Antellevich, who is here with us today with Voices United has personally committed to helping with community outreach and I believe Gabrielle would like to say a few words, as soon as I get finished here. The funding would come from administrative citations and provide an opportunity for cost recovery for the police and fire services for parties with underaged drinking and this will be another tool in our tool box when addressing the serious issue of underaged drinking. We are short staffed, we understand everyone is overwhelmed, perhaps we can find some creative ways to work together to expedite this. With that may I invite Gabrielle to speak.

>> Mayor Reed: Okay, I have two requests to speak, Gabrielle Antellevich and David Wall. Gabrielle, go first.

>> Hi everyone, I'm the executive director for Voices United, and one of the things that we do as an organization is work on reducing the underage and binge drinking among teenagers. And we did all this research about different methods that really help that, and a social host ordinance is one of those things. So we actually wrote a grant which we were given by the County Department of Alcohol and Drug Services and we have helped with developing and working with different city councils around the county in getting social host ordinances happening. And you know it's really interesting you know this Palo Alto Gilroy everywhere around San José city. And so we've been working with the youth commissioners on getting their interest. And they actually passed a motion, either in May or June, to actively work with our organization. Because we feel that a social host ordinance is not just a piece of legislation. We are committed to actually educating the community about it, and the benefits of it. Because teenagers you know, their brains are not developed yet and the vulnerability to them

drinking alcohol is much higher than adults. And most parents who think that it's safer for them to drink at home and have little parties in the home is not true. So they need to be educated about that. And so you know, the youth commissioners are very enthusiastic, in fact, District 7 have put it in their work plan to work with us on the social host ordinance. And the community forums are for adults as well as teenagers because we want adults and teenage to talk together about this and the benefits of it. So the first one is going to be at the Mayfair community center on December 3rd. And Districts 5 and 3 have combined, and the youth commissioners and Voices United are putting this together. And we have already met to you know develop the agenda. And a lot of it's going to be education about how alcohol impacts teenagers differently from adults. So that adults get it. And we've been given funding to actually do this work and we see this as a partnership with San José city with Nancy Pyle's office, we're really grateful you're doing the kind of work that we can't, you know, because you guys need to feel comfortable with an ordinance that you will be passing. And so Nancy Pyle has been doing that kind of work that we can't so we're dove tailing.

>> Mayor Reed: Sorry your work is up.

>> So we're just dove tailing the work we're all doing. Thank you.

>> Mayor Reed: David Wall.

>> David Wall: Once again Councilmember Pyle blazes the trail. Just I don't know how the rest of you can take it. It's almost unfair she comes up with all these great ideas and doesn't get much credit. I want you to look at this in reference to the drunk-in-public ordinance that was somewhat of a mockery downtown. Does the sixth time being drunk at one of these parties count, or can you just blame it on staff for coming up with that ridiculous formula to begin with and let the police do what they do very well, and that's take care of criminal activity without any undue influences from the office of City Manager or what have you. These properties should also be looked at, as a formulation for a public nuisance prosecution, with reference to cost recovery, and make it very Draconian. And the attorney could be directed to look at it from a mechanic's lien point of view. As soon as these fines coming up they're given a certain specific time to pay, and if the money isn't cleared into the City's accounts,

then an immediate mechanics liens onto these properties with going after these people in civil court for public nuisance. That's where you get some real cost recovery. Other than that, a few hundred dollars here and there is not going to deter this type of activity. Make it tens of thousands and you'll take care of it. Thank you.

>> Mayor Reed: That concludes the public testimony on this. See what the staff has to say, City Attorney.

>> City Attorney Doyle: I think I'll take the lead here because I think the bulk of the work will be from my office. I think can I get back to the Rules Committee with an assessment by December 8th which I think -- and we'll let you know what it will take. I don't believe the ordinance in and of itself will take a long time. There are other models out there but we would also look at what the current laws with respect to the state, Councilmember Pyle has identified the most recent legislation which the governor signed that provides at least some liability. But we'll look at other cities and then give you an assessment as to how soon we can get back with an ordinance.

>> Thank you.

>> Mayor Reed: What about proposition 26 and the impact on administrative citation versus fees?

>> City Attorney Doyle: Well, administrative citation we'll look at that. I think to the extent you're imposing penalties, I don't think prop 26 will cover that. Or that's certainly not how I read the intent. But we'll get back to you with what restrictions there might be. I think cost recovery in terms of -- while some cities try to collect the cost of having to enforce which is the cost recovery for law enforcement, you know, some cities may try to impose penalties, whether they're fines in administrative citation, I don't think -- you know we have already similar structures for other penalties in place and I don't think those are at Rick. But we'll -- rather than talk out loud here, it's probably better to be addressed in the memo.

>> Mayor Reed: One more question for the City Manager I know on the agenda for the 18th, we'll be talking about existing staff referrals on the ordinance, I think this would be number 40 on the list of pending ordinance

changes for the staff and part of what we need to talk about is how do we manage 40 ordinance assignments with a shrinking staff ability to process ordinances which will be a topic of conversation I think on the 18th.

>> City Manager Figone: Yes, and the ordinance drafting is one element I think we have to be very realistic about enforcement and what it means to actually implement. And so you know, I appreciate Rick taking the lead. The 8th is sooner than I could have committed to but if you see yourself sooner in the lead we will support you in coming back to the Rules Committee but would I just caution us all apart from the drafting would be the question of what it takes to enforce, and we'll need to get PD's assessment of that.

>> Mayor Reed: It seems to me there are two parts of this, as I understand it. The first is the potential for administrative citations. The second is the potential for private cause of action for somebody who has been injured. That's really what the state law just changed.

>> City Attorney Doyle: Right, prior to this -- I think it's effective January 1 but prior to the change if you're over 18 you couldn't go after the parent or guardian. It was only after the individual, and this is anyone under 21. It's sort of the anomaly you can't legally drink until you're over 21 but you're an adult at 18, so there was that gap.

>> Mayor Reed: But if the state has already changed the law on private causes of action that's nothing we need to do if the state's changed it. They're the one to set the causes of action.

>> City Attorney Doyle: Exactly. What I think this would be designed to cover is to have the city enforce short of somebody having to get injured or get killed just the fact that you've served alcohol in a setting like that I think is what the city could use as a -- to enforce and again to the City Manager's point who enforces that, the police, code enforcement or how is that enforced and that's a resource issue too.

>> Mayor Reed: Okay so we'll bring this back on the 8th. Is that okay with the committee?

>> Councilmember Pyle: Sounds good.

>> Mayor Reed: So ordered I guess.

>> Councilmember Chirco: Do we need a motion?

>> Mayor Reed: Yes.

>> Councilmember Pyle: I move that this does -- the information from the attorney's office does come back by December 8th and we can proceed from there.

>> Councilmember Chirco: Second.

>> Mayor Reed: The motion is to bring it back December 8th with the workload assessment by the City Attorney. All in favor, opposed, none opposed, that's approved. Indemnity item is a registers from the City Clerk to approve a District 6 showing of the film trashed as a city sponsored special event so we can expend city funds and accept donations materials and services.

>> Move approval.

>> Mayor Reed: Motion is to approve, all in favor, opposed, none opposed, that's approved.

>> Lee Price: That includes adding this to the November 16th agenda?

>> Mayor Reed: Yes it does, on a consent calendar?

>> Lee Price: Yes, consent calendar.

>> Mayor Reed: Nothing else on council or committee agendas to discuss. I think we're down to open forum. David Wall.

>> David Wall: Again we start out by thanking Councilmember Pyle. In reference to her helping out San José police department. Through a park in her district the Jeffrey Fontana park and Almaden Valley Nursery's participation in that, which I was down there today. And they were in tears. As I walked up, I asked, why are you crying? We haven't seen Councilmember Pyle in so long! So I'm bringing you that message. If chief Davis is no longer the chief, then he shouldn't be in uniform as the San Jose police chief on that CPLE Web page, that shouldn't there be. And lastly, Mr. Mayor, because tomorrow, I won't be able to see you, it is that time of the year. I want to thank for your service to the nation. You made all of us free during your time period that you couldn't be yourself, couldn't wear a tie or that tie or the bib overalls with the holes in them, and you got yelled at on the tarmac on a cold winter day and you couldn't say hey, you're an idiot. And you took care of us and you got to be thanked as all veterans that hear my voice have to be thanked, and that includes Councilmember Herrera. But also I want to include this year, the mother of an army ranger, a green beret. Because without a good single mom behind the flag, Councilmember Pyle wouldn't have had a great son to serve our nation, either. So all the veterans I thank you and especially you, Mr. Mayor, all the veterans and their special spot in my heart for you folks, thank you very much for your service to the nation.

>> Mayor Reed: You can see me tomorrow if you come to the parade.

>> Councilmember Pyle: And me, too.

>> David Wall: I'll be picking up trash.

>> Mayor Reed: Okay, that concludes our meeting, we're adjourned.

>> Councilmember Pyle: I'll see you there.