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>> Councilmember Nguyen: Councilmember Constant is harassing me up here. I guess we need to call if meeting to order. This is the Rules and Open Government Committee. We will start with item A, the February 8th, city council agenda. Are there any changes or additions on page 1? 2 or 3?

>> I'm sorry, Madam Chair, there will be a request for an adjournment in memory of an individual that we'll add on to the agenda.

>> Councilmember Nguyen: Sure, thank you. Page 4 or 5?

>> Dennis Hawkins: Madam Chair, we ask for deferral of item 3.3, the fire retiree interviews. We have a scheduling problem with one of the candidates and we'd ask that that be deferred to February 15th.

>> Councilmember Nguyen: Okay. And page 6 or 7? I believe we have a few additions here, commendations from myself and Councilmember for the lunar year, a commendation from the mayor and Councilmember Chu for SMTT corporation as well as some travel requests for the mayor and also for Councilmember Chu. Oh, okay and then labor negotiation update.

>> You know what, I'm sorry Madam Chair, that shouldn't be placed on February 8th, we actually already have it on the 15th so we don't need it on the 8th.

>> Councilmember Nguyen: Thank you.

>> Councilmember Constant: I'd like to make a motion that we approve the agenda with the amendments.

>> Second.

>> Councilmember Nguyen: All right, thank you. We have a motion and second to approve the agenda. All those in favor? Opposed, hearing none motion carries. And we'll move to city council agenda for February 15th. Any changes to page 1?

>> City Attorney Doyle: Madam Chair, I would like to point out under call to order 9:30 a.m., what we envision, this is new, the labor negotiations will begin here, so council will come to the council chambers, we will have the open session briefing and then we'll adjourn to closed session. We're still working it out with the mayor as far as logistics. The doors will be open and the public will have the ability to participate.

>> Councilmember Nguyen: Thank you. Councilmember Constant.

>> Councilmember Constant: Yeah, I just heard about that just right before the meeting and I kind of have a concern about doing that at 9:30 in the morning. So I don't know if there's a particular reasoning behind that. But from the perspective of the general public who knows that we always start our meetings at 1:30, to all of a sudden have things start at 9:30 for labor negotiations which is most likely going to be on an every other week or maybe an irregular schedule I think is confusing. And I'd like to maybe have more discussion about that. And perhaps, the appropriate time is next week, when the mayor is here. But I'm sure it increases the amount of workload on the AV, to set it up twice in a day versus doing it once. And I'm just not comfortable. We often have closed session that runs quite long, as well. So I'm not necessarily sure that this is the appropriate time --

>> City Attorney Doyle: No, I think it is and clearly we're trying to -- this is new for us, too. So whatever works. I mean I think there was concern in terms of the public but what we're trying to accommodate the ability to have both the open discussion and closed session discussion and have some continuity and be able to deal with it. But we're open to what the preference of the council is. We'll have the open session and closed session and maybe the ability to go back into closed session if need be. But we're trying to work this out with the mayor and the mayor's staff and Alex. And his staff. And maybe it is best to wait until next Wednesday and I'm looking to staff, maybe it's a conversation we need to have. We're inventing it as we go along here.

>> Councilmember Constant: It came to us without the discussion and I think this is the appropriate venue to have the discussion. So if the discussions have happened, we as the folks who set the agenda weren't aware of it so it was just kind of a surprise to mean.

>> City Attorney Doyle: This is the place for the discussion. That's the purpose of it and you're right, the Rules Committee sets the agenda.

>> Councilmember Constant: I would like to have the discussion particularly on this next week.

>> Councilmember Nguyen: Councilmember Herrera.

>> Councilmember Herrera: Well, since I'm here this week I want to weigh in on it. I like the idea of being able to do it in the morning so that we have closed session close to or in the same time frame as we're having the public discussion. And I also think it's good to have all of the labor discussions kind of in one area where we're sort of focused on labor, I like that idea. I'd be open to hearing different arguments but I kind of like this idea of being able to do that. It's not ideal. I don't think we're going to have an ideal situation or perfect situation but I think it's accomplishes a lot of what we can do. If we have an idea we can stay it back into closed session but I also like the open session here.

>> Councilmember Nguyen: Councilmember Oliverio.

>> Councilmember Oliverio: I share Councilmember Constant's views. I'm more of a perspective that it should be in the afternoon. More of the public will-part of the idea is to expose this to the residents of San José. 9:30 is not going to do it. Whoever does watch and there is some I think they're accustomed to seeing it and at 1:30.

>> Councilmember Nguyen: We're going to have more of an extensive conversation when the mayor's here. There's really no action today, we'll just wait to have the discussion next week.

>> City Attorney Doyle: I think the important thing is that it gets at least on the agenda, and then the timing we can work out next week.

>> Dennis Hawkins: Madam Chair, as I hear the discussion, what I think would be appropriate is for us to keep it as agenda item 3.2 so it's clearly on the agenda, but just take the reference to the time at 9:30 off until the committee makes that determination next week.

>> Councilmember Nguyen: That would be fine, yes. Okay, that was page 1. We'll move on to page 2 or 3. Page 4 or 5. Page 6 or 7.

>> Dennis Hawkins: Madam Chair, we'd like to ask that when we have the 3.6, the Federated retiree -- I'm sorry the Federated appointment, and the new item for the fire retiree, if we could ask for a time-certain on that, something like not before 3:00 or something along those lines that would be helpful to accommodate the applicants.

>> Councilmember Nguyen: I think not before 3:00 would be good, would be fine. I wonder if my colleagues have any comments.

>> Councilmember Constant: We might want to wait until we figure out if we're going to have the negotiations in the public session, so usually we do the time-certain the week immediately preceding two weeks in advance so we have a better idea of what might be on the agenda.

>> Councilmember Nguyen: Okay. That would be fine, too. Okay, page 8 or 9? I believe we had an addition which Dennis, the City Clerk mentioned earlier which was appoint one public member to the board of administration for the Federated city employees. Councilmember Constant.

>> Councilmember Constant: I have a question on that one. Federated members are meeting this Friday. And we have two things that could happen. They could either select a member to recommend to us, or there is a

potential that they could have a tie, given that it's a four-four board. Is it possible to -- do we need to change anything in the wording of anything that we have to give us the ability to break that tie, if it exists or is this -- it looks like it's broad enough. I just want to make sure that it is.

>> City Attorney Doyle: It looks broad enough and if it is we have next Wednesday that we can make the necessary changes.

>> Councilmember Constant: Okay, with that I'll make the motion that we approve with the add and amendments.

>> Councilmember Nguyen: We have a motion and second to approve with the add and the amendments. All those in favor, opposed, hearing none motion carries. We'll move to the Redevelopment Agency agenda for February 8th. Any changes on page 1? 2 or 3?

>> Madam Chair, if you may there are some changes that will appear under 8.1B that's with the add sheet we have provided. 8-1B, specific text as opposed to the generic text that's there now. The Ace Charter School agreement although that authority was delegated to the executive director for the agreement, the authority to do the findings that are listed in 8.2B were not delegate therefore it's coming back to the board so we can have the findings made and proceed with the agreement on pace.

>> Councilmember Nguyen: Okay, thank you.

>> Councilmember Constant: Motion to approve with the amendment.

>> Second.

>> Councilmember Nguyen: We have a motion and second to approve the agenda with the amendments. All those in favor? Opposed, hearing none motion carries. Move to the Redevelopment Agency agenda for February 15. Anything on page 1? 2 or 3?

>> Madam Chair, I can't avoid the fact that this is a relatively light agenda but we do want to preserve this meeting because there is no meeting left in February after this. And if the state were to take any action it allows us the access to this agenda at next week's Rules Committee.

>> Councilmember Nguyen: That makes sense.

>> Councilmember Herrera: Motion to accept.

>> Second.

>> Councilmember Nguyen: Motion and second to approve the agenda. All those in favor, post office, hearing none motion carries. Thank you. We will move down to item C, review of upcoming study session agenda. And we wanted to approve the priority-setting study session from February 14th, from 1:30 to 5:00.

>> Motion to approve.

>> Second.

>> Councilmember Nguyen: Motion and second to approve. All those in favor, opposed, hearing none motion carries. Legislative update, do we have any from the state or federal? No. Item E, meeting schedules. I believe we have none. The public record.

>> Councilmember Constant: Motion to note and time.

>> Second.

>> Councilmember Nguyen: We have a motion and second to note and file. David Wall.

>> David Wall: Looking like the Rules Committee up here. Council, rather. On the high speed rail project, now, I personally, my own personal opinion, this is a hair-brained project. Regardless of that, what I would like the city to really start focusing in on is how much it's going to cost the taxpayers. There's no -- really, identification of how much staff time. It's going to be a lot of attorney time. I think it would be reasonable to break this down, we're running out of money, we've run out of money. I don't think high speed rail is going to do anything for San José except cause a bunch of problems. 30 years, 40 years too late. I think the big impetus for this would be light rail versus high speed rail. But let's focus on the cost from my perspective. And to try to justify it from that point of view. Thank you very much.

>> Councilmember Nguyen: Thank you. Do we have a motion? Oh, we have a motion to note and file. All those in favor? Opposed, hearing none, motion carries. Item G 1A we have a memorandum from the deputy City Manager recommending the appointments of Norma Callender as the district 2 neighborhood commission member, David Wilkins as the first alternate and Jerry Lewis as the second alternate and Theodore Johnson as the council district 5 neighborhood commissioner.

>> Dennis Hawkins: Madam Chair, could we ask for a one week turn around? The neighborhood commission meets on February 9th and they would like a new member.

>> Councilmember Nguyen: Do we need a sunshine waiver?

>> Councilmember Constant: Not for this.

>> City Attorney Doyle: This is just an appointment.

>> Councilmember Nguyen: Okay. We have a motion and second to approve. Air Force? Opposed, hearing none motion carries. Item B, approve memorandum from the mayor, from Mayor Reed recommend the appointment of Bill Souders, senior director of corporate affairs for Cisco systems to serve as a private sector representative on the Silicon Valley workforce investment board of directors.

>> Councilmember Herrera: Motion to approve.

>> Second.

>> Councilmember Nguyen: All those in favor, opposed hearing none, motion carries. Item G-2 work plan, no, annual reports, none. H, H 1, workload assessment for council requests and referrals, none. And item 2, accept the Santa Clara Valley water district joint advocacy federal project in the city of San José's jurisdiction and approve the city's mutual request for funds through the appropriation process.

>> Motion to approve.

>> Second.

>> Betsy Shotwell: Madam Chair, if I could just add, Betsy Shotwell, Director of Intergovernmental Relations. My counterpart, the water district, Rick Callender is here, if there were any questions, I assume -- I guess there are none. I do want to add with the earmark process, the standard earmark process all but gone for this year we will be working collaboratively, our lobbyist with the Water District's lobbyist to look at ways to find funding for these programs Hopefully perhaps to the Army corps of engineers and the bureau of reclamation budgets, and then with the presidential budget coming out in a week or so, we'll see as well what opportunity we might have to find funds for these projects in this coming fiscal year.

>> Councilmember Nguyen: Thank you Betsy. Just a quick question. On the memo on page 3 it says under the Coyote area, creek flood protection project, you will go out there and conduct community meetings. In the staff

memo it says in 1998 the project was met with some opposition from the community. I assume that we're going to do adequate community outreach so that we're probably not going to engage as much opposition.

>> Good afternoon, you Rick callender with the Santa Clara Valley Water District. Yes Madam Chair we will be doing extensive outreach on the various projects.

>> Councilmember Nguyen: Councilmember Oliverio.

>> Councilmember Oliverio: Betsy, Rick, perhaps both of you, since this is under legislative update and just a general question, we have a lot of old flood zone maps in the City of San José. We are unable to edit them unless FEMA makes those modifications. Oftentimes we've made improvements to various creeks in San José yet haven't seen the updates to the map because we're basically under federal. Does that fall on your plate ever on the federal level on updating these maps? Because they do affect homeowners that place flood insurance or can't build a basement or things of that matter.

>> Betsy Shotwell: It hasn't fallen on my plate as much. I don't know if perhaps Rick might have a response and public works might have an opportunity --

>> Councilmember Oliverio, that's an ongoing problem one of the things we are continuing to advocate for is for adequate funding for FEMA. That's something that's not actually done underneath us, actually a third party. That is something you obviously get a lot of complaints about when people are placed in the floods zone or the project is completed and they are not removed from the flood zone, for a year or two in order to get out of the flood zone. So that's something that we have advocated for but that's nothing that we've directly added onto our list of priorities to push for.

>> Councilmember Oliverio: And Rick in your work experience with FEMA do they on a scale of one to ten, ten being extremely responsive, 1 being nonresponsive where do they stand on the.

>> I think probably around a 5.

>> Councilmember Oliverio: Got ya.

>> If I had to look at a number.

>> Councilmember Oliverio: Thank you.

>> Councilmember Nguyen: David Wall, you wanted to speak on this item.

>> David Wall: (inaudible) reference to page 2, and I'll quote: This is underneath the San José area water reclamation reuse program. Quote, the program also decreases the amount of treated effluent discharged into the San Francisco Bay. That is a truthful statement. Preserving and protecting the salt marsh habitat of two federally listed endangered species. This has never been true. There has never been any type of federally endangered species since the program has started. They thought that they were going to be endangered, but they found out later that it wasn't true at all. The next sentence is very trouble some. The program is critical to the region as it provides the San José area with high quality and reliable water supply. Well, that's a matter of perspective. I mean, depending on what? Raw sewage versus what you get out of it? It's not very high-quality at all. Now, on the page 4 on the upper Guadalupe flood protection project and I quote, the total cost project cost is currently estimated at \$256 million of which the Santa Clara Valley Water District will provide approximately \$99 million. There's a question as a where's the other \$157 million coming from? Just a question. I don't really know. But I thought it might be nice to be stated. So those are my two concerns and it's always good to see our good friends from the Water District here, and give my regards for everybody down there. Thank you.

>> Councilmember Nguyen: Thank you. Other questions or comments? Motion, somebody?

>> Councilmember Constant: Motion. To approve.

>> Councilmember Herrera: Second.

>> Councilmember Nguyen: Okay, we have a motion to approve. All those in favor? Opposed? Hearing none motion carries.

>> Betsy Shotwell: Thank you very much.

>> Councilmember Nguyen: Thank you. Review of additions to council committee agendas and work plans. None. Open government. None. Open forum.

>> Councilmember Constant: One.

>> Councilmember Nguyen: Mr. Wall.

>> David Wall: This is in reference to believe last week's memorandum on cronyism in hiring. Bullet memo will be coming. It appears that an individual was hired in this process. And let us be fair. Hiring of late, and I mean of many years has been predicated on the construction of a tailored questionnaire. Now, an issue about a tailored questionnaire can be a good thing or a bad thing, depending on how it's constructed. Where I have the need for an investigation is to look into this, whether or not a tailored questionnaire was specifically tailored for one individual, period. And that nobody else would qualify, but then, staff would go ahead through the hiring process to set up what I would call, my own personal opinion as a mock hiring panel, so the decision was already made. This gets into issues of fraud, it goes to the issue of equal opportunity and of course the merit principle of civil service rules. So these are very serious things that should be looked at. Now I hear through rumor and innuendo but people I can rely on as being you truthful that human resources will not look into the matter unless an aggrieved person, obviously a person that applied for this position, decided to file a complaint. And nobody has, to my knowledge. But I don't agree with the person because I'm a taxpayer and I'm funding equal opportunity and the merit principle and everything else that's good about this city, and I believe in fairness and the hiring

process because council, also, Councilmember Oliverio was very correct this goes to your issue on performance appraisals.

>> Councilmember Nguyen: Thank you, Mr. Wall, your time is up. We'll move down to adjournment. Any comments, questions? Wee are adjourned. Thank you.