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>> Mayor Reed: Like to call the meeting to order. This is Rules and Open Government Committee meeting for March 28th, 2012. Any changes to our agenda order? None then let's take up April 3rd council meeting agenda. Anything on page 1? We have an invocation by the middle school orchestra. We've successfully gotten orchestras in and out in the past. I don't know what the procedure is but we want to make sure they're clued in as to how to get in and out quickly. Anything on page 2 or 3? Page 4 or 5? Page 6 or 7?

>> Councilmember Constant: Mr. Mayor.

>> Mayor Reed: Yes.

>> Councilmember Constant: Number 8.1, I had belatedly asked the clerk, I forgot to do it when I was first thinking about it, if we could defer 8.1 either one or two weeks.

>> Fine.

>> Mayor Reed: April 10th for the audit of police department secondary accomplishment.

>> Councilmember Constant: Yeah.

>> Mayor Reed: City Manager.

>> Debra Figone: Mr. Mayor and Pete could we just ensure that the chief is going to be in town? He and I haven't even talked.

>> Councilmember Constant: I don't care when it is. There are a couple of people who wanted to meet with me before and I don't know if I can get the meetings in beforehand.

>> Mayor Reed: Just want to make sure the chief is here. He's going to be going to Washington on Sunday-Monday, I don't know if he's going to be here on Tuesday.

>> City Attorney Doyle: He's not here Tuesday.

>> Councilmember Constant: He wasn't here for that anyway.

>> Mayor Reed: April 10th, we'll see if that will work, we can move it out a little bit further. Anything on page 6 or 7? I have some requests for additions, commendation to Kim Tran Nguyen by Councilmember Chu, proclamation month of young child, Councilmember Pyle, excused absence for Councilmember Chu on a trip to something. Oh, he's missing neighborhood services and education committee meeting for BART groundbreaking thing, and Councilmember Herrera's travel to Sacramento. League of California cities legislative action days, is that one that requires council approval, inside the state, it is overnight.

>> Dennis Hawkins: I'll like at this if we need in it on the agenda.

>> Mayor Reed: It may not need to go on the agenda.

>> Councilmember Constant: Do we need to do it for committee meetings? I can never remember. It seems like

--

>> Dennis Hawkins: Generally the policy is, if the councilmember is designated as the City's representative then there's no approval required. Because for these kinds of things, if it's a national or California league of cities meeting.

>> Councilmember Constant: I'm sorry, I was talking about 2.4, sorry I didn't say that when I started. Committee meetings, I can never remember. Do we have to do the excused absences for committee meetings? Because if we do I probably missed one or two.

>> Council committee meetings?

>> Dennis Hawkins: Council committees. I'll send something out to refresh the rules.

>> Councilmember Constant: Yeah, it would be nice to remember.

>> Dennis Hawkins: I'll look at both of these items.

>> Mayor Reed: Okay. And then in addition, request from manager I think for item construction taxes for polycom, Inc, request for refund of construction taxes, we need a waiver, when will the memo be out, this afternoon?

>> Correct.

>> To Pete's question last week, is it time-sensitive? That being Nancy saying yes from economic development and so fair enough. Thank you.

>> Mayor Reed: There's a reason. Okay. Anything else in the way of additions or changes? Mr. Wall you want to speak on this?

>> Councilmember Constant: While he's coming up I'll make the motion for approval with the amendments and the adds and the sunny waiver.

>> Councilmember Oliverio: Second.

>> Mayor Reed: Motion is to approve.

>> Item 3.3, Senate Bill 20. I really think you folks should rethink this for approve support position, support position for this bill. You know, rental units weren't even discussed as far as those real estate transactions. This is not good, by any means.

>> Mayor Reed: We're not making a decision, Mr. Wall.

>> I understand that. I'm just saying that you should --

>> Mayor Reed: It will be re-thought. That's why it's on the council agenda.

>> Well, it should be re-thought, correctly, it should be killed at Rules.

>> Councilmember Constant: I tried, David, I tried.

>> Thank you very much.

>> Mayor Reed: That is the public comment on this. We have a motion to approve with the changes. All in favor, opposed, none opposed, that's approved. April 10th draft agenda for council. Anything on page 1? Page 2 or 3?

>> Councilmember Constant: Shortest consent calendar I've seen in a long time.

>> Mayor Reed: It is a very short consent calendar with only one item only the standing items. We'll add some things between now and then.

>> Councilmember Constant: I was going to say maybe we could push something in there.

>> Mayor Reed: Anything else on page 2 or 3 or page 4? I have no written request for additions, anything else in way of changes or additions?

>> Dennis Hawkins: Mr. Mayor, I'll be asking for an adjournment in memory of former councilmember David Golio on the 10th as well.

>> Mayor Reed: Okay.

>> Councilmember Constant: Motion to approve.

>> Councilmember Oliverio: Second.

>> Mayor Reed: Motion is to approve, all in favor, opposed, none opposed, that's approved. Coming study sessions, we're having one tomorrow, we've already considered that agenda. We have no legislative update. Per meeting schedules. The public record, have some requests to speak on the public record, Mr. Wall.

>> Item M might get your attention for today. Because according to the international city-county municipal association's article, March is national ethics awareness month. Make ethics your personal cause. I think that has a unique application to what has been going on for some time, with the environmental services department. And should be required reading, I think, of all department heads. It is a very nice article, it is two years old but it is timeless. Ethics is one of those timeless matters and I think it should be looked at, also as it applies to the stuff going on down there at medicine water. I could talk all day about what's going on but I will reserve it for another period of time. This item M though is for good reading. Marie Hader.

>> Yes, the senior citizen commission had a concern that these little punch cards that were being used by rec and parks and then each time a senior attended an hour's worth of time in the center a little punch was made. But this little card is worth 20, \$25 and there's only one little punch so previously it had only until March 31st to be redeemed for services and classes and not for cash. Some of the seniors can't get in there and take classes worth \$20 of time and so the request in the senior citizen commission is that the time be extended to I believe it is

the end of June. And I've since been told that the rec and parks department has already made that change, that they've extended the time to redeem these. But we were concerned and sent you the letter.

>> Mayor Reed: Shen Wong.

>> Good afternoon. Can I ask my fellow resident to speak first, because we sort of have two items.

>> Mayor Reed: Sure, Ron John Matthew. Okay, I've got a card. Whatever order it works for you is fine.

>> Thank you, Mr. Mayor. My name is Ron John Matthew and I'm a resident and taxpayer on park meadow drive in San José which is next to John Meis park. Two weeks ago the parks and rec commission by a majority of 5 to 2, upgrade John Meis park in West San José. It also gave the PRNS two action items, study why other sites were not chosen first and return with a detailed spreadsheet analysis of why Meis should even be a candidate. Second to complete the Meis proposal factoring in the neighbors' needs and requirements which include no fence no turf and other factors. Since March 7th we have learned that the PRNS staff intends to ignore or not to disposition the recommendation of the parks commission and proceed to submit the proposal directly to the city council, effectively bypassing any of the advisory commissions and a public preview of the -- what the city council is to hear. We also learned that the city council can choose to ignore the parks commission or the Planning Commission recommendations or any other commission for the matter since all these commissions are only advisory body, we do understand that. The neighborhood, there is considerable opposition to the John management's proposal and we have more than 800 petition signatures. Within the City of San José, Lynbrook high school similarly proposed to upgrade their sports field to artificial grass and a formal EIR was commissioned, which included a traffic safety report, noise assessment and lighting plan. John Meis should receive no less a purview than the Lynbrook matter through its own full EIR not a down graded CEQA. Some of us have formally figured the Planning Department as well as the Planning Department director to grant the John Meis a full EIR review and we await the formal response now that it has been presented as a public forum. If the PRNS staff --

>> Mayor Reed: Sorry, your time is up, sir. Sorry.

>> So we request postponement of this agenda topic in any upcoming city council topic.

>> Mayor Reed: Shen Wong now.

>> How much time do I have?

>> Mayor Reed: Two minutes.

>> Thank you very much. I just want to affirm what my fellow resident has said in these two minutes very briefly to give you a preview of some of the concerns of the residents which we believe were not really met which the parks and recreation and neighborhood services staff. Firstly we are concerned about the parking and traffic conditions. Because the proposed park calls for an extra 30 or 31 parking slots. And John meis court is the only access, egress for many residents of strawberry park. And I think that -- there was an accident wrote up in November of last year, and it Moorpark has a particular, peculiar drastic for traffic, so we believe traffic safety report has to be met. Secondly, the light leakage is something that is of great concern to the park residents, because the PRNS staff report or the proposal has the boundary of the light right to the very door steps. In fact it impinges into the patio area of the residents. So we believe these are concerns which have not been met by the PRNS staff and the fact that the parks and recreation commission have asked the PRNS staff to go back and reconsider shows that the whole project is not conceived correctly. Therefore, we appeal to the Rules Committee not to allow this to be tabled onto the meeting in April, thank you.

>> Mayor Reed: Thank you, that concludes the public testimony on the public record. Councilmember Constant.

>> Councilmember Constant: Yes, first the items spoken on John meis park, I want the residents to know that there is a neighborhood meeting scheduled for Monday, April 2nd. I think it's important to keep in mind that the city is still receiving public input, and there's an opportunity for people to express their views at that meeting and learn more about the project. If you need the details on the time, you can contact my office, because I don't

remember off the top of my head what time it is. But it will be at middy high school. And second on item F, is there a reason why we have such short duration, expiration dates on prepaid activity cards? I would assume since it's a prepaid sort of cash balance card we would have some discussion about the time at a they're valid for.

>> Debra Figone: You know, I really don't know but we could do, ask the department and perhaps get an info memo out.

>> Councilmember Constant: If we could look at it, because I kind of think of it like you buy a Starbucks card. You might not go there for a month, but when you want to use it, you hope it's not expired. And I don't think we're that much different than any other prepaid gift card when it comes to our own services so if we could just find out and then since I'm the liaison to the senior citizens commission just let me know then I'll make sure they are properly informed.

>> Debra Figone: Deputy Director Suzanne wolfson is in the audience and she has taken notes.

>> Councilmember Constant: Motion to note and file.

>> Councilmember Oliverio: Second.

>> Mayor Reed: .

>> Councilmember Constant: It has not been agendized yet has it?

>> Debra Figone: No, it is tickled for perhaps the end of April.

>> Mayor Reed: There is a community meeting Monday night.

>> Councilmember Constant: Yes.

>> Mayor Reed: For those who are interested. Okay, the motion is to note and file items the in public record. Awful, post, none opposed, so be it. I want to go back to meeting schedule. We didn't talk about the April 9th study session date, we're holding a study session date, I don't think we're ready to give that up but I want to see if there's any candidates for that. I think depending on what the council wants to do on retirement issues after tomorrow's meeting, we might not give up that date, just to have it but we don't have another topic it looks like.

>> Debra Figone: If it's time to give it up I would suggest we hold for a while.

>> Mayor Reed: Take it up next week at Rules Committee. On to item G-2, proposed resolution amending the rules of conduct for the meeting -- this was -- we're doing this because of the changes to the redevelopment agency and fixing some other things just to make them consistent with practices, and to clarify some things. So city Attorney, you have --

>> City Attorney Doyle: Mr. Mayor, the City Clerk and I have -- and my office have been working on some cleanup. I'm going to let Lisa Herrick go through the more relevant changes and then we're here to answer any questions.

>> Lisa Herrick: Thank you, Mr. Mayor, members of the committee. I think we've summarized them pretty well. There are essentially two categories of more substantive changes, one has deleting references to Redevelopment Agency and then referring to any sort of action by the successor agency. The other category relates to basically giving this committee and the council more flexibility in setting public hearings. We'll need to work with the Planning Department to make sure that anything that this committee or the council does, in setting an agenda, is consistent with the public notice that has been begin. And because typically these public notices relate to planning items, not all but typically that's what they relate to. The other two categories are truly cleanup. Some just codify current practice. Not everyone sits at the same committee meeting or council meeting and so it gives some ability for staff to know what the rules of the road are. And then there's some technical nonsubstantive clarifications. So if you have any questions about any of them, I'm happy to answer them.

>> Mayor Reed: Clarification notes. There's the change regarding the making of substitute motions which codifies the practice, and I just want to note that I did go read Robert's rules of order, in the 10th edition, newly revised, they're all newly revised, but this is the 10th edition of the newly revised, I think there is a specific section that deals with substitute motions and whether or not they can be amended so that's just consistent with our Robert's rules as well as our practice.

>> City Attorney Doyle: Mr. Mayor, I'm operating under the 8th edition and I'm told there is now an 11th edition and there may be a 12th before this meeting is over.

>> Mayor Reed: I don't think Mr. Robert has much to do with the current Robert's rules, been amended a few times. It's getting thicker and thicker, it's an inch thick now. And then on page 33, we talk about committee meetings, when we have less than a full committee present, item numbered 6, G-6, says when only three committee members are present the committee may take action on the matter with a 2-1 vote. I just want to talk about that because I don't know how that gets transmitted to the council because I can't remember. Do we indicate that it's only a two-person recommendation?

>> City Attorney Doyle: I think we do. The rule has been that when there's two members meeting, they can't take action, they can only move it forward. The question being, if there's three present can you get a 2-1 vote and pass the matter forward? And there's been some inconsistencies with the various committees so we wanted to make sure it is clear, yes, the committee can take action and I think the clerk would note that in the packet.

>> Mayor Reed: So are my councilmembers okay with that, having two out of four doesn't work but two out of three is okay for taking action. I think the key thing is that councilmembers, when I look at it I want to know, did the whole committee look at this or is there some issue there that might be more interesting than first appears.

>> Lisa Herrick: And I'll just add this is consistent with Robert's rules.

>> Councilmember Constant: Which edition?

>> Mayor Reed: All of them.

>> Lisa Herrick: From my current search.

>> Dennis Hawkins: We might need to cross reference what the committee was.

>> Mayor Reed: However it gets presented to council, councilmembers will know, there was some sort of an issue. Those were my questions and comments. Anything else?

>> Councilmember Constant: Motion to approve.

>> Mayor Reed: Motion is to approve. All in favor? Opposed? None opposed.

>> Councilmember Oliverio: Motion to approve items G 33 and G-4.

>> Councilmember Constant: Second.

>> Mayor Reed: Approval of the beautiful day and great American litter pickup so that we can accept donations of materials and services.

>> Councilmember Constant: Could I just ask a quick question? On something like Great American Litter Pickup that we've been doing as long as I can remember and will most likely do far into the future is there a way that we can just institutionalize that so it is a city event, and we don't have to do this every year, one less memo to be written?

>> Councilmember Oliverio: What is easier than doing that?

>> Dennis Hawkins: Actually I've started doing that on citywide events to cover all members of the council. I'm sure we can take a look at if there's another way to do that so we have a list of preapproved events.

>> Councilmember Constant: Yeah, much like we do -- we have preapproved things with national league of cities and stuff like that I think we could probably identify four or five things that we routinely go through.

>> Dennis Hawkins: We are working on bringing the special events policy to the council, and we can incorporate that suggestion in the policy.

>> Mayor Reed: Let me suggest that we do that on an annual basis, once a year we just look at all the coming events. Because I don't want to lose touch with some of these events. This is at least a chance for us in the public to look at the dozen or so that are sort of ongoing.

>> Dennis Hawkins: Examples would be state of city, National Night Out, great American litter pickup, activities that are citywide.

>> Mayor Reed: You could do that in one memo once a year on one agenda item just know that's going to happen.

>> Councilmember Constant: Sounds good to me.

>> Mayor Reed: The motion was to approve these two. All in favor, opposed, none opposed, those are approved. Taking us to David Wall wants to speak on public records issues. Item whatever that is. Item I. Yes please. The document before you, the first page, March 7th request for public record information, was what I was talking about last week. Now in retrospect I should have called Mr. Norris to find out. Because he is an honorable man and he runs a very tight ship. He never got this document. And I am of the opinion that a mistake was made, obviously. People make mistakes and I'm going to leave it up as that. I'm going to resubmit it as of today so we

have today's date on it but at no time did Mr. Norris make any error, and with reference to this document. This is the second portion that I added, actually answered one of the questions that I had asked about it. This organization chart. This should disturb you very greatly, Mr. Mayor. The environmental services department has collapsed from a management point of view. It's in free fall. You have people that are running around there getting appointed as acting this or acting that and high levels of responsibility, that just don't have the people underneath them to justify deputy directorships. In other areas. Now, as to the other public records that are pending, I've asked Mr. Ist to stop on them until this, the March cent, one is properly adjudicated. And then I'll go forbid at some later time. I just -- forward at some later teem. I'll look at this as a mistake. I don't know what happened, this was improperly turned into the clerk's office but Mr. Norris never got it. And I just want to be -- I don't want anybody to get in trouble with this. Just chock it up to somebody had a bad day and made a mistake. We all make mistakes. Except the March cent one goes forward answering what I want done on it. I think that's reasonable. Any other things? Okay.

>> Mayor Reed: I think that's all the testimony on that agenda item. There's no action at this time. On any of that.

>> Debra Figone: Mr. Mayor.

>> Mayor Reed: City Manager.

>> Debra Figone: If I might just on the general topic of public records act requests we are being inundated with them. I just want the committee to know that. We are doing our best, across the board. And at some point we may need to bring this issue to the committee's attention. And I'm really relying on Tom Norris to do the best that he can to operate within the time lines that we've set forth. The Attorney and I have talked about this. We meet regularly to review the requests, but quite frankly, it is getting quite overwhelming.

>> Councilmember Oliverio: Question mayor. City Attorney, public record request time lines city or state?

>> City Attorney Doyle: They're state and the state law generally is you have a -- well, a combination. The general state law is ten days to respond. You can ask for an extension if you need it for another 14 days. The city's sunshine policy is if the document is immediately available you turn it over as soon as possible and the practice is that as documents are coming in they can be turned over. The City Manager's office who orchestrates this, Tom Norris specifically continues to furnish the documents. What the City Manager is referring to is inundation of both public records act request as well as litigation holds in connection particularly with pension measures and it's really taken an enormous amount of resources to look at these and in some cases we've had to look to outside counsel to look at some of the documents.

>> Mayor Reed: Well, let's just take note of the fact that the Public records act requests are now being used for discovery, and so they're getting much more complicated, much longer, much bigger, and involving thousands if not millions of pages of documents. So Weaver not talking about people coming to the counter in the Clerk's office and saying can I see something. It is a request that will take hundreds of hours, of somebody apples time if not Tom Norris's time if not lawyers. So the complexity of the request really increases the amount of time to deal with it. So there's really a variety of categories that the public records act request so we do have some council policies about the speed at which these things are supposed to be done but it is impossible to meet that policy all the time. Just based on what I've seen in the way of requests that have come in. And so if we need to adjust that policy or grant a dispensation or reprieve or something then you know bring it back to us and let's just sort of out. Councilmember Oliverio.

>> Councilmember Oliverio: I imagine the policy works just fine when it's a normal citizen just wanting to see something from it. But not when it's misused, much like you see good legislation on the EIR or CEQA misused by someone who is just adamantly opposed to something, it's, you know, fruitless.

>> City Attorney Doyle: And the -- I think it warrants probably a discussion further down the road because there's recent court decisions that require that we retain documents that you know doing search and the real problem is from a resource standpoint we can only charge for photocopying, we really can't charge for time unless we have

to go and do some over and above work to create a document. There's just some limitations given the budget situation and resource limitations.

>> Dennis Hawkins: Mr. Mayor, I'll work with the City Manager's office, because it looks -- appears that we did not have a very successful hand-off on this between our office and receiving the document, the request and handing it off to the records manager in the City Manager's office and we will coordinate on that as well.

>> Mayor Reed: Anything else on this? No action today. That brings us to the open forum. Martha O'Connell.

>> I'm back. I was here last week explaining I'm still waiting for a letter from the City Clerk. Why this letter is important: When I came on the senior commission I was told that the chairs couldn't vote and for years the chairs only voted in a tie. I did some legal research, found out that was incorrect, got that clarified. Then I found out, at this point it's so long ago I don't remember from whom, might have been Mr. Norris but the chairs could place a motion on the floor. So I asked the City Clerk to draft up a three sentence memo which I've now drafted up and handed him today to all boards and commissions chairs. It's very simple folks. They need to know that they can vote and that they can put a motion on the floor. Because most chairs do not know this and so they're functioning under a rule which is incorrect. So I don't understand what the holdup is, why the City Clerk's office can't get out a three -- sentence memo to all boards and commissions. So I drafted it for him. And hopefully, he will put it on stationery and send it out and I don't have to come back next week. Because now we're in the seventh week. Thank you.

>> Mayor Reed: David Wall.

>> I don't know if you've have any discussions with the Santa Clara Valley Water District. With reference to the Cupertino sanitary district's refusal to to participate with the recycled water program. I think that there should be some -- first of all, some discussion about refunds to property owners for this project. The project was ill conceived. You'll find in the course of investigation that the Cupertino sanitary district is on solid ground and this affects the advanced water treatment aspects of that program, as well. You might want to make inquiries too,

what type of preventive maintenance program you have with the reclaimed water project, with reference to exercising their valves. Shutting down a system, that's just routine maintenance. I've been hearing reports that there's been some valve tail failures. These are very costly items. The recycled water project itself, for some of the equipment involved in there, getting into the end of its usable life. And so you have a very significant very serious funding issue with that South Bay water recycling. My own personal opinion it's been a white elephant since the day it was conceived. It was never needed and now it's come home to roost. One calculation I would like to see is, the proportion for a single family home from their sewer service and use charge, how much of that is for the reclaimed water project so we could establish some baseline for refunds, thank you.

>> Councilmember Constant: Mr. Mayor, if I could just ask Dennis on that boards and commissions stuff, I know we have guidelines. I know one of the things in the streamlining and the reorganization, we were going to look at uniform bylaws and all that. So I'm not sure if it's the bylaws of some of the commissions that are different but I do know we have some policies on that. Do you have any input?

>> Dennis Hawkins: It is a combination of issues Mr.-- Councilmember Constant. We don't have uniform bylaws. Generally, under Robert's rules the chair can make a motion. I think it's partially a training issue not only for the commissioners but of staff. And I want to address all those issues in a systematic way rather than piecemealing it. We've got a number of issues that we've been dealing with with boards and commissions over the last few years and I think one of the problems that we've had is that we've piecemealed things over the years. I think it makes a lot more sense for the committee to consider all the rules and procedures and let's get it cleaned up at one time rather than doing this on an incremental basis.

>> Councilmember Constant: But just like us, when in doubt Robert's rules is the clarifying what we look at right?

>> Dennis Hawkins: That's correct.

>> Mayor Reed: I agree with the clerk, that we've got quite a bit of work that's been done and bringing it together comprehensively is the best way to do with 42 boards and commissions all of whom are not doing it the same way.

>> Councilmember Constant: Hopefully less than 20 in a few months but that's my own personal opinion.

>> Mayor Reed: All right, I think that concludes the meeting. Unless somebody tells me otherwise, we're adjourned.