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>> Councilmember Chirco: Are there any changes on the agendas? So the first item is the October 5th city council agenda. Page 1. 2 and 3?

>> Councilmember Constant: Could we add on the ceremonial 1.2, to add Councilmember Campos to that please? Thank you.

>> Councilmember Chirco: Uh-huh. And page 4 and 5. 6 and 7.

>> Joe Horwedel: Madam Vice Mayor, on page 5, item 4.2, regarding on Saratoga, we're asking for that item to be dropped, to be re-noticed.

>> Councilmember Chirco: Page 6 and 7. Page 8 and 9.

>> Excuse me on page 8, 7.1 we're asking deferral until October 18th. There were some financing issues, and they're going back to TPAC, 7.1. 6.1 is noted.

>> Councilmember Chirco: Page 10 and 11. And page 12 and 13.

>> Joe Horwedel: And on item 12, or page 12, items 11.3 and 11.4, staff is asking those be deferred until October 26th. There is a supplemental memo on that item that I looked at this morning, so it should be getting distributed this afternoon. Last week at Rules I spoke about the question on the noticing, and so following Rules we did go back and do a parcel by parcel review on that and so there's a map that's included with that memo. It shows that we did miss some part of that pocket. And so we are asking -- we are re-noticing that and so rather than doing one piece, and not the other, we're going to hold them together. We'll do joint outreach back out. And then I just met with the neighborhood right before this meeting and we did receive zoning protest, about 160 protests that came in so we'll be doing an assessment of that and writing a supplemental memo. If -- to confirm is it a valid protest or not and what the procedures are. And that's related to 11.3A.

>> Councilmember Chirco: That's deferred to October --

>> Joe Horwedel: 26th.

>> Councilmember Constant: That's an evening meeting?

>> Joe Horwedel: Correct.

>> Councilmember Chirco: And page 13. And page 14. We do have some adds by the mayor and council. And the council appointees as well.

>> Nancy Kline is here if you have questions on 4.X to conduct a TEFRA hearing for Sun Power. I don't know if you want to make any comments.

>> Madam chairman (inaudible) here in San José (inaudible) (inaudible) 28 million from the state ARRA recovery bonds (inaudible) by putting us in that queue. (inaudible) here, that sentiment and he would be able to answer any questions that you may have.

>> Councilmember Chirco: Thank you, Nancy. Always glad to have lot of money coming to San José to put people to work and grow business. I do have a couple of speakers on the October 5th agenda. The first will be Tom Davis, you have two minutes, followed by Mike Chrisman.

>> Hello, thank you for hearing me. I'm not sure I'll be able to come back to the date when this is deferred so I'd like to have my statements now. We have been at this for four years, to try to find out why the City of San José is so determined to annex our small pocket. And we have yet to come up with what we consider to be a significant reason. I am here, though, to let all of you know why I think the basic origin of the passion in our neighborhood, because we do have a lot of passion in our neighborhood. October of 1977, the City of San José received from the county five working fire stations. They manned three of those fire stations. They're still being manned or

whatever the correct term is today, one is on Alum Rock avenue near White Road. The other is in Tully Road, the other side of the fairgrounds, and the other is on the far side of Almaden. You may know, the city has built a new station, for years it was the old county station on old Almaden Road. Two stations they didn't man, one of them was in the Burbank area right off Bascom avenue just near 280. The other was the Cambrian station. Which I live on Cambrian, so it is very, very, very close to my house. The one station that they didn't man in the Burbank area, they moved station 4 to Lee Avenue across the street from the city college athletic fields. And that was much nearer the old Burbank station. Our neighborhood has received nothing. I don't think you could ever let a neighborhood know that they were unimportant in any more of a dramatic way than close the fire station. It was a gift. There was no economic reasons for them close it back then. It was a gift. They could have manned it. They chose not to man it. I just don't see how the City of San José -- I was waiting for them to convince me that they really care about our neighborhood. Or they're really ready to -- every service we ever get from Campbell is quicker and closer. Thank you very much.

>> Councilmember Chirco: Mike Chrisman, two minutes.

>> Good afternoon, my name is Mike Chrisman. First of all, I'd like to thank the San José Planning Department about looking into our issue about getting notification for the upcoming October 5th meeting. Recognizing there was improper notification and taking action. So we all thank them for that. It means a lot to us. Just one more correction on Planning, he mentioned, director Horwedel, that we had 160 petitions signed and notarized protesting the zoning. The correct number is 210 and counting. So this is significant amount considering with 330 parcels. Another issue that has come up, wasn't available to us last Rules Committee was the staff report. Some issues in that staff report are, the financial reviews, and analysis for the neighborhood have not been completed. And specifically, the question of how fire service will be paid for. As far as if San José is contracting back with county fire what did cost of that is. And if we're able to remain in Santa Clara County fire district, what the loss in tax revenues the City of San José will realize. Thank you.

>> Councilmember Chirco: That's all the speaker cards I have. If I can have a motion to --

>> Councilmember Pyle: Motion to approve with all the additions.

>> Councilmember Constant: Second.

>> Councilmember Chirco: All those in favor, all those opposed, hearing none, that motion carries.

>> Lee Price: Madam Vice Mayor, if I could just clarify, that that does include the waiver of the 10-day noticing and posting requirement on the delegation of authority relative to the TEFRA hearing that we just added.

>> Councilmember Pyle: Absolutely.

>> Lee Price: Thank you.

>> Councilmember Chirco: There is no meeting on October 12th. We'll spend our time wisely. The next item on the agenda is the redevelopment agency, October 5th. So page 1. Page 2 and 3. And there are no additions.

>> Madam chair if I may there is an addition in the packet. It is labeled, it's not labeled, it would be 7X which since that's the only item actually becomes 7.1 when we publish the agenda later today. And that's the approval of an amendment to the building rehabilitation and loan agreement with urban markets at the San Pedro square location. We're asking that that be added to the October 5th council or board agenda. And that item was posted on the city clerk's Website last week so it does meet the 10-day sunshine requirement. Even though it will go out today it won't have ten days in our pact but it has been available to the public for at least ten calendar days.

>> Councilmember Chirco: So we don't need a waiver on that one because it has been available to the public Rick?

>> City Attorney Doyle: As long as the documents and the item has been posted it meets the ten-day requirement.

>> Councilmember Chirco: Thank you.

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

>> Councilmember Chirco: I have a motion and second. All those in favor, all those opposed hearing none that motion carries. The next item was October 12th which we're going to not have a meeting for redevelopment either. We do have a study session on October 12th. And that's just one page. So --

>> Councilmember Constant: Motion to approve it.

>> Councilmember Pyle: Second.

>> Councilmember Chirco: I have a motion and second to approve it. All those in favor, all those opposed, none, that carries. There is no legislative update. There is a meeting schedule change. Which is the Public Safety, Finance and Strategic Support, it's to replace the November 22nd that was cancelled. It will now be scheduled November 18th -- oh, did I do it backwards?

>> Right, cancelled on November 18th and scheduled for November 22nd.

>> Councilmember Chirco: Well, I had the dates, just in the wrong order.

>> Councilmember Constant: Motion to approve that.

>> Councilmember Pyle: Second.

>> Councilmember Chirco: I have a motion and a second to approve the change in schedule. All those in favor? All those opposed, hearing none, that motion carries. The next item is the public record. Is there anything anyone likes to pull?

>> Ed Shikada: Madam Vice Mayor, item A, which is a letter from the City Manager of Milpitas. I'd like to recommend that that item be held over until next week for consideration.

>> Councilmember Chirco: Okay, so that's item A.

>> Lee Price: And Vice Mayor, if I could also pull item J. And I think you may have some cards on this one, as well.

>> Councilmember Chirco: I have two speaker cards, and Mr. Wall, your card just indicates "public record." I don't know which item. So two minutes. And you will be followed by -- is that Martha O'Connell?

>> David Wall: First of all, good afternoon. And it's good to see at least three out of the four. This is with reference to item I. And item K. Neither of which for the record I -- I don't like doing this, writing about it, talking about it because this involves our great police department. And I'm a profound supporter of that department. But there are significant problems with the Consortium for Police Leadership in Equity. First of all, we're dealing with item I and as you can see on the bottom where it says attachment on file with the City Clerk, this is in reference with the CPLE report of the police department psychological thing or whatever you want to call it that has been systematically censored and kept from the public's perusal so they can make their own opinions and see what's going on, since indirectly they're paying for it. And I have a very significant problem with the public record being suppressed in this fashion two weeks in a row now. There's no call for that. Councilmember Constant was in the room. He was given a copy of it, along with everybody else in the room. On item K, this goes directly to the pain to my heart. Whether or not the chief of the San José police has a conflict of interest in being on the advisory board for CPLE, and you can see where I copied verbatim off the CPLE Web page, he's on their advisory board. And this raises an issue of whether or not the Chief of the San José Police is an agent for a third party entity. And I

can't tell you how much this bothers me to even talk about it, even to know about it. So I'll leave it at that. Thank you.

>> Councilmember Chirco: Ms. O'Connell. Two minutes.

>> Councilmember Constant: Squeeze the handle.

>> Councilmember Chirco: There you go.

>> Hi, I'm Martha O'Connell, and I'm speaking as a citizen, and behind me is Frances Jones. She's the chair of the Senior commission, and she said to say she was my ditto. So she's my ditto. There's a saying that if you have something that you want done, to assign it to a busy person, and that is why I've written this letter. It's been my experience in attending boards and commissions for 20 years that the folks are really committed and they want to serve you. But in order to do that, we need to know our schedules in advance so we can -- because we do have lives, believe it or not, other than being down here as you do. I've had a productive meeting with Lee Price on Friday, and I'd hoped to have an answer, which she tells me now there's going to be a meeting at 4:00. We need to know in clear and unambiguous language whether the intent of management addendum 16 that subcommittees would also meet quarterly. Okay? I've been told by Dennis Hawkins at the retreat that that was the spirit and intent. But I'm pleading with you guys to give us something in writing, because the human rights commission is considering establishing three new subcommittees after they abolished the other ones two months ago. The other thing, beside knowing in advance how frequently we're going to be meeting is the question of equity. And that is, if the human rights commission, can have three new subcommittees, then every other commission in the City of San José, in my opinion, should be able to exercise the same rights. So please, give us clear and unambiguous direction on how you want us to function. That's all we're asking for.

>> Councilmember Chirco: Thank you very much. This has been directed to the City Clerk, and will you bring it back to Rules, or what is the process?

>> Lee Price: Yes, Madam Chair, I think that would be the appropriate thing to do. MBA 16 which, so everybody knows what MBA 16 is, that was a manager's budget addendum that was approved by the mayor and city council when you adopted your budget on June 29th. And essentially MBA number 16 approved recommendations from Leslye Krutko, housing director, and Norberto Duenas, the deputy city manager, and Lee Price, myself, Lee Price, City Clerk, recommending three things. One, a reduction in meetings overall for the city boards and commissions as a result of our budget issues and our need to balance the workload of not only the city council and our boards and commissions, but also the staff that support the boards and commissions. Also we asked the council to adopt and you did so, templates for work plans and annual reports. The work plans are intended to help the boards and commissions establish a work plan that can be met, approved by the Rules Committee and then the city council so that you give your blessings to the works that the boards and commissions are going to be doing on your behalf. And that MBA 16 was approved as I mentioned but what we didn't address was meetings of subcommittees of the boards and commissions. Now most of your boards and commissions do not have subcommittees but there are a few that do. And we didn't address that clearly and so I think Ms. O'Connor raises a question that deserves an answer and as she mentioned we have a meeting this afternoon at 4:00 so we would like to bring this matter back to you.

>> Councilmember Chirco: Councilmember Constant.

>> Councilmember Constant: Thanks, Lee. I know that we did have a brief discussion at one of the Rules Committee meetings because I actually brought up and I talked to Dennis about it last week and I don't remember which meeting but it specifically asked about the subcommittees and how that was going to work. So my impression was a little bit different than the conversation I had with Dennis. So just if -- as part of it we can also review that meeting when we talked about it here at Rules. Because I -- the question was right on target with that, and the subcommittees and what would their function be. And I think that it is important just to figure out what it's going to be, and make sure everybody knows, and go forward in a unified front. And then I also wanted to comment on item B if I could. I don't know, I'm assuming this went to ESD, but it should be referred to ESD, and you know about it, I'm sure, but officially we'll refer it. Because I think it's an important program, and it ties in with some of the other stuff we've done in each of our individual districts and the overall efforts.

>> Councilmember Chirco: Okay, if we can have a motion for the public record with the items so noted.

>> Councilmember Constant: So moved, with those referral recommendations.

>> Councilmember Pyle: Second.

>> Councilmember Chirco: Okay, we have a motion and a second. All those in favor? All those opposed, hearing none that motion carries. The next item is the memorandum from the City Attorney Rick Doyle to the Rules and Open Government Committee dated September 23rd, responding to the September 15th public record item regarding prevailing wages, liquidated damages, waiver request.

>> City Attorney Doyle: And I'm going to ask the director of public works and Anita Grayson will maybe just sit at a table because this is really an issue that we're all engaged in. This is a response to the Rules Committee request on liquidated damages in connection with an enforcement of a noncompliance with the contractual requirement in a Public Works contract that the contractor pay prevailing wages. It's a standard provision, it's a provision that was imposed by council per policy, and any time there is a violation, the city insists on strict enforcement and part of that strict enforcement are the liquidated damages provisions which are treble damages of what is actually in violation. The memo really outlines the scope of the issue here and what -- including a chronology. And I'll let Katy and Irina take it from here.

>> Katy Allen: Thank you, Vice Mayor and members of the committee. The item before you is a request by the contractor on the Third Street garage project to waive the liquidated damages. The contract as it's written and council policy doesn't provide a means for waiving the liquidated damages. I would like to mention that the contractor did complete the project, the project is done, and that all restitution has been remedied, which is a good thing. It's really the issue I think before you today is a request by the contractor to waive the liquidated damages and advance this to the full council. So we're here to answer any questions, and I know the owner is here and would like to say a few words.

>> Councilmember Chirco: Is it the will of the committee to have the speaker first? We have a Michelle, two minutes.

>> Hi, my name is Michelle --

>> Councilmember Chirco: Squeeze it and pull it up right there at the top, yes.

>> Thank you. My name is Michelle Lecey Mares and I'm the general manager of Industrial Coating Restoration, a California corporation, minority woman owned disadvantaged. I'm before you because there's several issues that were addressed from the beginning of this contract to the end. I was in constant contact with Nina Grayson over prevailing wage and how I should put my supervisor project manager on the contract. According to prevailing wage, the supervisor prevailing -- project manager does not receive prevailing wage. He must be a laborer. Laborer on site are only prevailing wage recipients of that law. This was discussed continually, she even made sure that I put -- if my project manager did any labor it would either be labor 1 or labor 3 and I would put that on and certified payroll. As time went on, this project required a lot of offsite architect measurements and it took about four months before we finally got things in order. During those four months hours were put down and prevailing wage. There's no labor, there was no prevailing wage. So as time went on things started to happen, and I noticed one of our workers, our project manager, started to complain about not getting paid his prevailing wage. At that point things were addressed, there was no record from the city inspector on his visits, his hours that he saw the workers working, the situation that was going on at the site. So in the end, Nina took the word of my subcontractor, my complaining project manager, and another employee that came in, who worked together after all the complaining was going on, and after the meeting with Nina and Jim Wilson. The project manager was on the phone every time he would show up at the site and where Jim Wilson stated I've spoke with the employee, Mr. Clapp, and everything was --

>> Councilmember Chirco: I'm sorry your two minutes are up. You get two minutes to speak, and you've had --

>> I didn't see a little light so I didn't know --

>> Councilmember Chirco: That's the luxury we get in the chambers.

>> Were you lighting me? I'm sorry.

>> Councilmember Chirco: Thank you very much. Questions by the committee?

>> Councilmember Constant: Well, I guess my question's on process. We have -- let me get to the right page here. So we have the memo that gives your opinion. We don't have the original what we referred to you, so are we making the decision on whether this is going to council for review or what's our.

>> City Attorney Doyle: The only decision for this committee is if in fact the committee is interested in a waiver process which we don't have currently it could make the recommendation to council to consider that at a future council meeting then we could take up that discussion and it indirectly would -- we could bring this issue up. But right now there is no process for a waiver of the liquidated damages. Just some history and one of the reasons why we attached some of the prior memos going back to 2003 is one of the concerns has always been on prevailing wage is enforcement. And how the city would enforce it. At the time then councilmembers Reed and LeZotte took the lead in making sure we had a very strong provision in there and that it would be essentially strict liability. But the council can always take that issue up in terms of revisiting the policy. This is not the first time this issue has come to this committee, but really, the committee doesn't have the ability to waive it, I guess is my point.

>> Councilmember Constant: Right, that's what I was trying to get at, what can we actually do. I do think it's something that we should look at, because I'm not necessarily sure that a blanket rule for everything that doesn't take into account individual circumstances like some of the things we're hearing here is necessarily a good policy. So my follow-on question would be, if we wanted something to happen from here would we refer it to one

of our committees to review? Or what would be, from the City Manager's perspective, what would be the appropriate place, if we were to take some sort of action like that today?

>> Ed Shikada: I believe isn't it a policy call as to how to settle up a structure for the hearing?

>> City Attorney Doyle: Right, well the issue would be whether or not you would want to have a system in place that would allow for the director of Public Works to allow for either a waiver of policy or some kind of reduction. Right now, it's pretty -- it's a contractual provision that requires implementation. There's no discretion.

>> Ed Shikada: In effect no discretion of staff. But the threshold question for the council would be whether to direct the establishment of a system in which we could exercise that discretion.

>> Katy Allen: Along those lines, I'd like to add, Ed, that there has been questions over the time on the policies that we have, and there are options that we could --

>> Councilmember Chirco: Michelle, you may sit down. If we have questions --

>> Katy Allen: And I think working with the City Manager's Office and assessing our workload management of our resources, seeing if there's other options on the policy that the council would be interested in us following up on. Kind of in parallel on this is the work at the airport and some of the parity studies that are underway right now. But right now our policy, and something I want to emphasize, our policies in place, we do our best to communicate so this is not a surprise, when there is a violation. We do as much proactive communication as we possibly can at the beginning before a project even starts to let them know in San José our prevailing wage policy is very well defined and that there's liquidated damages assessed. So with that information, I'd like to say that we could look at the policy, we could look at other options, but right now that is not in our workload.

>> Councilmember Constant: Given that, that was kind of where I was going to go next. Is perhaps, depending what my colleagues here think, is we could -- I'm thinking maybe we'll ask to have a workload assessment

brought back at some point in the future. It doesn't have to be right away, because I know there's a lot of stuff going on right now. So that we could look at what it would take and what the possibilities are and what the time investment would be and where it would be amongst all the other issues on the plate. And then make a determination here at Rules whether that's something that we want to go forward from there. So that's kind of a long-winded motion, but that's my intent, if someone agrees.

>> Councilmember Pyle: I'd be willing to second that, but I do want to make a comment. And that is, I notice in the summary of the various dates from April 2nd, 2009 to April 5th, 2010, that a couple of things that really struck me as very problematic, and one was the fact that the certified payroll reports show that the worker is being paid cash. How can you ever prove or disprove anything with cash? I mean, Anita, do you find that to be a problematic situation?

>> Yes, that is a problem. Especially when you don't -- you can -- I mean, you can pay cash, however, you need to provide some information as to the number of hours that you worked, the hourly rate, and you need to provide deductions as well. So it is problematic.

>> Councilmember Pyle: And it would seem that there was notice, there was ample indication that these are the rules, that this is the way it all works. And it's unfortunate that work was upset, he did not receive his bimonthly cash payments. That really bothers me. It's not good business practices.

>> And it was the worker coming forward to our office to complain.

>> Councilmember Pyle: Right.

>> And that that then caused us to investigate that further. And you know we went back -- there were a lot of documents that our office requested, you know, time -- time cards, there were no time cards. So asked employees to provide their calendars. And that's -- that was the basis of that. And we went -- you know they rebutted and we looked at that again and then they also met with the Public Works director as well.

>> Councilmember Pyle: Okay.

>> Councilmember Chirco: So there's not a question of the business understanding the prevailing wage, that that was a clear part of the conversation, and the contract.

>> Yes.

>> Councilmember Pyle: But they just didn't follow through.

>> Councilmember Chirco: Well I'm troubled by that. I mean if a contract is made clear, that is an obligation that they have committed to. I don't know if this was a dissatisfied worker, and had we -- had the investigation shown that this was truly a lack of payment of the prevailing wage or a dissatisfied employee complaining about the prevailing wage not being paid?

>> We did speak with the employee. We also spoke with other people on the job that could give us their independent assessment of the working conditions. We were able -- we wanted to work with Michelle and we did meet with her to go through and make sure our records were accurate. Because of some of the record keeping over the course of the project, we wanted to make sure that it was accurate. Probably the pivotal point is the disagreement between ourselves and the contractor that this was a salaried position -- this was an hourly activity as opposed to a salaried activity for the individual. And we worked hard to substantiate exactly what he was doing on the job and we determined that the amount of time that should have been hourly should have been paid hourly as opposed to salary. And that became something that we were unable -- were not able to reconcile with industrial coding.

>> Councilmember Chirco: And part of that was the cash payment so there's not the time cards that can validate this?

>> Yes, as well as the worker actually performing work. Actually using the tools of the trade. As opposed to supervision of the job.

>> Councilmember Chirco: Well, I don't know that the policy discussion might not be inappropriate but in this case I can't -- I need to support the staff's recommendation. I think record keeping, when you are participating in a public contract, is the responsibility of the owner of the business. So --

>> Councilmember Pyle: I'd like to ask you to restate your --

>> Councilmember Constant: Well, I think we have two different conversations going on at the same time.

>> Councilmember Chirco: Pretty much.

>> Councilmember Constant: Because we.

>> Councilmember Constant: Have -- that's why I wanted to clarify with Rick what exactly the purpose of having this on and what our options were. I don't think it's our position right now to be deciding whether it was right or wrong in this particular case. And really, my motion is to say, let's look at the policy and determine, one, if we have the time and resources, and is it in the right level of priority for us to look at this. And if that's the case is this something we should be look at given what it's going to take our staff to do from a policy level. That's what my motion says.

>> Councilmember Chirco: So that would be a separate motion, and Nancy has --

>> Councilmember Pyle: I had a second but I'm going to have to withdraw the second, because I really don't think that we need to turn this anywhere beyond the purview of Nina and Katy. I think they've shown due diligence and they've taken all the precautions and they've done everything they possibly could.

>> Councilmember Constant: But I'm not talking about this particular case. I'm just talking on should there be strict liquidated damages or should there be another process that we could look at? That was my motion. So I'm kind of disregard -- I'm splitting it and saying regardless of the merits of this case either way, my motion is, look at that time policy.

>> Councilmember Chirco: I can't support that. Because I think this is a policy that's been in place. We really don't have the depth of staff or resources at this time. I know Rick has talked about the policy work that is backed up in his office. I just don't think this is the time for us to be doing that. So I can't support that.

>> Councilmember Constant: Okay. Sorry to hear that.

>> Councilmember Chirco: It would lie for a lack of a second. So we need a motion on this and that would --

>> City Attorney Doyle: I think it is just to note and file the response.

>> Councilmember Chirco: Okay.

>> City Attorney Doyle: Because the committee asked us to come back with a response.

>> Councilmember Chirco: You need motion to note and file?

>> Councilmember Pyle: I would make a motion to note and file that particular item, actually all of them.

>> Councilmember Chirco: And I would second that.

>> I think there needs to be a point of clarification here. You're telling me, when we had our meetings, documented -- my project manager is my project manager. He has his background in security.

>> Councilmember Chirco: Excuse me, this is not a debate.

>> I know it's not a debate, but you are telling me he's a laborer --

>> Councilmember Chirco: Michelle --

>> -- who's got a cell phone in his hand --

>> Councilmember Chirco: I'm sorry, we're going to have to dis --

>> You are mixing apples and oranges. Prevailing wage is only labor.

>> Councilmember Chirco: This is not a discussion -- this is a discussion you need to have with Katy and Nina. The committee has decided that we support the staff's recommendation. We have a motion and second. And this has to do with this particular item. So all of those in favor? Aye. All those opposed?

>> Councilmember Constant: Me.

>> Councilmember Chirco: We have two in favor and one opposed, I think that would probably go to council with no recommendation.

>> City Attorney Doyle: No, you have the votes, it goes to the recommendation to note and file, but it will be in the committee report.

>> Councilmember Chirco: Okay, thank you. And I would ask if there's any clarification needed, please check with Michelle. The object is that we need our small minority owned businesses to be -- thank you. The next item on the agenda is H-3, the memorandum from Betsy Shotwell to Rules and Open Government dated September

20th recommending the acceptance of the recommended city positions on the November 2nd California general election ballot.

>> Councilmember Pyle: Move to approve.

>> Councilmember Constant: I have a question before I give a second. Rick, the one question I have and it doesn't seem to be fully addressed, we had a discussion just the other day about prop 218, and the fees and the taxes, and what's a fee and what's a tax, and when does it get redefined. And that's my concern that I really don't see answered from our perspective from our city on prop I think it's 26 of the three propositions here. So I think before we take any official action that we really should get a perspective of how it affects our feast fees and charges, not necessarily the examples given at the state level.

>> City Attorney Doyle: Well right now prop 218 is limited as to what fees it applies to. Prop 218 defines taxes and general taxes, special tamps, assessments and then fees. And the really property related fees are charges. So when typically you see a sewer fee, a garbage fee, those are all prop 218 fees. Other types of fees, regulatory fees that aren't property related aren't subject to voter approval. The city council by majority can impose those fees. What this proposition does is it expands where voter approval is required and gets into particularly other types of fees and the one area of big concern is the regulatory fees. So if you're imposing fees on anything, and I think the background material talks about oil recycling fees and hazardous materials fees, and anything else. The city in particular has talked about a fee on downtown businesses to help defray the cost of police services, has yet to come into place and that is still pending. But that is the type fee that you're talking about that may be subject to there two-thirds voter environment. And it just adds an additional burden. You know, I think, my own perspective, this is me speaking, public finance in California is difficult enough and city councils, I understand 218 is the law and when you have a property related fee or tax because property owners feel they are subject to loot more just because of mere ownership of property. But this gets into activity and that's what you're trying to regulate.

>> Councilmember Constant: I think you got to my question. When we look at our big old thick schedule of fees and charges are we saying that it would pretty much fly a majorities of those?

>> City Attorney Doyle: Well, many of those, yes. I mean there's cost recovery charges like copying and things like that that I don't think we would apply.

>> Councilmember Constant: I don't have a problem of it going to council. I want to do a little research before agreeing to it but I will second the motion for the purpose of getting to council.

>> Councilmember Chirco: We have a motion and second. All those in favor, all those opposed, hearing none, that motion carries.

>> Betsy Shotwell: Thank you, Madam Vice Mayor, if I could ask for a one-week turnaround, in that we don't have a council meeting on the 12th, and I'm sure the absentee ballots will start going out next week.

>> Councilmember Pyle: I don't think it's going to council, did it?

>> Councilmember Chirco: Yes, it's just go to council. So for the one week turn around?

>> Councilmember Pyle: Yeah, that's fine with me.

>> Betsy Shotwell: Thank you very much.

>> Councilmember Chirco: The next item is a memorandum from the City Clerk Lee Price to Rules and Open Government. Dated September 23rd, recommending the approval of the application for appointment of public members to the board of administration of the Police and Fire Retirement Plan and the Federated City Employees Retirement Plan.

>> Lee Price: Do we get the award for the longest title?

>> Councilmember Chirco: I think so.

>> Lee Price: Assistant City Clerk Dennis Hawkins is here, and he is going provide the report and answer any questions you have. He's passing around a draft of the recruitment flier that our office has put together in coordination with the City Manager's office and the city attorney's office as well as the retirement director. And so I'll just turn it over to Dennis.

>> Dennis Hawkins: Excuse me, thank you, members of the committee, Dennis Hawkins assistant City Clerk. As the committee knows, in August the council approved some changes in the configuration of both boards for the retirement systems. And part of that is the recruitment and selection of public members for both boards. And so with that we are beginning the process of the recruitments, and creating the application for the board members that will deal with their qualifications, conflicts of interest and those kinds of things. So over the last few weeks we've been working with the City Manager's office and retirement services to develop a draft questionnaire for application. As you know in 2008 the council approved a new supplemental questionnaire dealing mainly with conflicts and qualifications for employee and retiree members of the retirement boards. And work as a staff we felt that question was really geared for employees and retirees and we needed something that was more specialized for the public members that dealt with the qualifications and conflicts of interest and that type of thing. So what you have before you today is the proposed application for recruitment and selection of public members to the retirement boards. I've handed out to you a draft of the recruitment brochure. We're planning on beginning the recruitment process starting as soon as the committee or the council approves the application form. Our goal ask do bring forward recommendations to the council for late November, either December. So that the boards, the new boards can be in place as the new year begins. That also coincides with the timing of the new fire retiree for the Police and Fire retirement board. That election will be conducted in December so that new member will be seated in January. We've tried to coordinate things so that the change in composition of the board both in public members and the addition of one of retiree to the Police and Fire board will all be coordinated and make for a

smooth transition on the board. And with that we'd ask your approval of the proposed application and we'll start the recruitment process.

>> Councilmember Chirco: Councilmember Constant.

>> Councilmember Constant: Thank you. First of all I think things look great. And I'm sure we're going to have a lot of interest. I did have one question on the application. Given that this is for board members at large we still have a question, are you a San José resident and should that not be do you live within a 50 mile radius of City Hall? Because the application really should be to prequalified people and see if they meet our basic requirements. It's in here but the other questions that aren't on here are some of the ineligibility questions, or the whole section here on ineligible persons. I think just from a matter of being able to have check-boxes to instantly look at the application, and say is this person eligible or not, taking those four items and having them incorporated onto page 1 of this application so it is just clear, if you are ineligible, don't finish filling it out, send it in.

>> Councilmember Constant, good point. On the 50-mile radius we can certainly make that change on the application. The -- we do have the ineligible criteria in the check box form on page 5, it's question five of section D.

>> Councilmember Constant: Oh, okay. My thought was just someone could get quite a ways through and do a lot of homework and then realize. I just thought maybe as a prequalification, yes/no -- if you check one of these --

>> We could mooch it up.

>> Councilmember Constant: Other than that I think that's that fits the intent we have here and at council previously so I will make a motion to approve.

>> Councilmember Pyle: Second.

>> Councilmember Chirco: We have a motion and second to approve the recommendation. All those in favor, all those imposed, hearing none, the motion carries.

>> Dennis Hawkins: Madam Chair, one quick clarification. The last application, the one for employees and retirees, was only approved by the Rules Committee. It was not presented to the full council for their approval. Did you want to bring this to the full council? And if so, we would like to ask that come next, one-week turn around to be agendized for next week. Or if the committee feels that we can go forward with your approval, we can proceed either way.

>> City Attorney Doyle: It is probably good idea to go to council. Because council makes the appointment ultimately. If you can go it on a one-week turnaround, it doesn't really sacrifice a lot of time.

>> Dennis Hawkins: We'll adjust the proposed dates that are in the draft recruitment brochure.

>> Councilmember Constant: I'll just amend it with the one-week turnaround, because I know it's time-sensitive to get this thing out there.

>> Councilmember Chirco: So that is included, thank you. The next item is a memorandum from the City Clerk Lee Price to Mayor Reed and the council dated September 24th requesting the approval of District 8 day in the park as a city-sponsored special event.

>> Councilmember Constant: Motion to approve.

>> Councilmember Pyle: Second.

>> Councilmember Chirco: We have a motion and second. All those in favor, all those opposed, hearing none, that motion carries. We have no --

>> Councilmember Constant: Of cost we do. It wouldn't be complete. I'd feel unfulfilled.

>> Councilmember Chirco: Open forum, Mr. Wall, you have two minutes.

>> David Wall: This is pertaining to a document you may or may not have. I'll put it with a letter on the public record, but it too maybe censored. It is a letter from the chief of the Los Angeles police dated June 29th, 2009, to Mr. Eric H. holder Jr, the attorney general for the United States. I will quote a couple of lines. It's all about the Consortium for Police Leadership in Equity. Quote: The objectivity of these established scholars is further supported by the fact that CPLE will not accept money from participating law enforcement partners. Period close quotes. I believe that to be a half-truth because they rely on the machinery of police departments, in reference to the San José police department having to do all their research for their project. Their objectivity is now in question with the following statement: "While CPLE has already proven beneficial in helping to address concerns of racial profiling and organizational equity, particularly in Denver, where Chief Jerry Whitman's leadership allowed the CPLE to be founded, there are additional areas of emphasis for the organization, including the following: Police use of force. Immigration policy and enforcement. Drug policies enforcement. Organizational equity. Youth offenders. Media and community relations. Close quotes. It is not objectivity at all. This is a third-party lobbyist entity that now raises controversy, are they being truthful in what they did with the City of San José, coming to you, and you apparently allowing them to go and have access to the San José police and taxpayer dollars to go forward with their own political agenda. To me, I would direct the auditor to look into the matter of how much money it will cost.

>> Councilmember Chirco: Thank you, Mr. Wall. The meeting is adjourned.