

The following transcript is provided for your convenience, but does not represent the official record of this meeting. The transcript is provided by the firm that provides closed captioning services to the City. Because this service is created in real-time as the meeting progresses, it may contain errors and gaps, but is nevertheless very helpful in determining the gist of what occurred during this meeting.

>> Mayor Reed: This is Rules and Open Government Committee meeting for October 31st, 2012. Happy Halloween. We'll get you here in time to go trick or treating. Any changes to the agenda order? I think we're going to drop item F 2A which is the parks and rec work plan. Is that correct?

>> That is correct.

>> Mayor Reed: Okay. Anything else? Right, first item then is the November 6th council meeting agenda. 9:00 start for closed session?

>> That's the recommendation, because there will be significant items on that.

>> Mayor Reed: And the afternoon agenda seems like significantly lighter than usual so if we don't get finished in the morning we'll finish it in the afternoon. Anything else on page 1? Page 2 or 3? Page 4 or 5?

>> Mr. Mayor, we need to request an additional waiver on item 4.1. The memo has not yet been released. We are anticipating having it out tomorrow or Friday at the latest.

>> Mayor Reed: That is the funding commitment for the affordable housing project.

>> Yes.

>> Councilmember Constant: I assume that is time sensitive right?

>> Yes, given the cancelled meetings and the funding commitment timing.

>> Mayor Reed: Anything else on page 4 or 5? Page 6 or 7? We have some requests for additions, Niederlander organization and amendment with the are agreement with Macias, Gini & O'Connell with that one we would need a sunshine waiver.

>> That is correct.

>> Mayor Reed: Can't wait for a couple of weeks, whatever, would need a waiver?

>> City Manager Figone: It has been reviewed by the auditor and finance director and Mr. Mayor I think I'm correct in saying that they're trying to wrap up the and this is last time we'll have an RDA, separate RDA section and that's what the timing urgency is.

>> Mayor Reed: We have eight or ten audits and things that are somehow all interrelated to the Redevelopment Agency and dissolution stuff. And those are all being delayed not by us, but by others. So -- okay, anything else? We probably should do the waiver for this one and get it going.

>> Councilmember Constant: So I'll make a motion to approve the agenda with the ads, a waiver for 4.1 and 9.X on the add sheet.

>> Councilmember Oliverio: Second.

>> Mayor Reed: Motion with the waivers additions and anything else, Mr. Wall you want to speak on this one?

>> Yes, sir. 4.2 the ordinance to amend height limits in airport issues, policies set fort in the envision San José 2040 general plan and make other changes. I really side on the downtown business association's position on this. I don't see why you can't extend the building's height more than 315 feet. I mean, pilots that fly routinely to Hong Kong can navigate through those structures. And I think that you should afford the piloting community the same type of opportunity. We could go straight up and only the best pilots could come into San José international and maybe you could see a couple of rules through the high rises, I think there's e-mail going on among the downtown business association, they were not too pleased with the types of restriction. 4.4, vacation of a portion of Emory street from Stockton avenue to Laurel street looks like a continuation of the great Jesuit land grab which

I fully support nested in the agreement is some type of fee and conveyance and tax from the office of economic development. Personally I think they would be heretics to try to do this to the Jesuits and I would say that just give the land to them for free in lieu of some indulgences that could be purchased to get whatever councilperson is certainly destined for pergatory. I say give it to the Jesuits. They are perfect folks. Thank you very much.

>> Mayor Reed: That concludes the public testimony on the item. All in favor, opposed, none opposed, that's approved. We have nothing to review for November 13th, nothing for that day although we do have a study session regarding affordable housing, we're going to review that agenda, not today though.

>> Next week.

>> Mayor Reed: Next week. So next week for the upcoming study session agenda item B, item C legislative update nothing on state or federal no meetings to discuss. Public record. Mr. Wall.

>> Yes, sir. Item actually all items on this week's public record, it's quite unique, one author, but the sewer service and use charge still seems to be an elusive topic for council's grasp, since it is basically a cash grab from -- not only that, I would say an elicit cash grab from taxpayers with regard to South Bay recycling and other items that flow from this fund. The item C about the (inaudible) mayor Reed gives \$100,000 to Councilmember Herrera's campaign. Is this to feed the monkey on his back? Well, the commentary contained therein is specific but it gets to the issue that the entire Rules Committee has recommended to the public, by use of your name and offices, to support Councilmember Herrera and her bid for reelection even though if you look to the San José police officers Website and the firefighters Website, there's some really nefarious business transactions that appear in court documents. And police have never lied to me, neither have the fire department. So I don't know why you would support such -- unless of course are you endorsing people loan money to Councilmember Herrera with reference to the financial documents that the Police and Fire have uncovered? Once again I'm not a spokesperson or an agent or principal to the POA, just a citizen. Now the IPA on Item D, she appears on television campaigning against the death penalty. I'm in favor of free speech, that's fine. But to do so in uniform in her office, what

appears to be her office, when a police officer or firefighter could get fired for doing the same if they were in uniform I raise the issue, is the IPA representing the City of San José's point on --

>> Mayor Reed: Sorry, your time is up. That concludes the public comment on the public record.

>> Councilmember Constant: Motion to note and file.

>> Second.

>> Mayor Reed: We have a motion to note and file on the public record, all in favor, opposed, none opposed, that's approved. On boards and committees A through I.

>> Councilmember Oliverio: Most to approve A through I on the appointments and reappointments.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: I just wanted to ask if we really want to be appointing people for terms that go for a couple of years when we're in the process of consolidation, and we know that we're going to have changes perhaps in the way boards are comprised and how they're appointed. And it seems like we're going to be continuing to create more transition problems by doing this. And would it not be better to appoint people for partial terms, so that we cannot complicate matters for us as we go further?

>> Mayor Reed: City Clerk, any thoughts on whether or not we're making it easier or harder?

>> Dennis Hawkins: Well, we would never want to make it easier. But no, Mr. Mayor, Councilmember Constant, we're continuing on the current course. We have the code as it is. And we have the vacancies as they are. So my recommendation is that we continue to fill the vacancies. At such time as we get back to the council with any changes, consolidations, eliminations, we can address those when the council takes those specific actions. So for

the time being, and I would also note that several of the appointments that we're making for these boards and commissions are commissions that are having challenges meeting quorum now. And so we really need to beef up the composition of some of the commissions. So that they continue their work during the transition period. So my recommendation is, we continue on the current course. And then when we get to the time to make those revisions, that we'll do those and we'll handle those -- the exiting of any commissioners at that time.

>> Councilmember Constant: So I understand that point, just offer a counterpoint, is I think any time we can give an incentive for the council to actually take action, because there are impending issues like people's appointments not continuing as such, it makes us deal with the issue. And this has been dragging on forever. And I'd like to see resolution. And I think it would be better for us to appoint for six months, eight months, 12 months, whatever the number may be, so that we have a target date. And this doesn't continue past 2014 when we have a bunch of new people there and they start all over.

>> Dennis Hawkins: Along those lines, if the committee would like, you could direct me to bring this back, and we could have an alternative that would do just that. And for example, we have some appointments to the housing community development and the mobile home advisory committee. Those two commission along with the advisory commission on rents will be merged. We could take a look at how we could do some short term appointments but keep the commissions going in the interim. So if that's the pleasure of the committee to refer back to us, we will certainly work with staff of the appropriate departments and bring something back to the committee. As I said, my thought was, otherwise.

>> Mayor Reed: If we appoint somebody to a term ending sometime in 2015, and we decide that's one of the commissions that we're combining or something so that we don't have enough seats for everybody that's on that, how will we deal with it, the transition? And do we need to just put people on notice, if we're appointing them to a term, that it's not really a three-year term, it's until whatever happens, happens?

>> Dennis Hawkins: To be determined type of approach. That will be one of the issues that we address when we come back with the work plan on how to do the consolidations. And so I've looked at how some other cities have

done that. You know, we've probably set up some sort of a process to have people reapply for the consolidated commission and take into consideration all the different factors that need to be weighed as we balance the commissions.

>> Mayor Reed: Is there any that prohibits us from ending the life of a commission and terminating all of the appointments so we don't have to put conditions on these appointments that allow us to do something if we get rid to the commission?

>> The rules with regard to appointments to commissions and boards is all part of the municipal code as you know. When we modify and consolidate and eliminate we of course will be modifying the municipal code. If we modify the code if we eliminate the board and all the terms of the board would expire. If we modify the terms of a particular commission, then the terms would be addressed in the modification in the ordinance. There is no right to have an -- to have a term if the Muni code doesn't provide for it.

>> Mayor Reed: So we could provide that we are drawing lots or flipping coins or whatever it is, whatever selection process we come up with.

>> Right.

>> Mayor Reed: Do we need to put people on notice that --

>> I suspect that when you reappoint them the notice should be going out to the people who are being reappointed or who are newly being appointed that your appointment is based on the current municipal code. If it changes then your term may also be either terminated or modified.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: My concern isn't necessarily with the transition, because I have every confidence that between the city attorney's office and the clerks office and the council we'll figure out how to transition. My concern is making sure there is a fire still burning where we have a date, the council really feels they need to take action because we have people's terms ending and we need to do something. I just have grown more and more impatient as time goes on, not in this in particular, but the days go by, and things get reshuffled, the deck gets shuffled a lot.

>> Mayor Reed: Vice Mayor.

>> Vice Mayor Nguyen: Thank you. I agree with Councilmember Constant. I think at this point it's probably -- it makes better sense to appoint these individuals to a shorter term, and we can figure out what we're going to do moving forward with the consolidation. You know just looking at this list here, obviously, we're going to consolidate the housing and the community development commission with the mobile home advisory commission, the rent commission. You know, that composition's going to change dramatically, and so I just think that it's probably better make sense to appoint them to just a temporary post rather than going for a couple years.

>> Dennis Hawkins: As I said before if that's the direction of the committee I would ask to bring this back in two weeks so we have a little bit of time to do some work and figure out what the appropriate time frames would be for those short appointments.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: I'd be happy to -- well not happy but I would remove my motion, or -- what's the proper terminology, City Attorney?

>> Withdraw your motion.

>> Councilmember Oliverio: I appreciate that power word. I too obviously we're going to have change at some point and appointing folks to the commissions also, in a way continues them in their current state which obviously this is a -- you know, it's an issue that the council has 100% discretion on changing. We have no federal law we have no state law yet we are really unable to make any changes. So -- and I you know to have people appointed through 2015 I mean I think short he terms would probably make more sense due to the fact we are going to do restructuring. If you want to bring it back then that's fine.

>> Mayor Reed: Let's give the clerk a chance to think about some of these. Some of these are changes that I think we are making absolutely no changes to and some we're making changes to if you could maybe sort those out so we don't make it more complicated.

>> Dennis Hawkins: We will do. We'll bring it back in two weeks.

>> Mayor Reed: Okay. We have a request to speak on this, Martha O'Connell.

>> I would be saying the same thing if I was up for reappointment of the commission (inaudible) human rights I would be saying the same thing. I oppose these long term appointments. You've got you got a commission a housing commission that only has nine members. It is going to look at housing as global issue. If you look at the paperwork, had you approved this you would have been appointing five of those nine members. There's lots of folks in the community who are interested in applying for a new commission. I think these folks should not be reappointed at this point in time except maybe for six or eight months. A year is too long. I also am confused. Because if you look at the last appointments to the small business commission and I thought you guys abolished that. So I encourage you not to extend these commissions but to try to move out to the community and get some more diverse representation of folks who might want to be on the new commissions. Thank you.

>> Mayor Reed: Okay, that conclusion the public comment. Councilmember Constant.

>> Councilmember Constant: My final comment would be, I would be in favor all of them being short appointments until we determine how they are going to be appointed. Because if we move towards moving towards district geographic representation by district it's going to change all the appointments.

>> Mayor Reed: Another thing for the clerk to think about. In the next two weeks, whether or not any of these should be done exactly the way they were done before.

>> Dennis Hawkins: We'll do a do-over and bring it back to the committee.

>> Mayor Reed: Okay. While we still have some time. So we will meet two weeks I think will be enough, right?

>> Dennis Hawkins: I think we'll be able to bring back at least some of these in two weeks. There maybe some others that we need a little bit more sometime to work through issues.

>> Mayor Reed: Okay.

>> Dennis Hawkins: But we'll start working on this and bring it back to you in a custom weeks.

>> Mayor Reed: So let's move on then to item 2B.

>> Councilmember Oliverio: Actually, mayor, could I make the suggestion that since we are not changing the historic landmarks commission and they have sometimes a difficult time making a quorum may I ask the rules committee to make a motion solely on the historic being landmarks commission? What we decided last week was not changing the historic landmarks commission, I would sort of like to give them the ability to have quorum. I'll take feedback if anybody has any.

>> Councilmember Constant: Did we decide they would be meeting in the same old fashion or changing that? That's my concern on commissions like the appeals hearing board where we have a predominance of one

area or the arts commission where we have a predominance of one area of the city. We have a decision where individual council persons appoint some people and we get lopsided commissions.

>> Councilmember Oliverio: I can tell you he's not from my district. He's not from District 6 I can't recall which district he's from.

>> Councilmember Constant: I don't have a problem with moving for with one. One transition is a lot easier than a dozen of them. But I'm just trying to --

>> Councilmember Oliverio: The only reason I bring it up is for the reason since it hasn't been proposed to be merged with any other commissions, and since it does have an issue of quorum, I have the responsibility to let the Rules Committee do that. So be it, I would simply make that motion on that one because it has that circumstance. So yes, that would be Marilyn messina, item D.

>> Mayor Reed: There is a motion.

>> Motion?

>> Councilmember Oliverio: I was waiting for second.

>> Mayor Reed: We are waiting for a second so we'll bring that back in two weeks.

>> Councilmember Oliverio: We'll wait two weeks, thank you.

>> Mayor Reed: Item 2B, compensation advisory committee, audit and work plan.

>> Councilmember Constant: Motion to approve.

>> Vice Mayor Nguyen: Second.

>> Mayor Reed: Motion to approve, a question regarding the work plans. I think from the discussion we had around boards and commissions we only have work plans that have come back to us for a part of them, right?

>> Dennis Hawkins: In this case, Mr. Mayor, the deferred comp advisory committee is there are no changes proposed for the deferred comp committee. And I would recommend the council -- or I'm sorry the committee approve the work plan for full fiscal year on this particular one.

>> Mayor Reed: Okay, Councilmember Constant.

>> Councilmember Constant: Just have one question. As we move forward with the pension reform and the ability of going into the defined contribution, yeah, defined contribution supplement, have we thought about how that might affect this work plan, or will it go with the retirement boards? Because it's kind of an area where we blur. I know we probably don't have an answer now but it's probably questions we should be asking as we go forward.

>> Mayor Reed: I don't think we had any discussion about how we might handle that if we get to the point where we have defined contribution supplemental --

>> We have not. The question is, whether or not you would provide this particular body with any oversight over any future defined contribution plan and that has not been discussed.

>> Mayor Reed: But it doesn't necessarily have to be this group or the retirement boards.

>> It does not. You can have a whole different body overseeing any defined contribution fund if you so desire.

>> Mayor Reed: So we are not prejudging with this representation.

>> No.

>> City Manager Figone: That would be important that we stay open on that, because as we pursue alternatives for those who might be in executive management and there is the potential for a defined contribution component that we are evaluating.

>> Councilmember Constant: And the only other question I ask is did we even discuss whether it would make sense to fold this into the retirement boards since it's the exact same topic? It's just like wheat bread and white bread, just a slightly different color?

>> City Manager Figone: I can't speak specifically. I know that Alex Gurza has been taking the lead on this and has been thinking a lot about its governance, let's say.

>> Councilmember Constant: Okay.

>> Mayor Reed: Right so this is the deferred comp advisory committee work plan. Anything else on it? I think I got a motion on that.

>> Councilmember Oliverio: Sure.

>> Mayor Reed: On the motion all in favor? Opposed? None opposed, that's approved. We have one more item, discussion and possible action on ATN update presentation of the airport commission agenda that's a change to the agenda for November 5th.

>> Vice Mayor Nguyen: Move to approve.

>> Councilmember Oliverio: Second.

>> Mayor Reed: Motion is to approve the addition to the work plan. Mr. Wall you want to speak.

>> Also was 2A I looked on the agenda it looked like it was an active item.

>> Mayor Reed: 2A was dropped.

>> Okay, doesn't show but okay. On this particular issue, automated transit network report, I don't understand how they get the money for this. I think that the D.O.T. should be really trying every way, shape or form trying to find money to fix the roads and potholes and whatnot. I don't see how automated transit network is going to help anybody going to the airport at this time. I think this is really a waste of time in my opinion until the airport starts really picking up with a lot of traffic what are you going to do have an automated transit network to go to a vacant airport with potholes all over the road? Anyway that's my opinion on this item. Thank you.

>> Mayor Reed: Motion to add this to the agenda for November 5th. All in favor, opposed, none opposed, that's approved. Open forum is our last item. Martha O'Connell.

>> Martha O'Connell chair of the senior commission. I was told by someone in PRNS that our work plan and our end of the year report would be in the packet today. It's not in your packet, guys. This was submitted to PRNS, in September. It was approved by the senior commission and yet on the clerks report we show as not on compliance. So I don't know what it's going to take to get a simple document to come down from the Department of PRNS. We did our report, it was written, and approved in September. Speaking of the citizen there was a lady at the time council meeting that stood up and went to the microphone and said that she was there on the mobile home advisory commission because of my support. That's true. What she didn't tell you was, that that was three and a half years ago. And since that time I've noted the dysfunctionality of that commission and subsequently told her yes you've quoted a three and a half year old letter I've changed my position I just wanted you guys to know that.

>> Mayor Reed: David Wall.

>> It's been referenced to yesterday with the workers comp issue. I didn't hear during the testimony about the actual workload that the consultant estimators are going to be performing. I have heard talk that our workers comp adjustors do anywhere from 400 and above cases per month or what have you. But these TPA people are only going to be doing 150 cases, maximum per contracted person. So it seems to me the City's not really getting a good deal here with this, if this is true. And I have every reason to believe it is true. And I also don't see any really analytical methodologies of really tracking these medical provider networks. These areas can be a great savings say if the city would design its own like Councilmember Chu prefers yesterday. But this area also has great area for corruption. Because there's just not enough money to audit them and to oversee them. I also would like to thank the office of the City Manager for trying to maintain control over organization that is basically out of her control because of a lot of different factors. I think the City Manager does her best to retain city employees wherever she can and I would like to thank her personally for that. And I also am mindful that I have not seen legislation putting forth from this council to protect public officials in their residences from being bothered, harassed by protesters, occupiers or whatever you want to call them. This is a hate crime and no public official should have this type of crap in their neighborhood and it should be squashed by municipal ordinance. Outside of that have a good day.

>> Mayor Reed: Jim Piazza.

>> I'm with clean earth management and again, the last six months I've given you guys numerous information after information after information about lead polluters. Again, I don't know why everybody doesn't want to do the right thing and to be accountable. We know the right knowledge and again, we always are going right back to stonewalling us, when I ask questions I get no answer he. Again, this is my proof. This is a lawsuit that's already done with. They've already paid it off. So why would somebody pay it off if it wasn't so true? Again, shouldn't we be all on the same playing field? You've let an ecological disaster happen the last four and a half years dumping lead in the bay. When is it going to be enough?

>> Mayor Reed: That concludes the public testimony, includes our agenda, we're adjourned.