

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: Good afternoon. I'd like to call this meeting to order. This is Rules and Open Government committee meeting for August 25th. We are having this meeting in the council chambers because the usual committee meeting room is reserved for other matters. First question is whether or not there are any changes to our agenda order. Nothing? All right. We'll just move ahead then with the August 31st council meeting agenda. Anything on page 1? I would note in terms of the closed session, we're starting at 9:30 as regular, but I think the City Attorney is planning on agendizing discussion of our major litigation items, so we will surely go until 12:00 on that day. Just so everybody will know because there's lots of things to talk about. Anything else on page 1? Page 2 or 3? Anything on page 4 or 5? The Guadalupe Mines Road, I think, Councilmember Pyle, you wanted to try to set a time certain for that.

>> Councilmember Pyle: Yes.

>> Mayor Reed: We'll come back to it and try to figure out what that time is. If we hear it last, which is the recommendation. Anything else on page 4 or 5? Page 6 or 7? I have some requests for additions. Proclamation of September 8th as international literacy day, Councilmember Herrera's travel to San Diego for league of California cities. Councilmember Herrera's travel to Washington, D.C. for the Silicon Valley Leadership Group advocacy trip. Councilmember Herrera's travel to Seattle for the San José Silicon Valley chamber of commerce trip. Any other additions we've got? All right, let's go back and talk about time-certain. What's the best guesstimate from the staff of a time-certain given this is a pretty short agenda?

>> I think actually probably 2:00 or 2:30. No more than 2:30. I know we have some presentations under section 7, 7.2 and 7.3 but I don't think they're long presentation he.

>> Mayor Reed: I have only one ceremonial. Consent calendar, looks pretty short anyway. That will be quick. I think the one substantive matter is the Guadalupe Mines issue. And then presentations on the commercial solid waste and recycle collections franchise and storm water permit, are those --

>> Actually 7.2 and 7.3, the two related to storm water permit.

>> Mayor Reed: How long will those presentations take?

>> Few minutes, if there are questions.

>> Mayor Reed: I don't think there's a whole lot of question or public testimony on those. So we could be done by close to 2:00 with most everything. So not before 2:00, does that work? Anything else in the way of changes? Anything?

>> Councilmember Constant: Motion to approve with adds and amendments.

>> Councilmember Pyle: Second.

>> Mayor Reed: Motion is to approve as amended. All in favor, opposed, none opposed, that's approved. September 7th we do not have a regular council meeting. We have a study session, redevelopment agency in the morning. And then City Clerk, we want to talk about the possibility of of setting a special meeting for civil service interviews maybe?

>> Lee Price: Thank you, Mr. Mayor. Since the council has already cancelled its regular city council meeting for September the 7th but set aside the morning from 9:00 to noon to meet as the redevelopment agency as well and discuss the agency budget, I have a need for the council meet at 1:30 that afternoon here in council chambers in a special meeting then to interview candidates for the civil service commission. I've checked with each council office and with the exception of Councilmember Campos, all the councilmembers are available and willing to meet at 1:30. At this current time we have five applicants who are submitting their application for two openings on the civil service commission and it's very critical that we fill these seats on the commission as soon as possible. They are just a five-member commission as you know. And currently, all of the appeals are pending, waiting for the commission to be full so they can conduct those hearings. So as soon as we can get those positions filled, the

better. So hopefully, that will be a good time do that. I don't expect the interviews to go later than, say, maybe 3:00. And I can come back next week with the agenda for your approval.

>> Mayor Reed: Okay, why don't we agendize that then, to discuss next week and official get it on the calendar. Because we have five now, we'll probably get a couple more. So we're looking at a couple of hours on average, time. Councilmember Constant.

>> Councilmember Constant: That was my question. When I looked up the application it said open until filled. So is there a cutoff that you're going to have for this particular meeting or sit just if people get in for the evening before, just so that we know as we're informing people for outreach.

>> Lee Price: Thank you, excellent question. In order for us to make sure we meet our open government noticing requirements for special meeting, I will need to have that packet out on Friday, September the 4th -- 3rd. So what -- although I haven't posted a deadline for the applications I think realistically in order for city attorney's office and code enforcement to do their due diligence with their conflict of interest and code enforcement review, that Wednesday, the 2nd, right? The 2nd would be -- 1st. No, Wednesday the 1st, for the interviews on September the 7th. However, if applications came in after the fact, and the council had an interest in conducting an additional interview, at a later date, we certainly could facilitate that.

>> Councilmember Constant: Okay, that's great, thank you.

>> Lee Price: You're welcome.

>> Mayor Reed: All right, so we'll discuss this in detail next week and get it on the calendar officially. Nothing else on September 7th agenda. We'll take up the agency schedule then, August 31st.

>> The agency has no items scheduled for the 31st and we'd recommend cancellation of that afternoon session. We'd still remain available for the morning closed session or for any joint items that came up on the City's agenda in the afternoon.

>> Mayor Reed: We have a motion to cancel the afternoon portion. All in favor? Opposed, none. That's approved. September 7th we have no regular redevelopment agency meeting but that is the budget study session.

>> That's correct. We cancel just like the city except for our study session proposed.

>> Mayor Reed: Okay. Upcoming study session agendas, speak of that September 7th, the agency budget preparation study session, we have a proposed agenda. And what time are we starting this? 9:00.

>> That's correct. We'd be finished prior to noon.

>> Mayor Reed: Okay. Any comments or anything on the agenda itself?

>> Councilmember Chirco: Move to approve.

>> Mayor Reed: Motion is to approve the agenda. All in favor, opposed, none opposed, that's approved. Legislative updates, we have nothing in particular.

>> Betsy Shotwell: Betsy Shotwell, Director of Intergovernmental Relations. Mayor, members of the committee, not at this time, unless the City Attorney wishes to provide any updates on any activities they may be working on. The legislature is trying to adjourn, Friday the -- they do have in the the 31st. They're trying to deal with over 100 bills a day. And then we'll be on call with regards to the state budget deliberations.

>> Mayor Reed: All right and we do have some legislative positions to be considered, we'll take up under the item H. We can talk about those when we get there.

>> So mayor, a couple of updates. Just as a report I know none of them are on the agenda for discussion but simply an update as to what Rick mentioned last week. There are six bills that are moving forward in the legislature. All dealing with the crisis that was created by the city of Bell. With regard to AB 1955, the City's legislative staff here and in Sacramento have been working hard to make some modifications to that. We were successful in getting an amendment that was adopted in August the 18th to exempt charter cities whose populations are in excess of 285,000. So clearly the city would be exempt from that particular legislation. With regard to SB 501, that particular legislation required officials of cities and counties to file annual statements. Initially it had required that those filings be done with the Secretary of State. There was some legislation. The legislation was amended to include provisions that would allow as an alternative that the local cities file on their own Websites, as opposed to having to file with the Secretary of State, and also limited the persons who would have to file to elected officials, and did not require all designated employees which would have been hundreds of city employees of filing these forms. So it was limited and they did take a to the City's comments with regard to the legislation. With regard to AB 827. That particular legislation deals with the salaries of nonelected local governments preventing so-called evergreening clauses, meaning no automatic increases to salaries of nonrepresented employees. That particular bill is still -- there's still a lot of discussion on that bill. That bill would amend the Meyers Milius Brown Act which basically covers represented employees. But they're trying now to amend it to deal with nonrepresented employees as well. There is a lot of discussion, a lot of the charter cities as to whether or not that particular bill would apply to chartered cities. So we're still discussing that issue. There was a bill AB 192, Orgato bill relating to public retirement benefits dealing with excess salaries of employees who are part of the PERS program who moved -- who transferred to a city and then received compensation in excess of 15% of the prior salary. That would create liability on the new employer to deal with the potential liability of the excess compensation. My understanding as of this morning is that the author is going to delay that particular bill, is not going to push that particular bill forward this year but would look to move it next year. So that -- that bill will be removed from the six and now become a five-legislative packet. AB 184 relating to retirement and local employees putting a cap on the percentage of salary that would be permitted with regard to

retirement systems. Again, we're looking at that bill to see what impact it has on a chartered city, and so we'll have to give you an update on how we progress in our comments with regard to that bill. AB 2064, relating to state and local governments salary disclosure, that bill is similar to SB 501, which would require salaries of certain officials to be posted on Websites and with the Secretary of State. This particular bill includes the legislature and constitutional officers as well as local officers. So if this bill were to pass there is an exclusion provision in the bill that if SB 501 as well as AB 2064 passes the section dealing with local government officials would be eliminated and this bill would simply cover the legislature and the constitutional officers disclosure. That's the update we have.

>> Mayor Reed: Okay, that's it on the legislative item. Next item is meeting schedules, we have nothing to talk about. The public record, I have request from the public to speak on the public record items. We'll take that now. David Wall. And then Aaron Racindez.

>> David Wall: Good afternoon. The first one will be the letter from Councilmember Campos concerning Mr. Aaron Racindez's situation. I find this to be troublesome insofar as knowing Mr. Racindez and his campaign was above board in everything he did. And also seeing the testimony of Mr. Ford. I was not a party to the videotaped incident so referenced. But I believe that any time a government official hides behind the shield and sword of the attorney's office in reference to what appears to be a very valid complaint is problematic. Leave it at that. The other thing on this begin grants program. Number G, I'm very concerned about what appears to be free money being given out. And I reference page 2, quote, further all begin loans are structured as 3% simple interest loans with no monthly payment requirements for 30 years or until the home is sold or transferred to an ineligible household, close quote. Very problematic. Item I the ability to speak on issues play be a procedural error on my part. I do not know the procedure, apparently as of yesterday. I was assuming that anything that is listed and you filled out a public request to speak card you could speak on. And apparently things have changed to now where I'm of the opinion that the transparent government has become opaque at best and that perhaps I need some form of education or the citizens need some form of education to clarify when you can speak and whether or not Your Honor gets the cards or is there some procedure interferences that needs to require remedy. Thank you very much.

>> Mayor Reed: Aaron Racindez.

>> Hi, Mayor Reed and members of the Rules Committee and open government. You know, this is my complaint was not an anonymous complaint. It is a real complaint. People working for me. That they forgot that they are public servants working for me but also was caught on videotape. That my wife she was very intelligent of doing that. And you know they cannot with this small memo from a councilmember trying to go to Sacramento is going to get worse in Sacramento. So Mayor Reed, and the Rules and Open Government Committee, I'm asking you to, you know, follow up on this, and another thing that note is lying there, we never talk about the issue. When she called me from the city phone she say we cannot discuss this matter on city time. We have never discussed that, neither city time neither outside. I'm open to discuss this. You know I'm expecting still an apology and I know they did wrong. Mr. Ford was wrong on what did he to me. Thank you very much, and please, keep this going. We cannot have elected official acting this way. Thank you.

>> Mayor Reed: That concludes the public comment on the items filed for the public record. Does the committee wish to pull any for discussion? Motion to note and file.

>> Councilmember Constant: I was just going to make a comment. On Mr. Racindez's item. As you know, the way the charter reads, each councilmember is an individual appointing authority, and this board, no other council, unfortunately, has any jurisdiction in that matter. But we do hear your complaint but our hands are tied due to the form of government and appointment process we have. I can just tell you there are several councilmembers myself included that if we get complaints in our office we turn them over to the office of employee relations to have an impartial investigation. That's what I do, I think that's appropriate to do but unfortunately that's all we can do at this point because of the way things are outlined in our charter.

>> Mayor Reed: All right. I have a motion to note and file. All in favor? Opposed? None opposed, noted and filed. Item G, boards commissions and committees. I have recommendation memos to approve appointment of two people, to the Silicon Valley workforce investment network board of directors, Ralph aceves and José

Gonzales to serve as representatives on that board. I have a motion to approve both. All in favor, opposed, none opposed, we have nothing under work plans or annual reports.

>> Lee Price: Mr. Mayor, if I can ask the committee if we can go ahead and put this forward on the agenda for next week to ratify the appointments?

>> Mayor Reed: Okay, make it so.

>> Mr. Mayor, if I could interrupt, there may be a need to do a reconsideration of the agenda for August the 31st. My understanding on the agenda item, dealing with the Guadalupe Mines Road there are several appeals that have been filed that will actually have to be taken up on that date. So I would like to recommend that someone make a motion to reconsider that agenda, so that we can include council hearing those appeals on that date. We will need council action since you have approved the agenda as printed out and you will have to amend that before Tuesday.

>> Councilmember Constant: I would like to make a motion we reconsider.

>> Mayor Reed: Any objections? Okay. That's approved. Without objection. So we need to fix a spot there for -- to hear the appeals before we take up the land use item is basically what we need to do?

>> In connection to 4.4 would have another item added at the beginning of that item, you would hear the appeals and then determine whether or not you would want to approve the rezoning.

>> Councilmember Constant: If I could interrupt, if I could restate my motion, I'll move the agenda as amended with the additional language just added by the City Attorney.

>> Mayor Reed: Okay. We have a motion to approve as amended. Including the previous amendments, we already took up. All in favor? Opposed? None opposed, all right we can hear that on the 31st. Next category are

approval of city positions for six resolutions to be considered at the annual league of California cities conference which we need to get on the council agenda for action on the 31st.

>> Councilmember Chirco: Move approval.

>> Mayor Reed: We have a motion to approve, any further comments other than what's in the staff report, Betsy?

>> Betsy Shotwell: No, thank you.

>> Mayor Reed: When is that conference?

>> Betsy Shotwell: It is the 15th, 16th and 17th. And the council representatives will be at their policy meetings and at the annual business meeting representing the city on these items.

>> Mayor Reed: Okay. We have a motion to approve. All in favor, opposed, none opposed, that's approved. Some additions to council committee agendas to consider. Committee and economic development committee agenda for September 27th, to add an item regarding 2010 California building standards ordinance implementation, request from the City Manager, and an item to add to the Public Safety, Finance and Strategic Support Committee for September 16th, again regarding the 2010 building standards adoption ordinance. Motion is to approve both additions. All in favor, opposed, none opposed, those are approved. We have nothing under appeals of public records act request. So we have open forum, and I have one request to speak, David Wall.

>> David Wall: This is a report, my report, basically, from the first meeting of the police chief recruitment. I will say the City Manager to her credit had an outstanding meeting. Making sure that everybody had any level of participation available to them. I was concerned though, and you should be very concerned, four nationals are participating in the selection process of the chief of the San José police. And from my discussions with some of them they feel that they are entitled to certain aspects of the police chief operations insofar as, they want the

police to -- the San José police to look the other way on immigration matters. They do not want their vehicles taken away. They don't even want to be fingerprinted. In other words, they want to bypass all immigration laws when I asked them a few questions. So this is very problematical for that. Another problem is the fact that we have very talented people, Mr. Shikada, for example. Why should we be paying a professional recruiter a \$26,000 contract, plus \$13,000 more for benefits and expenses, when we have outstanding people in the office of City Manager that could facilitate. Dr. Spano, he has a sweet gig with the city. Make inquiries on your own. I think last year several hundreds of thousands of dollars, \$7,000 alone just for this participation. Facilitation should be a requirement of any deputy City Manager, in my opinion. Other issues are, do not sell or lease Muni water for obvious reasons, and I think there should be a guard or a chaperon for Councilmember Liccardo and the deputy director going to Holland. That place has become a wild place over the years, and I think that should be --

>> Mayor Reed: Sorry your time is up.

>> David Wall: Thank you.

>> Mayor Reed: That concludes the open forum, that concludes our meeting, we're adjourned.