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>> Vice Mayor Nguyen: I'd like to call the Rules and Open Government committee to order. We will start with the city council agenda for September 25th, 2012. Any changes to page 1? 2 or 3? 4 or 5?

>> Dennis Hawkins: Madam Vice Mayor, I had a conversation with Councilmember Herrera's office a few minutes ago. And she would like to request a deferral of item 3.4. The boards and commissions item and item 3.5, the neighborhoods commission pilot program. It -- next Tuesday is Yom Kippur, and Councilmember Herrera would not be able to attend the evening session due to religious holiday, and she would ask that those two items be deferred for a future evening council meeting.

>> Vice Mayor Nguyen: I believe it was brought to our attention that we -- the residents wanted to hear this item at a night evening session sometime in September. So I'm not sure how my colleagues feel. But this is pretty much the last meeting in September for this month. Right?

>> Dennis Hawkins: Right. The next regularly scheduled evening council meeting would be October 23rd, if I'm calculating correctly. I think the council direction was to be heard in an evening in September. And that's how we got to September 25th.

>> Councilmember Constant: How many times has this been deferred? Quite a few, right?

>> Councilmember Oliverio: Once. I'm sympathetic to the religious holiday of Yom Kippur, and if Councilmember Herrera is unable to attend the council meeting and we're rescheduling the public's business on a religious holiday, that's a difficult situation. Listen, this isn't time-sensitive per se. Nothing's going to -- no one's losing a permit, no one's losing any economic development opportunities. I'm happy -- or not happy, but content with postponing it.

>> Councilmember Constant: I don't have a problem with it, either, as long as it -- if it was the fifth deferral it might be different but --

>> Vice Mayor Nguyen: No, it's not. Okay, we can defer this until we choose a date, or should we discuss this at the next Rules meeting?

>> Councilmember Constant: I think we should say, for that October evening meeting, unless for some reason there's a reason to call an earlier meeting for a zoning or something, then we can handle it at that time.

>> Vice Mayor Nguyen: So that will be the first evening meeting of October?

>> Dennis Hawkins: And that's currently scheduled for October 23rd.

>> Councilmember Oliverio: And question for the city clerk. With that said, now that there's more time for the clerk's office, would you be providing any of the cost information, you know, the cost of staff time?

>> Dennis Hawkins: Yes, we are also already planning on issuing a supplement later this week which would have cost information, as well as some other policy alternatives and other data for the council. So we'll -- we'll issue a supplemental memo that will include that information.

>> Councilmember Oliverio: So this will allow you the time that you were originally being told you were given, right? Because remember you were told in December, and then the council pulled it in much earlier.

>> Dennis Hawkins: Yeah. As staff we are ready to go on both items. We have got it teed up for next week, and -- but we'll be ready in October as well.

>> Councilmember Constant: Could I just clarify, the third Tuesday in October is the 16th, and that's -- usually we have our evenings on the third Tuesday, right?

>> Dennis Hawkins: We've been kind of -- we don't have a firm practice of third Tuesdays. When the council meeting schedule is approved every six months, we designate certain evenings as evenings, and the current

calendar is October 23rd. However, if the committee directs, we could schedule a special evening meeting on the 16th, if that is the committee's preference.

>> Councilmember Constant: I guess I had the wrong date in my calendar, so I got to figure out what I'm going to do on the 23rd, but I will be here.

>> Councilmember Oliverio: So then a motion to approve the agenda --

>> Vice Mayor Nguyen: Well, actually, let me get through the agenda. So we also have a speaker -- we also have a member of the audience that want to speak on the item, as well.

>> City Manager Figone: Madam Vice Mayor, just to draw to your attention when you get there. These are the only items that evening, so it would likely mean, except for the ceremonials, that you might want to consider just cancelling the evening session.

>> Vice Mayor Nguyen: Oh, I think we have one on 3.7, that is also for the evening, on the next page.

>> Dennis Hawkins: I'm sorry, I didn't mention that, 3.7 the rules of conduct was not specifically what Councilmember Herrera was concerned about. But that's correct, we have three items scheduled for the evening. The boards and commission items and then the rules of conduct that was deferred from yesterday's meeting.

>> Councilmember Oliverio: It would seem, to come for evening meeting for that one item and a ceremonial would be best to cancel the evening session.

>> Vice Mayor Nguyen: I'm okay with that. So would we move this to the afternoon agenda, then, for 3.7?

>> Dennis Hawkins: The memo from three councilmembers specifically asked for an evening discussion. So --

>> Councilmember Oliverio: So they could can request to defer it at next Tuesday's meeting?

>> Dennis Hawkins: Or the committee could just defer to it that same meeting, when we're doing the board and commission.

>> Councilmember Constant: Which I prefer, I think we should just handle it here.

>> Vice Mayor Nguyen: Yeah, okay. We'll -- you can make a motion once we're done. So anything else on page 6 and 7? Page 8 or 9? And we have one land use item and that's being dropped, so -- okay.

>> Councilmember Constant: So we have the add sheets as well.

>> Vice Mayor Nguyen: Yes, and we have the add sheets, a commendation honor Santana Row as it celebrates its 10th anniversary in San José, and a commendation to Blossom Valley All Stars, from Councilmember Nancy Pyle, and excused request absence for the mayor. Martha O'Connell, did you want to speak on this -- one of the item?

>> I came down here because I'm very angry and very frustrated. Board and commission stuff is still going on, it's been three years. We've had the senior commission has had this item on their agenda for three why years, okay? I'm sensitive to the religious holiday, I understand this guys but stop kicking the can down the road and would you have the guts to make a decision in October and do something? This has been very disruptive, it's been very demoralizing. The senior commission hasn't been able to revise their bylaws for two bloody years, I just had a call in to the human rights commission who was going to come down next Tuesday to speak. People are arranging their lives around this, people that don't normally come to your city council meetings. So now you're putting it off again. I would hope in October you would have the courage to finally make a decision about these consolidations. Thank you.

>> Vice Mayor Nguyen: Thank you.

>> Councilmember Constant: So with that, I'm ready to make a motion if you're ready.

>> Councilmember Oliverio: Go for it.

>> Councilmember Constant: So first I'd like to add Mr. Oliverio to our commendation, because I didn't know he wasn't on there. So we'll figure that part out later. So a motion to approve the agenda, with the deferral of the three evening items to the October meeting. Adding in the adds, but we do need to make sure that we coordinate with the three council offices and have the evening ceremonials to ensure that they can be rescheduled, as well.

>> Councilmember Oliverio: Second.

>> Vice Mayor Nguyen: Great, we have a motion and second. All those in favor? Opposed, hearing none motion carries.

>> Councilmember Constant: And also in that away as a commitment that I won't allow this to be deferred again if I have anything to do with it.

>> Clarify if that is scheduled for October 23rd and not a special meeting?

>> Councilmember Constant: Yes.

>> Vice Mayor Nguyen: Okay. We'll move to October 2nd, 2012, city council agenda. Any changes to page 1? Page 2 or 3? 4 or 5? Or 6? And I did not see any additions or amendments. May I get a motion?

>> Councilmember Constant: Motion to approve.

>> Councilmember Oliverio: Second.

>> Vice Mayor Nguyen: We have a motion to approve city council agenda for October 2nd. All those in favor? Opposed? Hearing none motion carries. Moving down to item B. Review of upcoming study sessions. Approve October 5, 2012, study session agenda. This is the city council Board of Supervisors meeting.

>> City Manager Figone: Yes, madam vice care, we are coordinating the items under 3 with the county staff, I think from the city perspective and county level we're good to go.

>> Councilmember Constant: Just note, I'm not going to be there, for the third year in a row it conflicts with Lafco obligations so maybe next year we can figure out ahead of time. So anyway I'll make a motion to approve it since I won't be here.

>> Councilmember Oliverio: Question on the agenda, City Attorney, if it's something not on the agenda can it be discussed that day?

>> The only thing you can do is ask for a -- you can give direction that it come back at a later date. You can't discuss anything that's not on the agenda or related to anything on the agenda.

>> Councilmember Oliverio: You cannot?

>> You cannot.

>> Councilmember Oliverio: So you couldn't have the what if, extraneous discussion that comes out?

>> Any discussion on any item that's on there would have to be referred to a future date. You can raise an issue, but it would have to be referred. My understanding is that there is still time to add stuff to the agenda, if the City Manager is able to provide you with the information --

>> Councilmember Oliverio: We as the two bodies together don't take an action.

>> But did you discuss items?

>> Councilmember Oliverio: Right.

>> The agenda requires that you identify what it is you're going to discuss, take action or consider.

>> Councilmember Oliverio: I'm sorry, so does that in this joint meeting the council and supervisors do not vote per se on anything.

>> Well, they can vote to work on an item. They can vote to direct their respective staffs to do something. So they can take action. It looks like, in this case, it is simply going to be discussion. But I'm assuming that at some point both boards can direct their respective staffs to do something in furtherance of some discussion that was had at that evening.

>> Councilmember Oliverio: Okay, but if I remember correctly, those aren't actual votes, it's just kind of like a consensus of opinion.

>> Correct, but the issue is whether or not either board can discuss anything that's not on the agenda.

>> Councilmember Oliverio: Thank you, second.

>> Vice Mayor Nguyen: Okay, we have a motion to approve. All those in favor? Opposed, hearing none, motion carries. Move down to legislative update. Betsy.

>> Betsy Shotwell: Thank you Madam Vice Chair, members of the committee. Betsy Shotwell, Director of Intergovernmental Relations. As I reported last week, the governor signed the pension reform measure that was on his desk, and this is the time period that he is reviewing, his staff is reviewing legislation that is pending on his desk until October 1st. And then I did just learn that he did sign the workers compensation measure. SB 863 which I know the city attorney's office and employee relations has been in review of. There are provisions of the bill that I know the league and staff feel would be beneficial to the city but the costs are somewhat unknown at this point. If the reductions and the fiscal savings will be offset by any increased cost so we'll still be monitoring that of course very closely in implementation. I did also want to mention there is some bills we're looking at in review having to do with infrastructure financing districts. This is looked at as a tool not to replace redevelopment of course but somehow raise revenue for infrastructure financing, and there are three measures, two Senate Bills, one Senate Bill 214 and senate bill 1156 and AB 2144 which are all on the governor's desk which we're reviewing internally as well. Don't know the outcome of these measures will be but we're looking obviously at any opportunity for tools to piecemeal if you will, replace functions that redevelopment had for the city and I'll be back with updates next week.

>> Vice Mayor Nguyen: Thank you. There are any questions? Thank you Betsy.

>> Betsy Shotwell: Thank you.

>> Vice Mayor Nguyen: Go down to meeting schedules. We have a city council session entitled draft be Santa Clara Valley habitat plan review for September 27th, 2012, from 1:30 to 3:00. Seems like this is an hour and a half without council discussion. How do we determine if we put something on the study session or put it on the regular council agenda?

>> Joe Horwedel: Thank you, madam vice chair. Joe Horwedel, planning director. This was something staff had originally proposed for September 25th in open session. When the study session slot opened up, when another one dropped out we did suggest that this maybe was a better opportunity to allow a little bit more time. Because the issues are -- there are some complicated issues with this that's -- that a regular council agenda I think might

be a bit constrained. So staff did propose this before we bring it for final consideration, in October. And so it was an opportunity.

>> Vice Mayor Nguyen: Okay. Councilmember Constant.

>> Councilmember Constant: Well, don't we have plenty of time just to put this on the Tuesday evening agenda, and go back to that item, add it in? And that way we're not cancelling the evening meeting. All we would have is the three ceremonials, this item, and then we could free up the afternoon on this Thursday?

>> Councilmember Oliverio: May I?

>> Vice Mayor Nguyen: Yes, Councilmember Oliverio.

>> Councilmember Oliverio: I'd actually add to Councilmember Constant's comments, that the 25th agenda is very thin. I think we could easily accommodate an hour and a half, and then just have a longer day meeting, and then we got it done in one day.

>> Joe Horwedel: Any one of those options I think are possible. It's really to have an hour and a half block of time that we're not feeling kind of rushed that we need to be somewhere else. I do feel that it's important enough to have that kind of block of time.

>> Vice Mayor Nguyen: Maybe we can add this as the last item on the September 25th afternoon agenda.

>> Councilmember Oliverio: How do you feel? I think it's a topic that you know, either way is fine. As long as it's on the agenda. I somehow feel that maybe it should go earlier in the agenda, since that's when most people are top of mind.

>> Vice Mayor Nguyen: Oh, okay.

>> Joe Horwedel: This, sorry --

>> Councilmember Constant: My only comment was that we do have the three ceremonials that are going to take some rearranging and we don't have a lot of evening sessions. So this would be a way to cause as little disruption as possible, since everyone already has that evening marked off on their calendars. And we could be here from 7:00 to 8:30. I don't know if the City Manager has any comments.

>> City Manager Figone: Just a question, Joe, I've lost track. Materials aren't out yet.

>> Joe Horwedel: That's correct.

>> City Manager Figone: It's not out for action. Were we in the window or might we need a waiver on the materials?

>> Joe Horwedel: I would be asking for leniency on getting materials distributed. Friday would have been our deadline for the Thursday study session. We are still working on materials for the meeting. So it -- I would ask for a little bit of discretion.

>> City Manager Figone: And just along those lines, because it was a study session you anticipated you'd have to bring back action items anyhow so in terms of the council, I know it's quite dense material but do you feel it's reasonable that they hear this and be prepared for the meeting if the materials go out Friday?

>> Joe Horwedel: That's correct. Is that we have a Planning Commission staff priority went out that I think has been shared with the council that is a pretty good primer on the plan. So really our focus as noted in the staff report for the committee today is on a couple of very discrete areas, the majority of that material is already out, we are trying to package it a little bit better for you to make it a productive session. I think we'll be okay. It's the one

thing I have to work on is orchestrating some other staff from fish and game and fish and wildfire which we were trying to get for the 27th which they were actually having some conflict with, so maybe this will work out again.

>> Councilmember Oliverio: Joe, do you know a better time in the afternoon would be better for them typically?

>> Joe Horwedel: Originally they were working with the afternoon and coordinating with the Board of Supervisors were in the morning, they were going to have a discussion going on. So I think either the end of the afternoon, but you know, being that we could actually really spend an hour and a half on it, or doing the evening after the ceremonials and you know recognizing it's probably 8:30 or 7:30 to like 9:00.

>> Councilmember Oliverio: Well, either way, I think. I just saw the habitat plan which is about 8 to 10 inches of paper, literally stacked --

>> Joe Horwedel: 13 pounds of paper.

>> Councilmember Oliverio: So I think the council's probably going to have the benefit of your comments and the PowerPoint presentation -- I assume you'll present --

>> Joe Horwedel: Correct.

>> Councilmember Oliverio: We keep Microsoft in business here. But with that said -- yet you're going to come back to us, I think a solid hour and a half in the afternoon is where I would like to go with this.

>> Vice Mayor Nguyen: Are you okay?

>> Councilmember Constant: I prefer evening, but I don't really care.

>> Vice Mayor Nguyen: Well then I get to vote. I think it should be the -- you know in the afternoon, council agenda, whether it's -- you know we can allocate an exact time for it or we can allow it to be the last item so that we have ample sometime for the presentation and also discussion, that would be my preference, is to be heard last on the afternoon agenda.

>> Councilmember Oliverio: Fair enough. I'd like to make that motion, but city attorney how do I make that motion since we've already --

>> You can ask to reconsider the item.

>> Councilmember Oliverio: I'd like to reconsider the last item so we may add the habitat hour and a half plan as the last item on September 25th.

>> Councilmember Constant: Second.

>> So now you vote on it again, because you voted on reconsideration.

>> Dennis Hawkins: Point of clarification. Does that include a sunshine waiver for any materials and documents?

>> Councilmember Oliverio: It would include a sunshine waiver for any materials and documents due to the schedule change.

>> Vice Mayor Nguyen: Very good, okay, we have a amendment to the motion, all those in favor, opposed, hearing none, motion carries. Public record.

>> So you're still deferring the ceremonials, which you didn't move it up --

>> Councilmember Oliverio: They can schedule whenever they like.

>> The ones that were scheduled in the evening.

>> Councilmember Oliverio: They need to move them.

>> Dennis Hawkins: We'll work with the mayor's office and the council offices for that.

>> Vice Mayor Nguyen: Okay. Anything on the public record? Committee members want to pull any items?

>> Councilmember Constant: Motion to note and file.

>> Councilmember Oliverio: Second.

>> Vice Mayor Nguyen: Motion to note and file. All those in favor, opposed, hearing none, motion carries. We will move down to boards commissions and committees, approve the 2012-2013 work plan as recommend by staff, which is the annual report for the library commission work plan.

>> Good afternoon, Vice Mayor Nguyen, members of the committee, I'm Ann King the interim library director. You have in front of you both the annual report for 11-12 as well as the work plan for 12-13 for the library commission. As you can see the commission hears reports on regular matters such as the library budget as well as sit setting a work plan for the year where they receive various reports on various library program services and collections and services to different target populations. The work plan for -- they accomplished all of their goals in 11-12 except one that was carried forward to this year and then they've added another set of topics that they'd like to hear from staff about for the 12-13 work plan. And you can see they cover both in their capacity as the library commission as well as the oversight committee for both the library, construction bond as well as the parcel tax. And with that I will take any commissions.

>> Vice Mayor Nguyen: Thank you. There are any questions? Councilmember Oliverio.

>> Councilmember Oliverio: Hi, how you doing. For maybe the City Clerk as well as the library director. Library commission reports end up coming to the neighborhood services and education committee. I'm curious where we could find that there might be overlap? Did you see this anywhere when you were looking at things how library commission folds into neighborhood services at all?

>> Dennis Hawkins: Generally on our report on boards and commissions we would like to see a closer alignment between the commissions and the council committees that oversee those areas and the CSAs through the administration. And we think there's some value in making sure that all those work plans align.

>> Councilmember Oliverio: And do you believe the men in between city management and library do you believe they do align between the CSA and NSE?

>> City Manager Figone: In term of the City Manager's Office tracking of issues, it is definitely the deputy who handles NSE, Norberto Duenas, so whether or not there could be more alignment in terms of what comes on the committee agenda, I couldn't speak to, but that is clearly the alignment we would expect internally.

>> Councilmember Oliverio: I just wanted to bring that point, and I'd be glad to approve the work plan that goes through June 2013.

>> Councilmember Constant: Second.

>> Vice Mayor Nguyen: I have a motion to approve. All those in favor, opposed, motion carries. We'll move down to G, committee reviews, recommendations and approvals, G-2, agendize for city council consideration minor modifications to chapter 6.52 of the San José Municipal Code to enable one person to hold more than one pawn broker's permit and or to operate at multiple locations. I believe from last meeting we were supposed to hear from City Attorney or Planning to see whether this is a minor modification or whether it needs full council discussion.

>> I'm happy to talk on behalf of the city attorney's office. For purposes of the city attorney's offices in modifying the municipal code, it is a simple modification in that we simply change the word from one to two. However I believe that the City Manager's office was going to coordinate with police, and her other departments to determine if there were any other issues that would be impacted by that modification to the word. One to two.

>> Vice Mayor Nguyen: So then we do need a full discussion.

>> City Manager Figone: I'm not sure that you do. Joe, if you could remind me and I know we have a member of the police department here. On the pawn broker item did we believe that a fuller discussion was needed with the simple change?

>> Joe Horwedel: No, that because there was not an increase in the total number of pawn brokers allowed within the city it was really the mechanics of should one or two be allowed, the police department thought that that was a pretty minor change. It was not going to increase concerns elsewhere around the city and it only affects that part of the code.

>> Vice Mayor Nguyen: So that this committee has the authority to still approve the 99 change?

>> Well, approve it to putting it on the agenda. It was deferred from the agenda in order to determine if there were other issues that the council should consider and I believe based on the discussions we've been having internally in staff it would be a minor modification to change the word from one to two.

>> City Manager Figone: And the alternative would have been if it was a significant item, to put it into the prioritization process. We just didn't think that was warranted.

>> Councilmember Oliverio: I'll make the motion to approve it for the October 2nd meeting.

>> Councilmember Constant: Second.

>> Vice Mayor Nguyen: Great, motion to approve. All those in favor? Opposed, that's --

>> Motion to approval.

>> Vice Mayor Nguyen: All those in favor, motion carries. This will bring us to the open forum. We have Martha O'Connell.

>> Okay. Eight months ago, councilperson Herrera asked about the cost savings for boards and commissions, and we haven't heard anything. So I put in a public request and I will be going to the state of California, Dennis, if we do not get this information, Dennis, I promise you. This is ridiculous. These departments do not want to tell you guys how much is being spent on staffing because they're concerned about their jobs and they're concerned about reassignments. I've had two city staffers tell me that they don't want consolidation because they're afraid of their jobs and if necessary I'm do a report and I'll name names. But at this point I'm not willing to do that because I think that we should be able to get the information. I also believe that there are certain staff members who are withholding information from you deliberately because information is power. And if you don't have the information, you don't know how to vote on these issues. So I encourage you to do everything you can to put pressure on getting a simple request. And I think desk audits would be great. Because in the last month I've been told by two city staff members that they're, quote, too busy to do simple jobs. Because of the split assignments. The commissions are not being appropriately staffed. Thank you.

>> Vice Mayor Nguyen: Thank you. Jeff Fedola.

>> I'm -- you see on the card I'm speaking on the issue of the Emery street vacating proposal. I've done some work with the college park neighborhood association board. And traffic area. And I have found some things going on with respect to that vacating proposal that bare looking at. They fall under the category of sunshine matters of the appearance of impropriety. And I don't know if they truly are. I've had an assurance. But I'm not really satisfied

on bases of assurances. I would like to discuss the matter off the record first. I don't know the rules. If you bring something up it becomes a matter you can't deal with it until -- I don't know. I'm not ready to do all that. But I would like to forward this matter to everyone's consideration before it goes on the agenda. As an alternative, if we have trouble doing that, would -- if you guys would be willing to look at a dispute resolution mediation, I know the dispute mediator for Santa Clara County and I'd be happy to bring it up in that forum if it's a little bit too difficult to bring up. I have evidence that I think points to reasonable doubt concerning the ethical propriety of the Emery street deal. I've spoken to somebody in the city attorney's office relative to that. Yesterday I stopped in but that's two minutes. That's about all I can say. I've got my e-mail on that card and I'd really like to hear from somebody, thanks.

>> Vice Mayor Nguyen: Thank you. We are adjourned.