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>> Mayor Reed: I'd like to call this meeting to order. Rules and Open Government Committee meeting for December 19th, 2012. Any changes to our agenda order? None. We'll start with the January 8th agenda, since the 25th is cancelled.

>> Councilmember Constant: Sure you don't want to meet on the 25th?

>> Mayor Reed: 25th is cancelled due to lack of interest. Nobody wanted to come.

>> I'll come.

>> Mayor Reed: Have it all to yourself. Anything on page 1?

>> Councilmember Constant: Just a quick note, the invocation will be done by district 10 instead of district 1.

>> Mayor Reed: For January 8th?

>> Councilmember Constant: Yes, sir.

>> Mayor Reed: Did you guys swap?

>> Councilmember Constant: Yes, I thought it would be nice for him to have the invocation on his first council meeting.

>> Mayor Reed: Anything on page 2 or 3? Page 4 or 5? Got a note on 4.5, lease agreement whispers Inc, that we may have to waive sunshine on that, is that because the lease isn't ready to go?

>> I think the lease is prepared, it's just a matter of if we can get it posted by Friday.

>> Mayor Reed: Friday of this week?

>> Yes.

>> Mayor Reed: When would it get posted, if it doesn't get posted by Friday of this week?

>> I'm guessing the Wednesday of our return.

>> Mayor Reed: That would be Wednesday, the week before our return?

>> Yes.

>> Mayor Reed: So at least it will get out the week before. This is lease itself not the staff report?

>> The staff report is complete. It should go out with the packet. We're trying to time the lease if we can get it back on time.

>> Mayor Reed: Anything else on 4 or 5? 6 or 7? I have one request for an addition for Councilmember Campos, national mentoring, to be added to the proclamation list. Anything else in the way of requests for additions or changes.

>> Councilmember Constant: I'll just make a motion to approve with the amendments and the sunshine waiver if needed.

>> Vice Mayor Nguyen: Second.

>> Mayor Reed: Motion is to approve with the changes and waiver if need. Did we have anything from last council's meeting that we punted to the 8th that isn't on there? We picked it all up? I don't see anything about the meeting, on the timing issues. One request to speak on this, Mr. Wall.

>> Sir, item 4.2, actions related to rocketship Tamien school. One, I have problems with these rocketship schools, with relation to public schools, but that's not an issue before us. However what I think is an issue is I think the cost for leasing out this is too low. I think you need to re-look at that, \$651,000 for 33 years? No, no. These are corporations. They're making a lot of money. I think they ought to be paying a lot more to the city than what you have. Also that \$848,000 left is also too low in my opinion, thank you.

>> Mayor Reed: That concludes the public comments on this. The taxi was not deferred to the 8th but to a later meeting?

>> January 29th.

>> Mayor Reed: All right. Anything else? We have a motion to approve with amendments and waiver. On the motion, all in favor? Opposed? None opposed, that's approved. We have no study concessions to look at today, nothing on the legislative update. We had one yesterday in the council meeting of course. Meeting schedules. The public record. Anything the committee would like to pull for discussion? I have one request to speak, that would be Mr. Wall.

>> Sir, you as the chairman of TPAC and madam Vice Mayor, I know you've been concerned about this. There are people that have misinterpreted my comments about development in Milpitas and Irvine company with reference to your support of those activities. But those are within your purview as elected officials. I'm very concerned that the city, jogged my memory back to comments made by his honor Bob Lydinger during a TPAC meeting several years ago, about their concerns about economic development in Milpitas with reference to the sludge drying. Well, sir, sludge drying as it is done now is the most efficient, cost effective, environmentally sound way it is. If Milpitas wants to put the hammer on the sludge drying lagoons, they should pay the entire cost of

moving that operation, which as a minimum, as I recall, of director Erke of the plant, water pollution control plant at that time, was an estimate of \$500 million. But that was several years ago, sir, so I think a \$500 million deposit of an initial phase is what should be done. But they're look at significant cost to move sludge drying, and I think the city of Milpitas should pay in toto the entire amount, not the rate payers of San José. Thank you.

>> Mayor Reed: That concludes the public testimony on the public record.

>> Councilmember Constant: Motion to note and file.

>> Vice Mayor Nguyen: Second.

>> Mayor Reed: All in favor, opposed, none opposed, that's approved. Nothing under boards and committees, G-2 is memorandum from Councilmember Campos and Liccardo on filling empty store fronts, requesting a referral to staff, requested to direct the City Manager return back to council with some work. I'd like to give the staff a chance to look at the workload assessment and do the usual assessment before we decide what to do with it, knowing that we're going to be closed next week. If we can do this at the 9th I think is our next Rules Committee meeting, staff will be able to comment on it then. Defer this until you have a chance to look at it. Joe Horwedel is here. Can't tell how much work is involved in this. At least give staff a chance to figure that out.

>> Joe Horwedel: Thank you, Mr. Mayor, Joe Horwedel director of Planning, Building, and Code Enforcement. Definitely concur with the direction of where it's going to go and as you say it's really what is the staffing to did this. The budget director does have also the concern about the \$250,000, that's identified to offset permit fees of where that would come from kind of at an off-cycle budgeting process. So I think coming back on the 9th will give us the chance to look at this a little bit more, would be appropriate.

>> Mayor Reed: Anybody else? Vice Mayor?

>> Councilmember Oliverio: Motion to defer.

>> Councilmember Constant: So the motion was to bring it back on the 9th with a workload assessment? I'll second.

>> Mayor Reed: Take this up on the 9th with workload assessments. Staff's comments.

>> Councilmember Constant: Just a real quick question on that. I just want to make sure on item A-1 maybe we can check with the author of the memo. Are they really talking about space that's just been vacant 30 days or are we talking is it all vacancies, I'm getting a nod yes. That's all I need to know.

>> Councilmember Oliverio: One more comment.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: You formed a committee for economic development as a mayor's committee. I attended one meeting, it seems like you were discussing things related to this as it was.

>> Mayor Reed: That ad hoc committee for economic development is to focus on implementation of projects that are way beyond this. So this would be a topic for the I think the Community and Economic Development committee to come -- when it comes back.

>> Councilmember Oliverio: Fair enough, thank you.

>> Norberto Duenas: Mr. Mayor, members of the committee, I was discussing with Gloria, given the timing we would ask if it would be okay to come back on the 16th, just to give us a little bit more time given the break.

>> Councilmember Oliverio: Amend my motion for the 16th.

>> Mayor Reed: We're closing the building sometime Friday, right?

>> Norberto Duenas: Yes.

>> Mayor Reed: Motion is to bring it back with a workload assessment and other staff work on the 16th. One request to speak, Mr. Wall.

>> Pass sir.

>> Mayor Reed: Mr. Wall passes.

>> Councilmember Constant: Oh my goodness. Very few letters and a pass. Are you feeling okay? Okay.

>> Mayor Reed: On the motion all in favor, opposed, none opposed, that's approved. Staff, one back to that item before we move on. One question I have for this on a substantive basis, which I can't tell from the memo is, will this work? Do we have the key people, landlords that think this might be useful or not? I mean this is just part of the assessment. I don't expect to have it done by the 16th. Just is a question.

>> Joe Horwedel: We outreached with the landlords, was something that was really looking to, with councilmembers, that have signed onto this, is that wasn't something that, as staff, I was anticipating that we would be out --

>> Mayor Reed: I agree. I just wanted you to know that's a question I have.

>> Joe Horwedel: So that would be part, we would clarify that in the workload assessment.

>> Mayor Reed: Okay. Next item then would be G-3. Which is the Rules and Open Government committee work plan for the next six months.

>> Councilmember Constant: Motion to approve.

>> Vice Mayor Nguyen: Second.

>> Mayor Reed: Motion is to approve. Mr. Wall.

>> Sir I would respectfully recommend that you add the treatment plant advisory committee reports directly to rules as well as the airport competitiveness committee even though it's ad hoc and the other ad hoc economic incentive, whatever that new committee that you created. Thank you.

>> Mayor Reed: Motion to approve all in favor, opposed, none opposed, that's approved. Item 4, G-4 so the memorandum from Councilmember Rocha regarding communication with retirees requesting us to direct the City Manager and City Attorney to do some work on a policy. And comments on that? Mr. Wall you want to speak.

>> Sure. As a retiree I think this is a good idea. There's a lot of retirees that don't have the ability to come see and sit before your great honors and discuss matters of state with you. Therefore I think it's a very good thing that you start talking to retirees. There's a lot of us. And we could be very helpful in helping the city. Thank you.

>> Mayor Reed: Before we get to creating a new policy, I'd like to give staff a chance to think about what it is we might do. Because I do know that we have some conversations with retirees. Councilmember Rocha suggesting we do something similar to the unit 99, well maybe that's a good model. I don't know, staff hasn't had a chance to comment on this. So I'm not ready to say we have to have a policy. There may be a practice that works but I'd like to get the chance from the staff to talk about that. Councilmember Constant.

>> Councilmember Constant: Thanks mayor. My comments are similar. I think that we should perhaps get this back after the administration's had an opportunity to look at it a little bit, similar to the workload assessment that we normally do and especially the fact that we do have a couple of very strong retiree associations and perhaps

just formalizing a channel of communication flow that is utilized, kind of like an outreach policy that goes to the associations, would be the most appropriate way for us to look at it.

>> Mayor Reed: Okay. Staff.

>> Norberto Duenas: We're ready to take it back and then come back to the committee with some recommendations for you.

>> Mayor Reed: Okay, so is there a motion to refer this to staff?

>> Councilmember Constant: Sure.

>> Mayor Reed: That's the motion, all in favor, opposed, none opposed, that's what we'll do. Item 5 is a movie night and fund raiser city sponsorship.

>> Motion to prove.

>> Second.

>> Mayor Reed: Motion is to approve the community movie night and fund raiser as a city sponsored special event so we can accept donations on that. All in favor, opposed, none opposed, that's approved.

>> Councilmember Constant: Mr. Mayor before we go on, I have something I'd like to discuss under G-1 I know we don't have any documents but since it's a standing item.

>> Mayor Reed: Workload assessment for council requests and referrals.

>> Councilmember Constant: The last NSC meeting we had one of the members of the committee provided a memo for policy direction that really wasn't tied to an agenda item. Other than the fact that one dealt with PRNS's outreach in the area of childhood obesity which is a kind of report of progress. And the memorandum was to develop a policy mirroring the county's policy on vending machines at city-owned facilities which are -- it's quite a stretch to try and find a Brown Act connection between the two. And there was considerable amount of discussion at the NSE committee about whether the committee could throw stuff on their work plan and give direction to staff to start implementing a policy whereby completely circumventing what we just did with all these other policy issues. And I know the city attorney's office took the item under submission, they were going to discuss the Brown Act part, whether we had the -- enough reason to be discussing it there. But I wanted to have a discussion here about how we handle things like that that are just kind of go stray of a committee and to circumvent the process of having the workload assessment and the evaluation with the priorities and everything as we do with all these other policies. And I know from me it kind of took me off guard, that we had a committee member that brought something that was not connected to an agenda item, and then the committee on a 3 to 1 vote you can guess I was the one, voted to go ahead and add it to their work plan and push forward with something without bringing it here. So just from a process standpoint I'm a little concerned that if that happens with multiple different committees we can have staff running in all these different directions without us having the ability to get a workload assessment and some direction from the Rules Committee. So I just wanted to bring that out and see how we deal with those issues.

>> Mayor Reed: We should deal with it the way we have in the past is that it's essentially a request to modify the work plan, it comes to here so the staff and the chair of the committee and everybody can talk about the committee's workload how it fits in whether or not it can be done, et cetera. So I think Brown Act issue is a separate question. The city attorney's can deal with. But I think our workload assessment that we put in place is to protect staff in some regards, as well as the public, from just a lot of things happening and staff not being able to respond. I think our standing practice and probably the policy, the written policy is that it would come to the Rules Committee so it could be vetted in terms of the workload for that committee in that six month period. Norberto do you have anything?

>> Norberto Duenas: I would agree with that mayor. I'll go ahead and talk to staff for that NSE meeting I wasn't there, but again issues that have citywide implication and certainly any changes to a work plan of the committee should come before Rules.

>> Councilmember Constant: And that's what I thought. That's why I brought it up at the committee meeting. And the remainder of the committee said basically so what? We're going to put it on our work plan, took a vote to do so. So I think it's important that we all play by the same rules.

>> Mayor Reed: Well, we've finished with that work plan, we've got another one. This committee will be taking up all the committee work plans, in January sometime. Vice Mayor Nguyen will be chairing that committee next time. Do you have something to add?

>> Vice Mayor Nguyen: Yes I do. As the incoming chair of the Neighborhood Services and Education Committee, I think that's the right approach. I think when we have an item that's not on the current work plan, that issue should come to the Rules Committee. I think this is the body that's charged with that type of responsibility and I would be more than comfortable if we stick with our standard and it goes to the Rules Committee before it becomes an item that we should discuss at the various committees.

>> Councilmember Constant: Thank you.

>> Mayor Reed: Okay, no action on that because of the existing policy I think covers it. I think we are down to the end of the line here, we have, I think, a request to speak by Susan Landry that falls under our open government appeals of public records act category and then two requests to speak under the open forum. I'll take Ms. Landry first.

>> I wanted to know if you got copies of my document, I distributed them.

>> Mayor Reed: Got 'em.

>> I'm requesting that the city Rules Committee recommend that a formal internal review process be -- or internal review be performed on lack of access of public documents, use of bid sync in RFP, RFQ process and insufficient standards in regards to the RFP, RFQ process. I just had a recent request for proposal that I tried to submit on for landscape architecture services. The title is master agreement. No master agreement was attached, in three weeks of posting this bid. And it finally was issued at the last minute and it was not adequate legal review or professional review and you have to sign it saying you took no exceptions to the exemplar. When trying to get an extension, they issued it 72 hours before the RFQ was due. I found out there's no way to contact the city through the bid process with bid sync. There's no way to get documents unless you register or join bid sync. There's no access in City Hall or anywhere else. I now am getting solicitation phone calls from bid sync asking to upgrade a pay for their service and all I wanted to do was look at the public documents. There's no provision in city code or anywhere that I can find that says when an addendum for professional contract should be issued. Issuing the exemplar master contract in last minute with no additional or extension created an unfair advantage. Any company that currently has a contract with the city would have had that contract. I brought that all up to the Public Works director in a protest letter. And I was told, oh, okay, you have 48 hours now to submit your proposal. I said everybody's proposal's been reviewed. How are you going to add mine in? Besides if I do that everybody else is going to protest and I want make it because that's the whole point. It took them a week and a half to respond to something I had 72 hours to respond to. And it turns out just by calling the city and asking a question I was disqualified. The letter from Public Works says I am not disqualified because of that. There is typos there's wrong titles --

>> Mayor Reed: I'm going to have to ask you to stop you've used up your time.

>> Thank you.

>> Mayor Reed: But couple of questions for staff. I know there is a very extensive RFP process and process integrity guidelines that we've gone through. And I believe there's also a specific appeal process on any given RFP. So the question is whether or not that appeal process would cover this situation, or if we need to talk about

the appeal process. Or if we just need to refer this to you and let you think about it and figure it out. And respond at the next meeting.

>> Norberto Duenas: Yes, if we could do that and Ms. Landry maybe I can speak with you after the meeting.

>> Oh, I don't know who you are.

>> Norberto Duenas: Norberto Duenas. I'm sorry, deputy City Manager.

>> Mayor Reed: So there is a formal RFP appeal process, the council occasionally sees that. So whatever that is, is in place and you need to talk to Mr. Duenas about. Make sure that if you have rights in that appeal process that you're aware of what those are, and we will refer this to staff I think to respond to this, at the next Rules Committee meeting, as to what we might do with it. If that's okay with the rest of the committee, let's refer this to staff. All right, open forum, Mr. Wall.

>> Sure. With reference to performance-based merit increases I respectfully submit the entire office of the City Auditor be given merit increases because they routinely save the city millions if not tens of millions of dollars. I would also like you to think about having parcel tax reform so you can bundle up Police and Fire off the General Fund into parcel tax but have every living unit in the city taxed. So you can raise up a lot of money but not being burdensome and oppressive to land owners. Also I would like to give you assistance for a battle plan to deal with these vagrants that are dealing on the river. Because of my disabilities I'm getting increasingly? It's almost impossible for me to navigate down there. Also on Coleman and Hedding street please take notice of the incredible number of shanties that are out there. Outside of that sir I think you've done a great job. You and the council done a great job this year with the scant resource he that you do have. People don't understand that when you're in command you take command decisions that aren't always popular. I want to state for record you're doing a good job, keep up and Merry Christmas to you all.

>> Mayor Reed: Martha O'Connell.

>> Councilperson constant, you are correct. We all need to play by the same rules. You all have this document. These are the rules for the boards and commissions, and they're not being followed. I have bent contacting the City Clerk's office for four years. I have files and files and e-mails and emails. Here's the latest. I requested a tape of a meeting, no, it was on or before the 10th of December. Your rules require that these tapes are archived for two years. As of 1:00 this afternoon I have not received that tape and I need to review it as chair of the senior commission. No idea where it is. No idea when I'm going to get it. The human rights commission has had no minutes online for at least three years. No minutes online. PRNS is meeting without a quorum. And it's reflecting in their minutes that they have a meeting, they held a meeting and it says they didn't have a quorum. Whereas, other commissions for example, the MAC and the ARC were cancelled when the City Attorney came down and the senior commission told us you don't have a quorum you can't meet. So I-d oh and the greatest -- the award for the most corrupt commission should go to housing and community development for turning off the tape in the middle of a meeting because they didn't want what they were saying to be on the tape and it's on the tape that they turned the tape off. And city staff sat there and let it happen. So I ask the City Clerk, the new City Clerk please ma'am can you get them to follow the rules because we have consolidation and could somebody in your office archive these tapes so that commissioners and the public can listen to them. It's a great big boondoggle. Thank you.

>> Mayor Reed: That concludes the open forum.

>> Councilmember Constant: Mr. Mayor.

>> Mayor Reed: Comment from Councilmember Constant, Oliverio.

>> One quick comment. One thing that really bugs me because we have a tape turned off because it was more convenient to have the tape recorder turned off so I'd like to ask the city attorney's office to follow up on that particular issue. Some of the other issues with the quorums I know groups can meet and not take action. They

can meet but are prohibited from taking action. It depends on what's on the agenda. What really concerns me is that taping issue. If we could follow up, perhaps that if you could get us the date.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: That was my question, and also, I believe it's happened more than once based on the testimony so one way or the other we should just figure it out.

>> Mayor Reed: Okay. Anything else? That ends the open forum, ends our meeting, we're adjourned. No meeting on January 2nd. No Rules Committee meeting on the 2nd, the first Rules Committee meeting will be on the 9th. Enjoy the little bit of recess.