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City of San José Rules and Open Government committee meeting.

>> Councilmember Chirco: Rules and Open Government Committee to order. Are there any changes to the agenda? If not, we'll look at item A, which is the September 22nd city council agenda.

>> Councilmember Constant: 29th.

>> Councilmember Chirco: Where did I get the 22nd?

>> Lee Price: Do you want to relive yesterday?

>> City Attorney Doyle: We can do it been.

>> Councilmember Chirco: Let me recalibrate here. The September 29th city council agenda. Page 1.

>> Councilmember Constant: Just quickly on 1.1, my name is supposed to be on that with economic development. Thank you.

>> Councilmember Chirco: Page 2 and 3. Page 4 and 5? Page 6 and 7? Page 8 and 9? Page 10 and 11.

>> On item 8.1 we'd like to defer that to October 20th.

>> Councilmember Chirco: Okay.

>> And we will be issuing a supplemental on that.

>> Councilmember Chirco: Certainly a long one. Page 12 and 13.

>> On item 8.2, the CPLE research agreement, that was posted, the MOU was posted to the Website last Thursday but we're going to circulate it in paper, just in case there's increased interest in this item.

>> Councilmember Chirco: Okay. And page 14. We do have a few additions. If I can have a motion.

>> Councilmember Pyle: So moved to accept. The full agenda with the modifications, 8.1 and 8.2.

>> Councilmember Nguyen: Second.

>> Councilmember Chirco: Before we call for the vote, is had anything that's time sensitive, that we need to set a time certain for?

>> No.

>> Councilmember Chirco: Can I have a motion and second to approve the agenda at presented, all those in favor, opposed, that motion carries.

>>> The next item is October 6th, city council agenda.

>> Councilmember Constant: October already.

>> Councilmember Chirco: I know, we must have blinked. Page 1.

>> Councilmember Constant: Vice Mayor, I think -- never mind.

>> Councilmember Chirco: Okay.

>> Councilmember Constant: Wrong note.

>> Councilmember Chirco: Page 2 and 3. Page 4 and 5. Page 6 and 7.

>> Councilmember Constant: There was an item on my notes, excuse me. I believe on -- we'll get this clarified before next week. I believe we'll combined 1.3 and 1.4 to do together. And I think our offices are going to work with you to get the appropriate wording.

>> Yes, they gave me that.

>> Councilmember Constant: Sorry about that.

>> Lee Price: And I'll just note 1.2 as Councilmember Liccardo, so we can make that change.

>> Councilmember Chirco: If I can have a motion.

>> Councilmember Pyle: So moved.

>> Councilmember Constant: Second.

>> Councilmember Chirco: We have a motion and second to accept this agenda. All those in favor, opposed, that motion carries. Redevelopment agency agenda for September 29th. Page 2 and 3.

>> Madam vice chair, there are no changes or additions to the agenda you have.

>> Councilmember Constant: Motion to approve.

>> Councilmember Chirco: We have a motion and second and a second to approve the September 29th agenda for redevelopment. All those in favor? All those opposed, hearing none, that motion carries. October 6th.

>> Madam vice chair and committee there are no items from the agency for October 6th date at this time. If it remains that way, next week we would recommend cancelling that meeting date for the agency.

>> Councilmember Chirco: Okay. We have a legislative update. And Betsy's not here. Oh, it's EFC?

>> You have a fairly substantial memo explaining our support position for SB 402 by senator Wolk which was a last minute gut and amend at the very last day of the legislative session to help protect the fund balance in the California redemption system fund. That funds several recycling activities of the cities, and

provides the refund money that people get when they go to recycling centers. It's been a long-term policy, legislative policy of the city to support expansion of the bottle bill to include more container types and to ensure that recycling systems are to the extent feasible, self-supporting rather than requiring higher user fees. That's the substance of the bill to make up for a higher recycling rate that has led to more payouts to consumers, leaving less for other purposes and also to make up for a very substantial borrowing from the fund balance to support the state General Fund, during the budget solution of June. If you have any questions I'd be happy to answer them.

>> Councilmember Chirco: Questions by the committee? I have a couple. I didn't see anything in here that talks about education, and with them expanding the number of items that there will have the CRV attached to it, I was wondering how they were going to get the word out on the expansion to these items.

>> That's not discussed in the bill substantively. The Department of Conservation, historically has had a very high public relations budget to promote bottle and can recycling. That's been cut somewhat in this year's budget, maybe even substantially, plus there is also a reorganization going on that would eliminate the waste management board, that would combine the DOC with the board. So it's not completely clear what they're going to do. Typically they use the advertising budget they have to address changes in the system and we would expect them to do that. Unlike some other things that we're considering, this kind of change will not require substantive outreach. CRV is usually indicated at the shelf. It's clearly printed on their statements. It actually is slightly more confusing to have identical containers with different constituents, subject to the fee on the one hand and not on the other. So we don't think that this is as much of a challenge as introducing, say, a whole new recycling system. The one thing that is slightly challenging is introducing a new container type which is the Aceptic packaging, juice boxes larger than 7 fluid ounces. It will be completely new for the system and frankly I would expect them to spend most of their advertising budget dealing with that issue. If this is signed.

>> Councilmember Chirco: And that was one of my concerns, is that fees at aseptic containers are subject to fees, these as aseptic containers are not. I didn't see anything to say, how do we keep the state from taking the money as they have done in the past?

>> A challenging question. Some people know that I'm also on the board of Californians Against Waste, the main bottle bill advocacy organization in Sacramento. The first time that there was significant transfer of money from the bottle bill fund balance to the General Fund under Governor Wilson, CAW litigated that, and surprisingly enough, we won. We have a fairly clear court precedent that money cannot be taken from this fund, because it would in fact, under other state law, under the state constitution, effectively convert the CRV to a tax. And perhaps invalidate the entire system. So that the borrowings from this fund come essentially with a guarantee to return it. How the state will do that, in two or three years with the economy the way it is, is not something that I could answer. We don't anticipate that that will happen. If the governor signs this, there's places for the money to be spent. All of which have widespread support in the legislature, and in fact, most have been supported by the governor in the past. Such as local Conservation Corps.

>> Councilmember Chirco: Well, I was troubled that you know, we're expanding the program with no guarantees that the state government won't raid it again, leave us in the same situation, and by, you know, side-stepping an approval process. Nancy -- oh, I'm sorry, Pete first and then you, Nancy.

>> Councilmember Constant: Sorry. My question comes in, what's described in the memo under outcome, does not necessarily match what's on page 3 in description. And I'm having a hard time reconciling the two. The outcome talks only about the reductions in payments, and the current state budget, and restoring funds, and doesn't talk anything about an expansion, as the Vice Mayor pointed out, and then when you look at the description, it talks about the specifics of the bill that all talk about the expansion but there's no discussion at all about the budget. So I don't feel like we have enough information. Either something's missing in this description, or maybe you can help us reconcile that.

>> Well first of all I guess I have to accept the blame for that since I wrote the memo. The outcome I frankly find challenging. We have to keep it so brief that it doesn't become the whole memo. The thing that seemed so important to the city as an entity is restoring the funding that flows to the city, to me as the author and also to ESD. We have several different flows of cash, including what was approximately a quarter million dollars a year that comes directly to the city to pay for in-house recycling, recycling of parks and other city facilities. We have a much larger flow of money that comes through the program to our curbside recycling programs. One is a direct grant to them that's proportionate to their scale of activity. And the other is the money that flows with the containers that's in addition to the CRV that people get when they go to a recycling center. That money will be reinstated automatically if the fund is

whole. The reduction in payments made by the administration was based on a simple arithmetic calculation of how much was available after they paid out the refunds, the CRV to consumers and to curbside programs, that's not threatened, and after they pay for administering their program. DOC is actually a fairly expensive program because of the accounting required because of the really huge cash flow. Once the fund balance is sufficient, the proportionate reduction in those grant and payment programs of 85% reduction from last year's spending level will be reverted, administratively. It doesn't require a statutory change to do that.

>> Councilmember Constant: I don't disagree with anything you just said. I guess where the gap for me is, I don't see anything in the specifics of the bill that address those issues. Unless there's something on page 3 that's missing. Where's the -- what specifically is contained in the bill that's going to address all those issues you just spoke about?

>> The only way that the bill addresses the funding issues, the outflow of money from DOC is by restoring the fund balance. Because those payments are obligatory. They're statutory, and they're in a continuous appropriation. If the money is there it has to be spent by DOC the way existing statutory provisions provide. If the money is not there, DOC is obliged to do a proportionate reduction in all their payouts, with the exception of paying for their own staff and paying the CRV, the redemption money back to consumers and other recyclers. They didn't write in that mandate. It exists in the public resources code already.

>> Councilmember Constant: Thank you. I -- just based on your questions and my questions, I think I'd like to see a support of, amended, to address some of these issues and I'd love to hear what our colleagues say on this, that is my personal opinion.

>> Councilmember Chirco: Councilmember Pyle.

>> Councilmember Pyle: I'm concerned, too, about the 85% reduction. How can we continue to do our recycling when the people who are administering it will not be paid. I can just see this collapsing as we go along. It just doesn't make any sense to me, that you take 85% away and it's going to work. It's not going to work. If people aren't there to administer it. And I agree with you, Pete, I think this needs further discussion. But this is -- this is ipso facto, isn't it, hasn't this already been passed?

>> Yes, the language was introduced the last day of the session and it passed a policy committee and both houses over the following 12 hours.

>> Councilmember Pyle: One would have to add the question, how could further discussion change anything?

>> The only issue is whether the governor signs it or not which is up in the air. And I would -- it's not kind of thing that we would put in a memo like this. But this is not the bill that we would have written. Either as a bureaucrat or an activist. It has substantial funding for industry interests, people that normally oppose expansion as a solution. But who needed a solution to continue the flow that comes from DOC to them. It's not the bill that local government would have written. It's not the bill the conservation corps would have written. It's simply a solution to leave us and them whole. While not harming anybody. With the exception patently of consumers who exclusively consume the currently exempt beverages and container types such as juice drinks and eight-ounce or larger packages will be in this system rather than out. And they are still protected in the same way that other consumers are, since they have the option of getting a full refund on the deposit they pay.

>> Councilmember Pyle: So this begs the question. If we do bring it to council and there is further discussion, the action that could be a product of that would be a letter, perhaps, to the governor?

>> Yes.

>> Councilmember Pyle: What do you think?

>> Councilmember Constant: Well, obviously, the support as amended won't work because it is already through the process. It is sign or not. I think we should remain neutral at this point because I don't think it addresses all our concerns and I don't like supporting something that gets part-way to something. That's my own personal feeling and I'd be willing to make that as a motion if anyone else agrees with me. That's my motion.

>> Councilmember Pyle: You got it.

>> Mayor Reed: We have a motion and second to remain neutral. Good intent, but we'd like to have seen a better process. All those in favor? [ayes]

>> Councilmember Chirco: All those opposed? That motion carries.

>> Ed Shikada: Chair, just for clarification, this will still go to council with a recommendation for a neutral position, correct?

>> Councilmember Chirco: Uh-huh. you wanted a one-week turn around?

>> Councilmember Constant: Yes, I think that was in the motion.

>> Councilmember Chirco: The next item is G, the -- I'm sorry, public record, ESP.

>> Councilmember Constant: There are two letters B and C from the senior citizens commission which I would like many of the others we've done in the past, refer it to our City Clerk as part of the overall boards and commission review process so that we don't keep making incremental changes, and we look at it in its entirety. That would be my motion, two referrals and note and file the rest.

>> Councilmember Chirco: Okay, I have a motion to refer B and C to the City Clerk, note and file the rest. All those in favor, [ayes]

>> Councilmember Chirco: All those opposed? You had one more Nancy?

>> Councilmember Pyle: There's one about the mobile home.

>> Councilmember Constant: We're not there yet.

>> Councilmember Pyle: You're right, coming up.

>> Councilmember Chirco: I called for the vote, didn't I?

>> Councilmember Constant: Yes.

>> Councilmember Chirco: Hearing none, that motion carries. The next item is G-1 which is an appointment to the downtown parking board.

>> Councilmember Constant: Could I make a motion for G 1 and 2 to approve both?

>> Councilmember Chirco: I think we can.

>> Councilmember Nguyen: Second.

>> Councilmember Chirco: We have a motion and second to approve item G 1 and G 2. All those in favor? [ayes]

>> Councilmember Chirco: All those opposed? Hearing none, that motion carries. The next item is H-1 which is expansion of the mobile home advisory commission.

>> Lee Price: Madam Chair, could I go back real quick? The recommendations specifically asked for one-week turn around but I would like to go ahead and put these on next week's agenda so we could ratify the appointment.

>> Councilmember Constant: Yes.

>> Lee Price: Thank you.

>> Councilmember Chirco: On the expansion of the mobile home advisory commission, I believe Kansen is here to speak to this.

>> Councilmember Chu: Yes. Thank you, Vice Mayor for giving me the opportunity to speak. I'm here to ask for your support for expanding the mobile home -- the membership of the mobile home advisory commission from five to seven. As you may know, right now the mobile home advisory commission is comprised of five members, the only commission that has less than seven members. We have one park owner representation and three neutral people and one resident representation. I believe if we expand it to 7 which will add one more park owners and one more residents, we'll have a better representation. Because here we have total of 58 mobile home parks, and activities of more than 10,000 spaces within the City of San José. By adding one for park owners and one for residents not only will give a better representation, and also, will give some smaller mobile home park organizations a chance to be at the table. So I'm here to ask for your support. I understand that we are working at consolidating some of the commissions. But I don't know the time line of the consolidation. I would think it would probably take some significant amount of outreach to the community as well as other commissioners, to know that their volunteer work would be terminated. So while we're waiting for the staff to come back with a plan to consolidating some of the mobile home -- some of the city commissions, I ask for your support to expand the mobile home advisory committee to seven members, and so that they can be a very productive body of our city commissions. Thank you.

>> Councilmember Chirco: Leslye, did you have something you wanted to add?

>> Leslye Krutko: Thank you, Leslye Krutko, director of housing. Just wanted to give you an update on what's happening with the boards and commissions study, because Lee Price and Norberto Duenãs and I have been working on that for some time, met this week, and we are anticipating this work will be done this fall. As we've mentioned before to you, there are three parts of this, some of which we've come forward with updates on. Lee's work that she's been doing has been really related to trying to establish some standards for commissions so that we ensure that there is some consistency between the commissions. We also had the big piece of work which was getting the neighborhoods commission up and running which is now up and running. And the last part which is really the more thorny part is looking at the commissions and, as Councilmember Chu said, looking at whether or not there are opportunities

for consolidation, elimination or any changes, such as increasing the membership or looking at specializations of memberships, how many times the commissions meet, things that are more individually to each commission rather than the work that Lee has been doing of just across the board changes. So that is something we're planning on coming back to you by the next-by the end of this calendar year. So as you make this decision that's just information for you to have.

>> Councilmember Chirco: I'd like to return to the committee. And I know Councilmember Constant and Madison and then Councilmember Pyle.

>> Councilmember Constant: Thank you. I definitely understand the intent of this memorandum. I have concerns, because we, as the Rules Committee, have spent so much time talking about boards and commissions, and we have fairly regularly, over the last number of months, referred items like the two we just previously did in the public record to the City Clerk. And I know there's been a lot of work that has been done. It is so close to coming to conclusion. If we were to pass this and council were to ultimately pass this memo, by the time we recruit, advertise, recruit, interview and appoint, we would be seeing the results of our board and commission update. And we may have to undo something that we have just done. I know it has been a very thorny subject but there has been discussion about the advisory commission on rents and the mobile home advisory commission and how they could or could not be merged. And I just -- I feel it would be a premature change to make when we are so late in the system. I personally would feel much more comfortable if we take this memo, refer it to the City Clerk so it can be incorporated in the process that we're currently going through and we don't end up having to have the same discussion twice.

>> Councilmember Chirco: Councilmember Nguyen.

>> Councilmember Nguyen: Thank you. I concur with everything Councilmember Constant just said. Councilmember Chu, I really appreciate your bringing forth this memo and I think the addition would be good for the mobile home advisory commission, but at this point I'm not comfortable with trying to piece each individual or separate board and commission. I think we allow city staff to come back and work at this as one piece, I think would be a lot more effective.

>> Councilmember Chirco: Councilmember Pyle.

>> Councilmember Pyle: I have a question for Lee Price. Has there not been a problem in getting a quorum on the mobile home advisory commission?

>> Lee Price: Currently we do have a vacancy, because of the unfortunate passing of the tenant representative on the Mac. We don't get a ton of applicants for the Mac, but we've been able to maintain a quorum. It's really the advisory commission on rents that we've had the most difficulty with, and they are a larger body but this particular one, we have done pretty good at keeping it a full compliment of members, however at this particular time we do have a vacancy.

>> Leslye Krutko: If I could give a little bit of history too. We had a period, I think this is what Councilmember Pyle was referring to, we had a period of a year where we were unable to meet, we had several vacancy. As soon as we filled them we had one more vacancy. It has been a bit challenging, bit we now are on the upswing and we have four full members and we hopefully are close to having a fifth member as well.

>> Councilmember Pyle: Well, I concur with my colleagues that we need to move this as one cohesive unit and not do it in parts but rather as a whole, so did you make a motion, Pete?

>> Councilmember Constant: I'm about to. I'm first ordering a tape of this, because I've had so many people agree with me today, I want to memorialize this meeting. So my motion would be to refer this item to the City Clerk for the overall boards and commission review.

>> Councilmember Pyle: Second.

>> Councilmember Chirco: And Councilmember Chu, having heard when they expect to come back with the boards and commissions, hopefully that addresses some of your concerns, that it will be sooner rather than later.

>> Councilmember Chu: Right, thank you very much. I'm glad to know the time line is sometime this fall. Because, you know, I've been hearing that for a while that we're consolidating some of the commissions. And to answer to Councilmember Pyle's question, if I may. The problem of getting a quorum is --

>> Councilmember Chirco: Can I just interrupt so we can take the vote?

>> Councilmember Chu: Okay.

>> Councilmember Chirco: And maybe you can have this conversation off.

>> Councilmember Chu: All right.

>> Councilmember Chirco: I have a motion and second. All those in favor? [ayes]

>> Councilmember Chirco: All those opposed? Hearing none, that motion passes. I would encourage Councilmember Pyle to get the answer from Councilmember Chu.

>> Councilmember Pyle: I already have it.

>> Councilmember Chirco: And we have item I-3. With in addition to the transportation and environment -- what did I miss?

>> Lee Price: We don't have a diplomacy in the packet but we do have an item.

>> Councilmember Chirco: I wondered where it went. Item H-2 is a referral but it wasn't in the packet. I'll let Lee speak to it.

>> Lee Price: Actually, Deanna can speak to that item.

>> Last week was the Rules Committee issued the referral. There were a couple of additional requests for information that were added by Councilmember Constant. We're in the process of drafting the report. We need some time to complete the report, get it out to comply with sunshine. We'd like to propose that we come back to October 14th to the Rules Committee.

>> Councilmember Chirco: Don't we need a motion for that?

>> Councilmember Pyle: So moved.

>> Councilmember Nguyen: Second.

>> Councilmember Chirco: We have a motion and second that that will come back on October 14th. All those in favor? All those opposed, hearing none, that motion's carried. I was just rushing to the end.

>> Councilmember Constant: You already missed your record, so don't worry.

>> Councilmember Chirco: Yeah, things happen. Item I-3, which is an addition to the work plan for the transportation and environment committee.

>> Councilmember Constant: I love adding things to other peoples' work loads, so I make motion.

>> Councilmember Pyle: We noticed that.

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

>> Just on the 29th council agenda, on page 7, there is the report-out on the Public Safety, finance and strategic support committee. On Item D-2, an audit of the park trust fund we will be cross-referencing that for the full city council's consideration. And it comes with a recommendation from the committee to not approve recommendation number 6 in the auditor's report. So we will create some language that is very clear of the committee's action.

>> Councilmember Chirco: Do we need a motion, or is that just a clarification?

>> City Attorney Doyle: Have a motion to add that as a cross-reference.

>> Councilmember Pyle: Make the motion, so moved.

>> Councilmember Chirco: I have a motion and second to include the addition as Deanna has outlined it. All those in favor? [ayes]

>> Councilmember Chirco: All those opposed, that motion carries. Which takes us to open session. Anyone wishing to address us? Mr. wall, would you like to come up?

>> David Wall: First, good afternoon to you all. And I'd like to thank the mayor in absentia for his true pay cut of \$27,237.50. As opposed to the piker's pennys from the office of the City Manager's pay cut. I think also, I would recommend that you consider very serious expanding the toxicology of the water pollution control plant laboratory, specifically to start identifying toxic compounds as they enter the plant. What type of classes of compounds that are coming in. Next I would like to talk about something that's coming up next week on the CED's agenda, and which it's a slight technicality, but it will chafe people's hides. You changed the designator from a market share development to this very low, no-income type slum arrangement where you don't notify people just because the building doesn't change. But this is a material land use issue, because you come from an issue of where people come in and own a house, versus people get free rent and trash a neighborhood. Another thing, too, there's all this very low income business, veterans' preference. We need to start loading up these free housing projects with United States veterans, first. And then, the rest of the citizenry, illegal aliens, you should ask people if they're in the country illegally or foreign nationals. Free housing for foreign nationals whether they're here legally or illegally, isn't something that should be given out, only citizenship requirement should be there. Thank you.

>> Councilmember Chirco: Thank you. With that our meeting is adjourned.

>> Councilmember Pyle: Good show, Judy.