

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.

>> Vice Mayor Nguyen: I'd like to call the Rules and Open Government Committee meeting to order. We'll begin with the city council agenda for November 4th, 2012. Any changes to page 1? 2 or 3? 4 or 5? 6 or 7? 8 or 9? Or page 10? None. I believe we have a few additions here. The mayor and city council excused absence requests from Councilmember Chu, Councilmember Herrera, travel to Sacramento. Couple of events. Council district 10. Community appreciation reception and 9.X, acceptance of the basic financial statements of the City of San José.

>> Councilmember Oliverio: Chair, are any sunshine waivers required for this agenda?

>> Vice Mayor Nguyen: I think 9.X.

>> Councilmember Oliverio: Any time certain wanted by anyone? No?

>> Vice Mayor Nguyen: I don't think so.

>> Ed Shikada: Perhaps not a time certain per se but there were items 3.6 and 3.7 that staff is recommending be heard last on the council agenda

>> Councilmember Oliverio: In the afternoon?

>> Ed Shikada: Yes.

>> Councilmember Oliverio: Motion to approve the agenda with the sunshine waiver on item 9 and the additions.

>> Councilmember Herrera: Second.

>> Vice Mayor Nguyen: We have a motion to accept the agenda. All those in favor? Opposed, hearing none, motion carries. We will now review the city council agenda for December 11th, 2012. Any changes to page 1? 2

or 3? 4 or 5? 6 or 7? 8 or 9? Also have a couple of items, couple of requests. Certification of election results, board and commission work plan. Authorization to pay reward and amendment to note with urban markets. Any other additions?

>> Councilmember Oliverio: Motion to approve the agenda with the additions.

>> Councilmember Herrera: Second.

>> Vice Mayor Nguyen: Great, we have a motion to approve the agenda with the additions. All those in favor, opposed, hearing none motion carries. Move down to review of the upcoming study session agenda. And we have the city council and Santa Clara valley water district board. President motion.

>> Councilmember Herrera: Second.

>> Vice Mayor Nguyen: All those in favor, opposed, hearing none, motion carries. Legislative update. Betts Betsy is not here so I guess woo have none state or federal. Meeting schedules.

>> Councilmember Oliverio: Make a motion to approve council meeting schedule, January through June. Only question I have some of the dates didn't correspond with the days of the week. If someone would bring those back.

>> We will do that.

>> Councilmember Herrera: Second.

>> Vice Mayor Nguyen: I'm sorry, there was something I was supposed to look at. Oh, study sessions. Give me some time to look at the study sessions real quick here. For, staff for Tuesday, January 22nd. We have that for the study session. Do we have anything that we're anticipating for that date?

>> We've had no requests yet from staff.

>> Vice Mayor Nguyen: Does the committee want to release that date if there's nothing on here? Because this is, I think it's either Martin Luther King or president's day. Martin Luther King, is that right? If we have nothing and planning staff have nothing we can release the date.

>> Councilmember Oliverio: I'm fine with that. Release the date so the motion would be to accept the plan release the date and make the correction. So for example it has April 25th which is a Thursday and it says Monday. So just want to clarify. I put in my calendar both the 25 and the 22nd. You let me know which one is right.

>> Okay.

>> Vice Mayor Nguyen: We have a motion with amendment. All those in favor? Opposed? Hearing none motion carries. Public record.

>> Councilmember Oliverio: Any speakers?

>> Vice Mayor Nguyen: Okay, yes. Frank Sweeney. Oh, yeah, Keith Graham.

>> Madam Chair, members of the rule committee. I speak to you on behalf of the airport commission of which I'm the chair and ask you once again to consider amending our work plan to allow us to debate and add items to the agenda at our meetings. We -- this is part of the original work plan as was submitand was turned down by Rules at the last meeting on the 1st of August. The reason being that when items are brought before the commission for inclusion, we have no mechanism to debate that in a normal forum in order to determine whether they should be added to the agenda or amended. We ask for the item, the ability to amend the work plan to be put on a regular

basis, for our meetings, whether we need it or not and ask you to reconsider the Rules Committee ruling on not having that ability. Thank you.

>> Vice Mayor Nguyen: Frank Sweeney.

>> Thank you. I want to give you an example of why the airport commission feels somewhat handcuffed in trying to proceed with items of business. Before one of the issues before the council now is the restructuring of all the commissions. The San José airport commission cannot make a recommendation to you on that issue, because it's not in our work plan. And we can't even ask to make a change in our work plan, because that issue is not on our work plan. So it's a catch 22. No matter what happens, we can't do anything. We can't give you our advice on commission restructuring. And so that's just one example, whose problems that arise under this -- the currently setup. I have always viewed a work plan as a goal to be accomplished. But the way it's being carried out here, it's restrictive and we can only do what's often the work plan. We can't do anything more. So that's -- those are my comments. Thank you for your consideration.

>> Vice Mayor Nguyen: Thank you.

>> City Attorney Doyle: Madam Chair, this is on the public record that's not agendized to take action. So if the rules committee wants we would have to refer to a later rules committee if we want to take any action in the future.

>> Vice Mayor Nguyen: Yes, we're not taking action right now.

>> Councilmember Herrera: What would be the proper course of action for someone on a commission to bring an issue up that they could come to -- they could bring it up to rules, so City Attorney --

>> City Attorney Doyle: The process now is that you bring a request to change the work plan to the Rules committee and they approve them. So each commission or council committee, for that matter, brings those items to the Rules Committee.

>> Councilmember Herrera: There still would be -- there is still a process way for this, to add something to the work plan?

>> City Attorney Doyle: Yes, ultimately, but it has to come to the Rules Committee.

>> Vice Mayor Nguyen: Just a follow-up. Would that come from one or two commissioners or would that come from the chair of the commission?

>> City Attorney Doyle: The chair. The commission has to ask for it so ideally through the chair or vice chair, whoever is authorized to bring it.

>> Councilmember Oliverio: Motion to note and file.

>> Councilmember Herrera: I had one more comment.

>> Councilmember Oliverio: Sure.

>> Councilmember Herrera: So in terms of the issue that was just brought forward, the proposed consolidation on commissions, if there was some input that the airport commission wanted to make as a body, they could come to rules with a request to add it to the work plan.

>> City Attorney Doyle: That's correct.

>> Councilmember Herrera: Okay, thank you.

>> Vice Mayor Nguyen: Make a motion?

>> Councilmember Oliverio: Motion the note and file.

>> Councilmember Herrera: Second.

>> Vice Mayor Nguyen: We have a motion to note and file. All in favor, many opposed, motion carries. Moving down to boards commissions and committees. A, approve appointments to various boards and commissions. We should have an update from the City Clerk on this item.

>> I have no update. Other than what's already in your report.

>> Councilmember Oliverio: I'd make a motion to approve it.

>> Councilmember Herrera: Second.

>> Vice Mayor Nguyen: All right, we have a motion to approve. All those in favor? Opposed, hearing none motion carries. We move down to rules committee reviews, recommendations and approvals. G 2, approve ad hoc committee on economic competitive meeting schedule.

>> Councilmember Herrera: Motion to approve.

>> Councilmember Oliverio: Second.

>> Vice Mayor Nguyen: Motion to approve, all those in favor, opposed, hearing none motion carries. G 3, approve an exemption to item 4 of the PRNS donated bench recognition program administrative policy for a donated park bench at Pfeiffer Park in recognition of Bev Head. Councilmember Pyle has a memo.

>> Councilmember Pyle: Thank you and good afternoon. I'd like to speak to this issue. It's been very near and dear to our hearts. If you might remember that Beverly Head, the wife of -- gosh, what is his name -- Mr. Head, was killed unexpectedly by two dogs that tangled around her and caused her to fall, hitting her head, and she died shortly after that. So what Mr. Head has requested, and it's a bit beyond the normal scope for what is put on a plaque. But it basically says, and I think you have a copy with G-3, in loving memory of Bev Head, she always had a friendly smile and greeting for all she passed in the Los Alamitos creek trail, 2009. That is a bit of an exception. It's more words than we normally would allow, but I think because of the fact that this was a bit exceptional, it was a tragic death and totally beyond her ability to control. And so I would like to read, if I may a message, from Mr. Bob Head, that he would like read into the public record. First, I'd like to publicly thank Councilwoman Pyle, chief of staff Kathy Sutherland, and park manager Mike Will, who is here ready to go, for their support in providing a memorial bench for my wife Bev. The Pfeiffer park location with its close proximity to the Los Alamitos creek trail where Bev's accident occurred is ideal. Bev loved this trail and walked five miles three times a week to enjoy scenery, the people and the occasional fox or rabbit she would spot along the way. I walked along the trail quite often after the accident, and was approached by many who said Bev always had a friendly greeting and smile for those she passed. Several said she was an inspiration to them to continue their walks and maintain their health and conditioning. It is for these reasons that I would like the memorial plaque to reflect this association with the trail. In addition, Bev and I have four grandchildren, age 8, 6, 6 and six months, and I would like my grandchildren to be able to read for themselves and to be reminded, while enjoying the playground equipment in Pfeiffer Park, of this wonderful quality in their grandmother, her friendly attitude that she exhibited to all. So that is for your benefit and all. But I would like to make the request that this plaque be presented as requested. And Mike, you may have some words.

>> The current city policy is a uniform policy that allows us to put three specific lines on a plaque for a bench dedication. A typical bench would have the first line be either in memory of or in recognition of or in honor of. And then the person's name, followed by the third line just being a date. This policy was established that we could be uniform in allowing dedications across the city. As it being a policy, of course the committee and council have the -- would have the authority to allow an exception to the policy should they decide to do that.

>> Vice Mayor Nguyen: Thank you. Questions? Committee members? Councilmember Herrera.

>> Councilmember Herrera: So I'm not familiar with the policy or the bench. So does the family then pay for the bench or how does that work?

>> Yes, the families pay for or the donor can pay for the bench, not necessarily the family specifically but it's not funded out of the PRNS bucket.

>> Councilmember Herrera: It is an additional bench, too, for the park, then?

>> It is, yes.

>> Councilmember Herrera: And then the maintenance of that, is there any maintenance required on the --

>> The bench styles that we're purchasing have very low maintenance needs. This particular style is a cement, pre-cast, our experience with this model, they're very durable in the park setting. So we don't anticipate a lot of maintenance costs associated with it.

>> Councilmember Herrera: And the engraving, how is that done? How long is that expected to last in the terms of the --

>> In this particular bench, it is a brass plaque that's embedded into the cement bench. In all the brass plaques that have been installed, none of them have come out, even through people trying to recycle that metal. The anticipated life of the perches is ten years. If the bench should be broken, a tree falls on it, something along those lines, PRNS would attempt as long as we have the appropriated funds to do so, to replace the bench. After ten years that's what we consider the normal life of a park amenity. We replace the bench. If it lasted longer than ten years all the better.

>> Councilmember Herrera: If it needs to be replaced, can the family replace the bench and complete a new cycle or does that be reused by somebody else? How does that work after ten years?

>> Currently we have need for park benches and older benches that need to be replaced that should, at the end of ten years, someone else want to put a bench in that area, numerous benches around San José need replacement that we would recommend. For many years I don't anticipate conflicts with too many people requesting bench replacement and dedications.

>> Councilmember Herrera: I'd make a motion to approve with this recommendation.

>> Councilmember Oliverio: And I would like to second that and I just want to say Mike, there's been this bench memorial, memorial policy for parks has been pending for a couple of years on changes. So for example, I've been trying to do one myself for a passed away person in my district but we've been waiting for policy to change. So I'm assuming then I could write a memo like Councilmember Pyle to get that done?

>> The policy itself was adopted by parks and recreation commission and approved by our director in October of last year. So we do have an effective policy. The policy does require that we follow any existing park master plans or park design guidelines. Parks such as, for example, the municipal rose garden does not have a policy as yet. So staff are working with the various donors to see if there are room for replacing existing benches or room for putting other benches in the park. So that's really the contention issue specifically.

>> Councilmember Oliverio: Okay I'm talk to you off lined about it so thank you.

>> Vice Mayor Nguyen: Thank you. I just wanted to thank Councilmember Pyle for bringing this forward. Obviously this was a major tragedy and I think this is just appropriate to have a bench in memory of Ms. Head.

>> Councilmember Herrera: I also want to thank you Nancy for bringing this forward.

>> Vice Mayor Nguyen: We have a motion to approve Councilmember Pyle's memo. All those in favor, opposed, none opposed, motion carries. We'll move down to G-4. Approve the recommendation to have the Rules and Open Government committee place the report from the city auditor, ten years of staffing reductions at the City of San José, Impacts and Lessons Learned, on the agenda for a city council meeting in December 2012. Councilmember Pyle, did you want to speak on this matter?

>> Councilmember Pyle: I just wanted to make sure that I was able to be here when that is discussed. There was some talk about it going into January mbut at this point we're going to stick with December.

>> Vice Mayor Nguyen: Actually, the -- we had a unanimous vote at the Public Safety, Finance and Strategic Support committee many last week, I believe.

>> Councilmember Pyle: I'm sorry, I missed that.

>> Vice Mayor Nguyen: It was a unanimous vote to move this to early January. And so I believe the reason behind that was because we have three meetings in December, they seem to be very packed meeting. As you can see from December 4th and December 11th we just went over around the committee just felt that it was appropriate to move this many to January, because we asked the City Auditor and there was no time-sensitive on the audit. Do you have anything else to add?

>> Councilmember Oliverio: No I just think -- vice chair, yeah, I just want to respect the work of the council meeting with a unanimous vote to have this held on the first council meeting in January to allow proper time for the item and such.

>> Councilmember Pyle: I'll comment and submit my card for it. Thank you. I did get one success.

>> Vice Mayor Nguyen: So we're not taking action on item 4, then, very good. Move down to item 5, approve the prevailing wage exemption for property based improvement district.

>> City Attorney Doyle: Madam vice mayor, the Public Works, Dave Sykes and Nina Grayson from Public Works are here. Dave Sykes has issued a memo. This is something that came to the city and the request was going to go to council to ask for an exemption. I think Mr. Sykes' memo explains that this can be handle administratively, and I'll let Dave speak to that.

>> Dave Sykes: Right, thank you. I know you probably haven't had a chance to go over the memo, so I'll just briefly go over some of the points. I think you're all familiar with the fact that prevailing wage applies to all construction contracts and maintenance contracts. As a charter city we have discretion in this area but typically we follow the directives that come from the department of industrial relations. Interestingly enough we recently found a determination or been made aware of a determination where the DIR provided quite a bit of clarity on what maintenance functions are and differentiating them between maintenance and cleaning. And so we've taken a very good look at that. And they've changed a previous position. And the previous position was that stuff like power washing was a maintenance activity. Their recent -- not recent -- the finding that they've made that still stands is that things like cleaning do not constitute maintenance. And based on this we've evaluated the washing of the downtown Pabout bid as a cleaning activity and not a maintenance activity. Therefore under our own ordinance only maintenance and construction activities need to adhere to prevailing wage. We have made an administrative determination that it's a cleaning activity, not a maintenance activity, it won't be subject to the prevailing wage but will be subject to the City's living wage. And so the information memo kind of lays that out. It will be going to the full council as we speak and we're here to answer any questions that you have.

>> Vice Mayor Nguyen: Thank you, questions and comments, Councilmember Herrera.

>> Councilmember Herrera: Thank you for doing the research and bringing this forward. I guess our memo doesn't need to proceed.

>> Dave Sykes: I wish I could take the credit for finding this determination. It was found for us. Once we read it we found it had application to what we're doing.

>> Councilmember Herrera: Great, thank you.

>> Vice Mayor Nguyen: Do we need a motion?

>> I don't think so.

>> City Attorney Doyle: Motion to note and file.

>> Councilmember Oliverio: Motion to note and file.

>> Councilmember Herrera: Second.

>> Vice Mayor Nguyen: Motion to note and file. All in favor, opposed, that passes. 6, authorize Councilmember Rocha's travel to Washington, D.C.

>> Councilmember Oliverio: Motion to approve.

>> Councilmember Herrera: Second.

>> Vice Mayor Nguyen: We have a motion to approve, all those in favor, opposed, hearing none, motion carries. Item 8 --

>> Councilmember Herrera: Motion to approve.

>> Councilmember Oliverio: Second.

>> Vice Mayor Nguyen: All right, that was the Vietnamese New Year flag raising ceremony. We have a motion to approve, all those in favor, opposed, hearing none, motion carries. And last item, approve the Bart to Berryessa extension project community meeting and district 4 --

>> Councilmember Oliverio: Motion to approve.

>> Councilmember Herrera: Second.

>> Vice Mayor Nguyen: We have a motion to approve, all in favor, opposed some motion carries. I believe that concludes our meeting, open forum we have no speakers today, that concludes our meeting, thank you very much.