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>> Mayor Reed: Let me call the meeting to order. This is Rules and Open Government Committee meeting notch 17th, 2010. Any changes to our agenda order? All right, first item then would be the November 23rd, council meeting agenda. None. That is very easy, meeting cancelled due to the holiday. November 30th. Draft agenda. Anything on page 1? Page 2 or 3? Page 4 or 5? Page 6 or 7? Or page 8? I have no written requests for changes or additions. Any others to consider?

>> Councilmember Pyle: 3.2 and 3.3.

>> We're deferring those items to December 7th, yes.

>> Mayor Reed: That's the comprehensive annual financial report and the comprehensive annual debt report until December 7th. That's good, because we don't have anything to do on December 7th. Why are we continuing those?

>> Because the memos aren't quite ready.

>> Mayor Reed: Any other changes? Is there a motion?

>> Councilmember Pyle: Move to approve.

>> Second.

>> Mayor Reed: All in favor, opposed, none opposed, that's approved. Agency nothing for November 23rd. November 30th.

>> Mr. Mayor, members of the committee, the agency doesn't have anything at this time.

>> Lee Price: You might want to cancel today. Because we don't have a regular rules committee next week.

>> Oh, that's right, rules in lieu. It will come back to the rules in lieu committee, the agency's CAFR you'll see that on the December 7th meeting as well. So we'll get all the action in at the same date.

>> Mayor Reed: Okay. Is there a motion?

>> Councilmember Pyle: Motion to approve the change.

>> Mayor Reed: I have a motion and second to approve that. All in favor, opposed, none, so that is cancelled. Maintaining as usual the closed session portion of it. In case we have something that goes on there. No 81 coming study session agendas to review. We're having one tomorrow. You're all invited to watch on television. We're having that in the chambers, right? Okay. Legislative update. Nothing to update us on. Meeting schedule. Looking at next year January to June, on the study session calendar.

>> Sorry, there is one change on the study session schedule. It's a Saturday, January -- right now it's noted as January 22nd. For the neighborhood association youth commission priority-setting session. It should be January 29th. We found that there was a conflict on this date. There's the gang prevention summit.

>> Councilmember Chirco: Let me move approval of that for you.

>> Councilmember Pyle: Second.

>> Mayor Reed: Okay, motion to approve the meeting schedules for next year. Is it okay if we add some more meetings, Judy?

>> Councilmember Chirco: Feel free.

>> Mayor Reed: I had one more thing to say about the meeting schedule, I had lost track of it. The council priority setting prebudget meeting that we usually have, is that -- when is that?

>> In February, usually and it looks like it may be the February 14th date.

>> Mayor Reed: Okay, that's --

>> We don't have that topic listed yet. That's usually the date that it's on.

>> Mayor Reed: The date that we're targeting on, because I know it's coming up. Councilmember Constant.

>> Councilmember Constant: I just had a question looking forward. At what point in time do we think we'll have all the other budget related study session dates picked out and set on the calendar?

>> Mayor Reed: You mean during the May sequence?

>> Councilmember Constant: Yeah and all the other related type stuff.

>> I think the budget office is actually working on those. I did receive an e-mail yesterday. I just can't remember when that's coming. But I think it's sometime in December. To Rules. So I'll confirm that with budget.

>> Councilmember Constant: Okay.

>> Mayor Reed: May to June is not quite enough info for you? All of May and all of June?

>> Councilmember Constant: 60 days is a little bit vague.

>> Mayor Reed: We'll get back to that whenever the budget office can get it together. Did we vote on that one? He can City Clerk? All in favor, opposed, none opposed, schedules are approved. Then item number 2 is a request to set a special city council meeting on Thursday, December 16th, at 8:30 a.m. to conduct interviews for appeals hearing board Police and Fire retirement board and Federated retirement board.

>> Councilmember Constant: Motion to approve.

>> Lee Price: Before we go this far, I've asked Dennis to join us. We are proposing a process by which we would like to screen the number of applicants you want to interview on December the 16th. We have 31 applicants for the two retirement boards for the public members of the retirement board. So I've asked Dennis to join us so he can go over what we've recommended and also some other alternatives that have been suggested.

>> Thank you, Dennis Hawkins, assistant City Clerk, Mr. Mayor, members of the committee, we're asking that December 16th be set as a special meeting to consider appointments to both the appeals hearing board and both retirement boards. As Lee mentioned, we have sent up to the council eight applicants for the appeals hearing board. We're in the process of obtaining back from councilmembers their indications of interest. Our plan for approaching the retirement boards is -- we'd like to discuss that with the committee and get your input and direction on that. As you know, the council adopted some rather specific qualifications for members of the -- public members of the retirement boards. And part of our suggestion is that the staff would do a pre-screening to make sure that all the applicants that are sent up do meet the minimum qualifications. We've already done the check to make sure that they live within the 50-mile radius. However there are education and experience requirements, as well. And our recommendation is that, if requested by the council, that we, staff, could do some prescreening on those qualifications. We could go as far as tiering the lists that we send up to councilmembers, as far as qualified, highly qualified or not recommended, to help the council narrow the field of those 31 members, and who should be brought forward for interviews. We're open for doing that. Kind of our rough time line is to get the -- we would still provide all the applications to the councilmembers, so the council would have an opportunity to see all 31 applicants, and if there was someone that councilmembers wanted to interview, that may be not in that tiered approach it would still be an opportunity to bring a person forward. Our rough timeline is to get those applications

out to the councilmembers early next week, give you approximately ten days to two weeks to do your review and then make your indications of interest by December 3rd. That would give us sufficient time to notify the applicants to schedule their time on December 16th.

>> City Attorney Doyle: Mr. Mayor, if I can just add a comment and maybe it's a concern. I think it's important for staff to do the prescreening with respect to whether somebody meets the minimum qualifications. To the extent that staff starts vetting and recommending the highly qualified, or lesser than highly qualified, in some cases staff has recruited folks to apply. I think there's a perception that is staff really in that position, just based on what a resume says. And the council can always say we'd like you to do that but I just think we need to be cautious in that area and maybe have some further thought.

>> Mayor Reed: Do you have any idea how many are going to meet the minimum qualifications based on -- we've already done the residency piece, right?

>> Right. And we're in the process of looking at the minimum qualifications. Based upon a preliminary review I would say that approximately four or five don't meet the minimum qualifications, from what we've been able to determine. One thing that we have done is ask all applicants who did not submit a resume along with their application to do so because in some cases based upon the information that's provided in the application it's hard for us to determine whether or not they meet the minimum qualifications. So we've asked all applicants to provide us that resume that will help us in the determining the minimum qualifications. But based on what I've seen so far I would say it's probably around five out of the 31 who are not going to meet the minimum qualifications. That number may flex once we see the resumes.

>> Mayor Reed: Well we've got at least a couple of dozen people in that ballpark that we're going to have to sort through. It would be helpful to have staff do some of that work at least to analyze it and tell us some things. Whether or not you want to rank them, Rick's question, I don't think I would like to figure out, out of 25 people who to interview without having some analysis done of that. How many positions do we have to fill?

>> A total of nine, Mr. Mayor.

>> Mayor Reed: Ed, did you have something?

>> Ed Shikada: Only to perhaps further the same thought. That perhaps staff could lay out specific criteria under which we would be prepare some analysis for the council to consider in ultimately what would be your own decision on who to interview. But you know whether it be years of experience or applicable experience, we could certainly be very specific in the way that were done.

>> Mayor Reed: What if you just did a grid, based on that criteria? You don't have to make a qualitative decision about somebody being highly qualified or not highly qualified. You could lay it out on the grid with the years of experience and the education and whatever you think might be important. Yeah, just the facts. That would be helpful to have one place to look instead of trying to go through 25 resumes and say is that one different than this one? That could be helpful.

>> We can do that.

>> Councilmember Chirco: I just had a question for Rick. I know when we get applicants for the various committees that we would be liaison to, they go through the diversity screening committee and they will be either recommended or not recommended. How with this be different?

>> City Attorney Doyle: Well that's an independent body that's appointed. What I'm concerned about is whatever staff that would be making the recommendation, you know staff may have a bias, a pro management bias. I just think that you run into the situation where, without knowing who's doing the ranking in the case of project diversity screening committee you appoint them and expect them as an independent body to make a recommendation. So I mean again, the council can always ask for that. But I just wanted to -- I think we should proceed with caution.

>> Councilmember Chirco: I really support the mayor's recommendation, having the grid with the information gives some guidance to when you look at the application.

>> We can do that.

>> Mayor Reed: Other thoughts on it?

>> Councilmember Constant: No, I think that's a good direction so I'll make that motion of what Judy just said.

>> Mayor Reed: Okay, motion is to have you provide the information, do the analysis, just don't add a qualitative ranking to it.

>> Lee Price: So with that motion then our past practice of submitting indications of interest to our office, and if an applicant receives four or more then we would bring those candidates forward to the interview.

>> Mayor Reed: Yeah, I think that's still a good way to do it. Hopefully we'll narrow it down to 25.

>> Councilmember Constant: To 24.

>> Mayor Reed: How long will it take to do 24, six minutes each? Six hours. Hopefully it won't take that long. How many are there for code compliance, three or four or five or six?

>> Lee Price: There are three seats, eight applicants.

>> Mayor Reed: We could be here all day for this.

>> Lee Price: There are three incumbents for appeals hearing board. Rick was just mentioning, there are three incumbents all three are eligible for reappointment, and then there are five additional applicants.

>> Councilmember Constant: Can I make the suggestion here, maybe we can kind of discuss this. One of the things I've brought up every time that we do code enforcement or the appeals hearing board is we're not necessarily following the outline procedure and this might be a good time for us since we have three -- as the liaison we have three incumbents that are doing a very good job and are very committed and acting appropriately. According to our rules, we could just have the liaison recommend them for appointment, just like the ones that we have later in our agenda, and that could be handled that way. There's nothing that prohibits us from doing that. Just so that you know, we kind of got off sync on how we do some and awaiting the boards and commission review. But in this particular case I know that we have three good incumbents. That is just something I'm throwing out there, I'd be comfortable doing, if everyone else is.

>> Mayor Reed: I thought we finished the board and commission review.

>> Lee Price: We still have the governing documents to bring back. And to Councilmember Constant's point, in the current council policy the appeals hearing board is not considered one of the commissions that the council interviews as a whole. However, it is a quasijudicial like retirement boards, like civil service elections, Planning Commission. So it is our recommendation that the appeals hearing board, because it's quasijudicial continue to be council-interviewed, council-appointed. Not to disagree with you because you're right, our current policy would put them through the project diversity screening committee process. However we would like to reserve that to the strictly advisory boards and commissions to the council.

>> Mayor Reed: Well how about saving a couple of hours in this meeting. The last meeting of the year when councilmembers are anxious to get out --

>> Councilmember Chirco: Well you'll have that information by 5:00 tonight. If councilpeople are supposed to have that in. So it could well be that the ones that would get the four councilpeople would request, would be the incumbents, if you've got three incumbents.

>> Lee Price: I think we've given you a little extra time on that because we first sent up six when we realized there were really eight. So we sent up a new revised batch of applicants.

>> Mayor Reed: Not due tonight.

>> Lee Price: That's correct, not due tonight, it's Monday.

>> Mayor Reed: We meet again, Rules Committee.

>> Lee Price: On December 1st. We could revisit that if you like.

>> Mayor Reed: Because you might look at that and decide, let's do the three incumbents and not do interviews, if there were three incumbents, we would do three incumbents because council asked to interview That seems like kind of a waste. We need to revisit this on the 1st and see, maybe by then we will know how many we have in the other pool as well. Because that is a lot of people to interview in one day. Anything else on that?

>> Councilmember Constant: Move approval.

>> Mayor Reed: I had one other related question, and I believe there is an existing public representative member on one of the boards whose term is expiring soon and we won't have somebody in place in December because we're not going to have this done by then.

>> City Attorney Doyle: I think that's a very good point Mr. Mayor. The Federated board is I think the second Thursday of December and if the term expires November 30th council would need to extend that appointment, at least until -- so that they could serve on the December meeting.

>> Councilmember Constant: I may add Mr. Mayor, I was going to put out a memo for next week's rules because I was out of town, but I realized we don't have next week's rules, requesting the council extend the public member

until the new members are seated so there is not a gap. Given the fact that we already downed one member because of the civil service position, we have been having difficulty maintaining quorums given the lower number. So my hope was that I would put out a memo and the rules in lieu would put it on the council agenda for the following meeting so we can just take care of that as an interim staff.

>> Mayor Reed: What immediately would that need to go on?

>> Lee Price: November 30th.

>> City Attorney Doyle: If you want to put that on as an add, we would probably put that on consent.

>> Mayor Reed: You want to revisit the 30th?

>> Councilmember Constant: Sure, I'll make a motion to reconsider the 30th agenda and make that add.

>> On the consent?

>> Councilmember Constant: On the consent, sure.

>> Second.

>> Mayor Reed: We have a motion to amend the agenda. All in favor, opposed, none opposed, approved.

>> Councilmember Constant: Do I still need to do a memo?

>> Lee Price: That would be helpful.

>> Councilmember Constant: I'll take care of it.

>> Mr. Mayor, since we're talking about incumbents, the current public member of the Federated board has reapplied so he is part of that 31 that we have.

>> Ed Shikada: In fact along those lines, I believe the City Clerk's office is following up to get resumes from all of the applicants. As we're doing our matrices, I believe that's important to have that for all even the incumbent so we can fill out the matrix.

>> Mayor Reed: Very good. As part of that are we still doing the questionnaire that we used a few years ago?

>> Actually, we brought out a new application, that council approved in September before we began the recruitment process, so there's a separate application for the public members.

>> Mayor Reed: Okay. Anything else on that topic? Public record would be next, item to take up. Anything in the public record that the committee would like to pull for discussion?

>> Move approval.

>> Councilmember Pyle: I may note that this is the first time Mr. Wall has not submitted a letter.

>> Mayor Reed: Mr. Wall has not submitted a letter but he has submitted a card. Mr. Wall.

>> David Wall: Due to budget constraints (inaudible) about CPLE. Now, this memo does bring some interesting issues which only learned legal minds can ferret out. It deals with, quote however the city is not required to construct a record in electronic format, the city no longer has the record available in electronic format, or presumably never had the record available in electronic format. Government code section (inaudible) close quote. That poses a very interesting dilemma, a conundrum of sorts. Because every document that's given to you is recorded by our honorable dutiful City Clerk. Now, aside of the matter, the CPLE report is stated, everything the

City Attorney stated in here is truthful and very honorable. Yet there's a sticky wicket here. The public record. I wrote memos, letters to Your Honors, to the broader council itself, including this report. It was time stamped as received. The time stamp is electronic. Therefore, it has been received in electronic format. Not to mention, no other documents supporting CPLE has been kept from the milk, except this report. In addition, last week, 15 independent letters to Your Honors, as a broader sense the entire council, had this report picture-graphed into each individual letter, and this was denied to you. You didn't even reference it on your rules packet as even existing. This is very troublesome, because this goes to the disingenuous nature of this whole CPLE process in which the public is being systematically denied. Now, the documents you have before you, Mr. Mayor, shows the chief of the San José police in uniform. Because of my commentary, I suspect, they added the term, "retired," to that photograph.

>> Mayor Reed: Your time is up.

>> David Wall: It's always up. Thank you.

>> Mayor Reed: That's it on the public record. Any comments? We have a motion to note and file. All in favor? Opposed, none opposed, that's approved. Next things are board committees and commissions appointments. We have memoranda, one two three for five six seven whoops, recommendations from Councilmember Liccardo, Chu, Chirco, variety of commissions. Can we take them all at once.

>> Councilmember Constant: Yes and I would make that motion to accept all.

>> Councilmember Pyle: Second.

>> Mayor Reed: Motion is to accept or approval aft of the appointments as recommended by the councilmembers in their role as liaison, et cetera. I have one request to speak on that, David Wall.

>> David Wall: After the prior lengthy and poignant discussion concerning retirement boards which I have to compliment Councilmember Constant, we do need financial people on these boards. So you did a very valiant job in this despite all the heat you've been given. But the same concept should be for all boards. I'm not berating any of these appointments. But to submit a name, just a name on these documents to be considered, without any cursory background, is like what do these people do, what makes them uniquely qualified for this appointment to a board, takes away from the general public who do not know these people, if they're qualified or there are questions about their background that may have a different perspective that could be voiced. So with that type of argument, I would suggest that you defer these for one week until a cursory background description of who these people are, whether they're living, dead, I suppose they're living, we don't know what their backgrounds are. Now I'm not impugning the honors of honors, you know these folks, that's fine but I don't know any of these people. Not that it matters but it would be kind of neat to know what their background is and how they could serve within the applicable boards that they've applied to and been appointed to by Your Honors. Thank you.

>> Mayor Reed: We have a motion to approve the recommended appointments. All in favor? Opposed none opposed, those are all approved.

>> Lee Price: Mr. Mayor if I might I'd just like to address Mr. Wall's comments. The applications for all of these individuals who have been nominated to serve by the council liaisons are on file in my office and all of these individuals went through a screening process with the project diversity screening committee so information about these individuals is available.

>> Mayor Reed: Okay. Next item is work plans. We have recommendation to approve the downtown parking board's fiscal year 2010-11 work plan.

>> Councilmember Constant: Motion to approve.

>> Councilmember Pyle: Second.

>> Mayor Reed: We have a motion and second to approve. David Wall is here to speak on this.

>> David Wall: I'm not here to (inaudible) focus of this plan and its only priority element in the work plan for the foreseeable future is to make park exceptionally easy for downtown. There's been way too many complaints for way too long period of time, from businesses and what have you, about parking in San José, you've devoted an enormous amount of resources to this but the problem still remains that people are not happy about not being able to park and your businesses are suffering. So I think a refocus of this work plan should be the highest priority, even though it is listed as ongoing. But of the highest priority is to facilitate the inward and outward movement of people as a function of how easy it is to park their cars. Thank you.

>> Mayor Reed: On the work plan, all in favor, opposed, none opposed, that's approved. The question about our committee appointments, those need to go on our council agenda?

>> Lee Price: Yes, thank you. If we could put them onto the 30th. We'll take care of that.

>> Mayor Reed: That's fine. Annual reports, do we have any to consider? Nope. Just got the work plan approved, they're not yet done. I think the next item on the agenda, that I see, is open forum. Mr. Wall.

>> David Wall: I wouldn't be doing -- well, put it this way: I like firefighters. I like police officers. Public Safety is really your only major job outside Public Health, Public Safety. I specifically don't want to burn to death. I mean, there's a lot of me. Fats volatilize into oils, so it can get real hot on me real quick. So I prefer that you really reinstate those 49 firefighters. Now, I know I'm going to hurt some people's feelings, I mean, hey, command decision, Mr. Mayor, I mean, you're bred for this type of stuff, you're good at it, for the most part. You've got to start cutting government and funding your fire department. It is just the cost of running the city. Now, there's a couple of ways that you haven't decided to figure how to do this, and I don't blame you too much. You're good at going to Washington. Ask the president to set aside the necessary seed capital, as a loan. To fund for police officers and firefighters. Because no city in the nation can support these kind of entities any longer. But you have to have them. So if you subtract something from foreign aid to some country, couple billion dollars or whatever it

takes for the seed capital to start annuities for these people. So you fund them from the date of their hire, cost of living increases, and their retirement in perpetuity with just a loan from the federal government. They retain the principal until the financial engine starts kicking in. Until then, you look at your staff and you say, oh, I'm going to keep this staff here, but somewhere in the city you're going to burn to death. And you're running the wheels off these high-priced rigs with your dynamic deployment methodology. And I'll tell you, these high-priced rigs, you don't have the money to replace them. You have to come up with a new methodology, instead of running a big fire engine for a drunk downtown --

>> Mayor Reed: Sorry. Your time is up. That concludes open forum, that concludes our meeting, we're adjourned.