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>> Councilmember Nguyen: This is the Rules & Open Government Committee for Wednesday September 21st, 2011. And we will start with city council agenda for September 27th. Are there any changes to page 1?

>> Dennis Hawkins: madam vice mayor I just wanted to point out we have a request to consider item H-2 as part of the review of the September 27th agenda.

>> Councilmember Nguyen: Yes, that is correct, I have that note. Page 2 or 3?

>> Madam vice mayor --

>> Councilmember Constant: Were you going to mention 2.9 sunshine waiver?

>> Councilmember Nguyen: I was. Ten day sunshine waiver.

>> Councilmember Constant: Uh-huh.

>> Councilmember Nguyen: Page 4 or 5?

>> Madam vice mayor on item 4.1, the administration is requesting a time certain for this item to be heard at 3:00 p.m.

>> Councilmember Nguyen: 3:00 is that okay?

>> Councilmember Oliverio: Works for me.

>> At 3:00 p.m.

>> Councilmember Nguyen: 6 or 7. I have a note on here, we need a ten-day sunshine waiver on 9.2.

>> That's correct.

>> Councilmember Nguyen: 8 or 9? 10 or 11?

>> Councilmember Constant: So Madam Chair on page 10 the public hearings that's the one where we would like to add the item that's in our packet as H-2. It will require a sunshine waiver. It should be noted that the paperwork for this except for the Planning Commission report has been out since it did go to the Planning Commission, additionally the Planning Commission video is available on for anyone who would like to review it prior to the report coming out. My understanding is the Planning Commission report will be out by the end of this week. Joe is here.

>> Joe Horwedel: In fact we have done the noticing out to the neighborhood for the 27th. And as Councilmember Constant noted, the planning commission packet is out. We have a staff report. My goal is to have it out tomorrow.

>> Councilmember Constant: And then one other item, since we're on this topic. I wanted to ask the City Attorney, I know I talked to Rick about the actual ordinance, on the mandatory denial. There's I know it's been completed. The city attorney's office it's gone to planning.

>> I think planning and the City Attorney are still working on it to finalize it. And I would defer to Joe as to when he thinks it would be an appropriate time to bring it.

>> Joe Horwedel: Renee had sent comments over, draft ordinance, I had provided comments back to my staff but they had not made them back to Renee. So those were going back today, and we are setting time with the city attorney's office and planning staff to walk, kind of work that one out. Our goal is it's on our November schedule.

>> Councilmember Constant: Okay I just wanted to make sure because when I talked to Rick and Ed Shikada there was confusion where it was.

>> I think planning in our office have worked that out and moving forward with it.

>> Councilmember Constant: Great I look forward to seeing that hopefully early in November.

>> City Manager Figone: Excuse me, madam vice mayor councilmember, Joe, similar to what we did with medical marijuana, why don't we send out an info memo to council therefore they have it all in accessible form.

>> Councilmember Nguyen: Okay and we also have joint scheduled city financing authority meeting on the 27th, that's on page 12 or 13. Then page 14. Think we have a few additions. Commendation to the Hispanic association of city employees, presentation of a proclamation recognizing September 26th, to October 2nd, 2011 astronaut week and a presentation of commendations to members of the San José department and the Santa Clara County District Attorney's Office, for the successful investigation, prosecution, and incarceration of a dozen gang members in Thomas street gang for violent and heinous crimes in San José. This is something that the mayor wants to do for a couple of years, I'm glad it is on now. And actions regarding mayor's action to Washington, D.C, retirement board liaison and we are swearing in a couple of youth commissioners from district 7, district 3 and District 9.

>> Dennis Hawkins: Madam vice mayor we'll need a sunshine waiver on the retirement board liaison matter.

>> Councilmember Nguyen: Okay.

>> Councilmember Constant: So I'll take a stab at a motion would be to accept -- or approve the agenda with the addition of H I believe it was H 2 that we discussed with the sunshine waiver, the other two required sunshine waivers, the additions with the additional sunshine waiver.

>> Councilmember Oliverio: A strong second.

>> Councilmember Nguyen: That doesn't sound very strong.

>> Councilmember Oliverio: Strong enough!

>> Councilmember Nguyen: All right, we have a motion to approve the September 27th agenda. All those in favor, opposed hearing none motion carries. Now we'll take a look at October 4th agenda items. Any changes to page 1? 2 or 3? Is there a time-certain on 3.3? I have a note here that staff wants to have a time certain.

>> Dennis Hawkins: Yes, madam vice mayor, we're still gathering the indications of interest from the council office so we don't know how many candidates we'll have back yet. That's due back to our office today but if we could set a time certain not before 3:30 or something like that. I'm not sure what other plans are on the agenda.

>> City Manager Figone: Could you set the time certain madam Vice Mayor next week, 1st you have an understanding?

>> Councilmember Nguyen: Okay, probably better. Page 4 or 5?

>> I guess madam Vice Mayor on item 4.1, administration is requesting a 14-day sunshine waiver request. The memo is released this morning.

>> Councilmember Nguyen: Okay. And then page 6.

>> Councilmember Constant: Madam Chair, item 8.1, recommendation of referral to the Public Safety, Finance and Strategic Support committee, I made that request as chair of the committee. As you're aware the Rules Committee added this item to the Public Safety committee's agenda and October meeting, I think it's important to

keep it on that track to have it on the October meeting and then it will meld follow to a subsequent council meeting.

>> Councilmember Nguyen: I think we have a speaker on this item too, Rich de la Rosa.

>> Thank you, Madam Chair and councilmembers. Regarding the title 16 revisions, we were just given those or just given those revisions within the last 48 hours and we definitely need the ample time to review that and come back with sufficient stakeholder input. In addition to that, as Councilmember Constant said, it was our understanding that it was to go to the Public Safety committee for review prior to going to the city council. Thank you.

>> Councilmember Nguyen: Thank you. Great. And then we have two additions, presentation of a commendation to the first tee program in recognition and appreciation of their commitment to the children of the City of San José and also a presentation of a proclamation declaring October 6th, 2011 as disability awareness day. I think that's all we have.

>> Councilmember Constant: Thank you, Madam Chair, I'll make a motion to approve this agenda with the required sunshine waiver with the adds.

>> Councilmember Nguyen: We have a motion to approve the agenda of October 4th, all those in favor, opposed, hearing none motion carries. Moving down to the Redevelopment Agency agenda for September 7th.

>> Madam Chair, we want to defer that item to October 4th to give both the mayor and council and the public adequate time to review our revised budgets.

>> Councilmember Nguyen: Okay.

>> Councilmember Constant: So with that I'll make a motion that we cancel the Redevelopment Agency agenda other than any joint items or perhaps any closed session items that would occur on the 27th of September and then we'll see it back next week for the October 4th.

>> That's correct, thank you.

>> Councilmember Nguyen: Second?

>> Councilmember Oliverio: Yes.

>> Councilmember Nguyen: Okay we have a motion and second to defer September 27th agenda to October 4th, because we need to meet. All those in favor? Opposed, hearing none motion carries. Okay. I don't believe we have anything under review of upcoming study sessions. Legislative update.

>> No update today.

>> Councilmember Nguyen: For both the state and federal?

>> Ed Shikada: That's correct, madam Vice Mayor.

>> Councilmember Nguyen: There's no meeting schedules under E. We'll go to the public record, we have one speaker, Mr. Wall, David Wall.

>> David Wall: First of all, good afternoon. Yesterday was very lengthy meeting. I'm glad you're here in good spirits. Item number D, I would like to see more of a rotation of these different councilmembers to the transportation and environment committee, and to the committee or Community and Economic Development committee. I am not impressed whatsoever with the leadership of these two committees. I'm very dissatisfied. In addition, they're the same people. They just switch, one is chair one, the other is vice chair then they just switch

positions. I think the city is very ill served by this mechanism. And I'd like it changed. I specifically do not like, am very dissatisfied with the work plan for the Community and Economic Development work plan. This speaks of mainly cheer leading exercises. And nothing real performance. And I want to emphasize performance-based here because I believe Councilmember Oliverio has been correct, all along on raising this issue on performance-based issues. With city employees. But also, with councilmembers and how they look at staff. Now, these folks either perform, at Office of Economic Development, and make money for the city, or they don't perform, and you change. They're making a ton of money over there and I don't see anything good change, especially item number 3 on the August 22 work plan, downtown is Silicon Valley city center. You haven't taken authorization on that yet. But I take a very dim view to link Silicon Valley with San José's downtown. It's San José's downtown not Silicon Valley city center. But it's this type of mindset that is just -- it's just going nowhere. In other words you're relying on old economic models that are not serving you, you need to change but above all you need to change council leadership. Thank you.

>> Councilmember Nguyen: Thank you. There are any motions?

>> Councilmember Constant: Madam Chair, I make a motion to note and file the public record.

>> Councilmember Oliverio: Second.

>> Councilmember Nguyen: All those in favor? Opposed, motion carries. Item G, boards commissions and committees, 1A, approve the appointment of Elizabeth rounds to the public member vacancy of the board of administration for the Police and Fire department retirement plan and provide recommendation from the Rules Committee to the full council for her appointment. Councilmember Constant.

>> Councilmember Constant: Madam Chair, thank you. Elizabeth Rounds has been interviewed a number of times by both the city council and by the retirement boards as we've gone through the process of reconstituting the board governance of our two retirement systems. She's been fully vetted, possesses the experience that is required, and not only that, she has a skill set that will specifically fit into the retirement board, being that she has

a strong human resources background, and the Police and Fire retirement board deal with a considerable amount of issues in that area. So that, I'd ask you to support me in sending this to the council with our recommendation so I make a motion to approve.

>> Councilmember Oliverio: Second.

>> Councilmember Constant: Also since we have to have it on the 27th it would be cross referenced and we'd like to get a time certain so that we could allow Elizabeth the time, I know we did make a time-certain for 3:00 for one of the items, was it the habitat conservation plan. Perhaps we could do this just before that, it should be very quickly if that would be okay with Joe and the City Manager.

>> City Manager Figone: Yes, absolutely so however you know Dennis you want to agendize that.

>> Dennis Hawkins: 2:45.

>> Councilmember Oliverio: How about if you do it after the ceremonials?

>> Councilmember Constant: I think she needs to get here. So maybe we could do time certain at 3:00 for this and habitat conservation immediately following, which again, whatever it takes.

>> Dennis Hawkins: We'll work on the language. Madam vice chair, if I could just note for the record. Because our office received some questions on this. Ms. Rounds is being nominated to replace Michael Flaherman, who was appointed directly by the council last December. This is one of the public members that is appointed by the council, does not require to go back to the retirement board for their input on this particular appointment.

>> Councilmember Nguyen: Thank you, Dennis. Councilmember Oliverio.

>> Councilmember Oliverio: Did Michael resign?

>> Dennis Hawkins: He did resign.

>> Councilmember Oliverio: Okay, thanks.

>> Councilmember Nguyen: Okay we have a motion and second. All those in favor? Opposed, hearing none motion carries. We have nothing under work plans or annual reports. We finished item H-1 and H-2, go down to H-3, recommend that the rules committee place on the 27th agenda an item to draft a resolution in support of California assembly bill 323 that would among other things prohibit the impoundment of a vehicle at a sobriety checkpoint for 30 days if the driver's only offense is the failure to hold a valid driver's license. There is a memo from Councilmember Liccardo, Kalra and Campos.

>> City Manager Figone: Madam Vice Mayor, the chief is here. Clearly, it's the committee's prerogative to bring this forward to council. I thought it would be important though to alert the committee and subsequently the full council through the chief's comments about some of the concerns that we have, and clearly we can round these out with the full council next week. But I thought you should hear from the chief.

>> Councilmember Constant: Before we get there, if you don't mind Madam Chair, we've had this discussion at Rules before about taking positions on legislative items without it going through our legislative review team. Usually things come through Betsy and the City Manager's office. We've struggled with this in the past because we don't get the full balanced analysis when it comes directly from a council office to Rules asking for a recommendation. So we not only don't have the chief's input which we can get right now but we don't know who supports it, who post office it and what are the other implications. I really think what we should do is refer this to the City Manager's office to have Betsy and Roxann do what they normally do and then bring it back in that format.

>> Councilmember Oliverio: Second.

>> Councilmember Nguyen: Okay we have a motion to refer it to the City Manager's office. Chief Moore, do you have anything more to add? I'm sorry. Ed.

>> Madam Chair, the only thing that the committee should be aware of, and again, it is your prerogative, is I suspect the reason why this may be time sensitive is that all these bills are before the governor's desk. And my understanding is there was a need to get something before the governor since he will be either vetoing or allowing it to go. So I suspect -- beyond whether bringing it back next week is sufficient. I just wanted to highlight that issue for the committee.

>> Councilmember Nguyen: Is this one of the bills that he needs to sign within 12 days or something like that?

>> Councilmember Constant: I believe so.

>> Madam vice mayor and members of the council if I may some of the questions might be clarified, if you want it's going to take me two three minutes or maybe even five. Thanks very much. I think Ed is correct in that this is one of the bills that the governor is considering signing not signing and has a lot of input from law enforcement. I thought it best that I as best I can reflect the view of law enforcement and what we're hearing the California police chiefs association has come in opposed to this bill as well as the California peace officers association. And having said that, in our own city, and through my policies at the police department, I think the intent of the bill is good. I think some of the language is good, but I do have some concerns about the absolute prohibition on being able to tow a car for 30 days. In our own policy at the Police Department we recognize that we have an out cause that basically allows with supervisor's approval that we can do this. But to say absolutely not, cannot, prohibited, is probably not in my opinion the best public policy. But again, that's for others to decide, but I thought I would offer that up. That most of law enforcement in California has pretty much come out saying, again, you're seeing a turn in the tide towards what San José does. And what other cities are starting to follow on using more discretion. But having that discretion to tow, when appropriate, and not tow, rather than having it forced upon law enforcement, which is I think why the push back is there.

>> Councilmember Constant: And I couldn't agree more, chief, or chief Moore, kind of sounds like run, Forrest run, but that's not what I meant. I think it's important, and the chief and I had long discussions about our own policy, because I think it's important that we preserve discretion for our officers. Because these laws were created, and have served our city and other cities well, and sometimes the discretion isn't appropriately used and that's why we have the ability to set policies and instruct and educate people on how to effectively use discretion. But I don't think the right course of action is ever to take the discretion away. And quite frankly, in my opinion it should stay with the officer. I understand why the chief wants to go to the supervisor. I don't have a problem with that but I think this is problematic for the state for us to just blanket do that. And that's another reason why it's important for us to get that review from the City Manager's office so we would know in writing that we have the California police chiefs not endorsing it and things of that nature. I'm actually more fine just saying no let's not take any action on that. --

>> Councilmember Oliverio: Second.

>> Councilmember Constant: Based on the comments of the chief.

>> Councilmember Nguyen: Not take any action meaning we refer there to the City Manager's office?

>> Councilmember Constant: No we just drop it.

>> Madam Chair, I want to make sure my views are reflective. I mean, I'm obviously a staff position on this, but because I am the police chief, and I have a policy that sort of reflects it, I think the existing law is ripe for change. That's not the issue for me. I'm just not sure that the language here as it is today is probably the right language. I know that will offend some people that really believe that it needs to change, it needs to change now but I just want to make sure my position is clear, it is ripe for change, this isn't the vehicle though.

>> Madam vice mayor, let me also make some comments. Clearly, again, you can take the motion, accept the motion that's being presented, or you can send forward without a position so the full council can decide whether

they want to support it or oppose it. I think the recommendation is that you put it on the agenda as a support. The Rules Committee could actually put it on there without a position, have the full council decide, and at that point take a position on it.

>> Councilmember Nguyen: I think that's probably where I would lean towards, send it to the full council with the recommendation that we not take a position on this issue at this time rather than kill it here at the Rules Committee.

>> Councilmember Constant: I'm not supportive of that at all. I'd be willing to send it to the City Manager's office so we can get a true neutral evaluation of it. I think that we owe that to everybody on every bill and I don't think it's fair to this committee to get things that haven't been evaluated.

>> Councilmember Nguyen: Councilmember Oliverio.

>> Councilmember Oliverio: There are a variety of bills that affect cities that are sitting before the governor, I mean, a lot. And they clearly had a process months before they went to the governor's desk. If this was so important, then it could have come through Betsy and through the process. If it's going to be this, then there might be 16 other memos from council. I respect the councilmembers' opinion to write the memos. They can certainly write letters of support to the governor and call the governor to support what which way they want him to go, but I'd just rather deny the item.

>> Councilmember Nguyen: Okay. We have a couple of cards from the public, who wants to speak on this item. David Wall.

>> David Wall: This is another, in my opinion, another one of Councilmember Liccardo's grandstanding type actions. Predicated to pandering to the Mexican community. I don't say Mexican American, I say Mexican community, in reference to illegal aliens who predominantly do not have driver's licenses. Also, other people do not have driver's licenses for a variety of criminal matters. So in other words supporting this bill is in essence a

variation of criminal facilitation by political policies. This is a horrible bill. Police officers circulate have the ability to impound all vehicles, from people that do not have a driver's license. This does not mean you forgot your driver's license at home. This means you do not have it for a legal reason and you should not be on the road. Driving is not something you're born with, you're given a right, and there are rules to it. And the police should be able to just take these cars off the road. As a matter of fact, there is so many of these unlicensed drivers out there, you'd be doing the public a great service on getting these vehicles off the road, stimulating the economy, through the tow truck folks that you've set up with your contracts and sending a message that there's deterrents, at least in San José if you get pulled over without a license, your car gets impounded for 30 days until a trier of fact gives it back to you.

>> Councilmember Nguyen: Thank you. Cecil Ward.

>> My name is Cecil Ward, I'm the director of organizing our rights, immigrants rights and education network, and we support the resolution. The resolution chief Moore mentioned is very similar to San José's policy that was changed a couple months ago and what we've seen in the last couple of months that due to the change of policy our community, the choice between the community and the police, from what folks have been telling me has increased and having similar policies statewide will increment the trust between the community and the police and not having the fear to report crimes and also at times recently we did a survey where over 800 people filled out this survey. And due to the impoundments, the 30-day impoundments what we've seen is folks face a deep level of depression because of the impoundments, we showed actually 68 people, out of the 800 surveyed said they suffered due to impoundment, domestic violence, 491 people suffered extreme financial difficulty, and 222 people suffered job loss meaning, less taxes to the City of San José. And also, 125 families say that their kids didn't go to school, missed school because of the effects of impoundment, 30 day impoundment. So we support this resolution and like mentioned we have less than two weeks for the governor to sign it so passing this resolution will help many, many residents of San José.

>> Councilmember Nguyen: Thank you. Lucille Ortiz.

>> Good afternoon, my name is Lucille and I also stand here in favor of giving the resolution up for the councilmembers to vote. And the reason why is because low income communities including and especially the immigrant communities are less likely to report a crime or a hit and run because of their fear that their cars might be deported or impounded I'm sorry and they have to pay fines of over \$2,000. And so that creates a huge financial hardship on those families and I believe that our responsibility is to be able to have a safe community in everywhere not just in San José but also in the whole state. And having a safe community includes that everybody has trust in law enforcement.

>> Councilmember Nguyen: Thank you. Other comments from committee members?

>> Councilmember Constant: Yes, first of all, I'll make a comment then I'll clarify my motion. I have strong feelings about this. Three times I've been struck by unlicensed drivers twice of which totaled my vehicle. So I know that had they been stopped and their vehicles been impounded they wouldn't have struck me. I also know that from my time on the police department it was one of the most effective tools law enforcement officers have out there, when they're out working. So my motion is, my first motion depending on how it turns out there may be a second motion, is to not move this forward, and essentially kill this memo at this point.

>> Councilmember Oliverio: Second.

>> Councilmember Nguyen: Okay, we have a motion to kill the memo. To drop this item. I'm not going to support the motion. I just think that this is a time sensitive issue. I know that -- I understand that we should be able to take a lot of these issues to the City Manager's office and I hope that's something that councilmembers will do in the future. But since this is the time sensitive issue, I think it's best to send this forward to the full council for a no position. So --

>> Councilmember Constant: So I can count the votes. So my second motion -- no I can withdraw my motion and then can I make another motion so that's what I'm doing.

>> Councilmember Oliverio: Point of order, for three people on the committee, is it just a majority?

>> Yes.

>> Councilmember Oliverio: Okay, so it's pretty simple.

>> If you have three people, two are the majority.

>> Councilmember Constant: Then I'll let it go. I thought it took three to take action.

>> Councilmember Nguyen: We have a motion to drop this item. All in favor, opposed, 1, okay, thank you. We'll move down to H-4 approve the initiation of --

>> Councilmember Constant: I'm sorry I meant to ask if we can ask staff to get back with us for a process that Rules Committee can rely on going forward because we struggle with this quite frequently and one other item I wanted to point out is we're being asked to put a resolution open the council agenda, we don't even have a resolution to look at. That's one other thing that's troubling. So if we could get guidance here at Rules and make a Rules policy.

>> City Manager Figone: Happy to do that. The chief is hearing this for the first time. We'll have an info memo to indicate where this is in the governor's queue to point that out. I do want to make clear we frame what is staff's position at least short of the full analysis and we'll try to bring a process forward that makes it clear what we think has been the practice that we would maybe want to formalize it.

>> Councilmember Constant: I don't know if we do really need to waste staff time when we have all these other things to send a memo out, to tell us the status of something that's no longer on our agenda. If the council members wants to resubmit it to the city manager's office to have it evaluated and bring it back to a future Rules agenda, they can do that. But I know you have way too many thinks to do to add this to your plate.

>> Councilmember Oliverio: I would concur with those comments.

>> City Manager Figone: Thank you.

>> Councilmember Nguyen: Okay, Item H-4, approve the --

>> Councilmember Oliverio: Motion to approve.

>> Councilmember Constant: Second.

>> Councilmember Nguyen: Okay. We have a motion to approve. All those in favor, opposed, hearing none, motion carries. Then we have H-5 and 6.

>> Motion to approve.

>> Second.

>> Councilmember Nguyen: Okay, we have a motion to approve city sponsored events in district 4 and district 8. All those in favor, opposed, hearing none, motion carries. H-7, consideration of councilmember Liccardo's memo, consider a request for a waiver of the revolving door restriction, in the municipal code section 12.10.070, for Edith Ramirez, former Redevelopment Agency employee, and forward to the city council for formal action on August 30. We are taking this -- this has actually being referred from the full council for the committee to consider.

>> Dennis Hawkins: Madam Chair, we ask that whatever the committee determines, that this be added to the September 27th agenda.

>> Councilmember Constant: Madam Chair?

>> Councilmember Nguyen: Councilmember Constant.

>> Councilmember Constant: Seeing the city attorney's memorandum dated September 16th, I think that that is something that we should do. They have had an opportunity to look at it. I think my concern is making sure that if we are not going to do a blanket waiver, like I know several councilmembers have encouraged us to do, that we do provide our employees with as much leeway as we can, once they've been laid off and they're looking for work. I think we do have some special coverage in the Muni code that makes it difficult to just give that waiver, and I think this memorandum here strikes a balance. So I would make a motion to move this September 16th language forward.

>> Councilmember Oliverio: Second.

>> Madam vice mayor, just wanted to be sure that everyone understood that it is not the City Attorney's recommendation, it is simply language that follows the intent of the memo.

>> Councilmember Constant: It's my recommendation that we follow the language that's been provided by the city attorney, right Lisa?

>> Lisa Herrick: That's correct, Councilmember Constant, and the only other thing that I would add is that this would be in addition to the waiver that already came from the committee several weeks ago.

>> Councilmember Nguyen: Thank you.

>> David Wall: This waiver has gotten way too much special attention by the council, the mayor and what have you. I want to read into the record City Clerk's letter dated August 19th, the analysis section on page 2, second paragraph, and I start quoting. In Ms. Ramirez's case she has requested a blanket waiver of the revolving door

restrictions so that she may start a consulting business to provide a variety of services to the public agencies, nonprofit organizations, and private businesses. Her letter is attached. At this time, it is not clear who Ms. Ramirez's clients will be, what specific services she will be providing to them, and whether such work is in the -- work is in the City's interest. In reviewing other similar waiver requests, the former employee had been performing work that meets an interest of the city, involves services the city has contracted for through an independent third party following competitive process and/or services provided to do/fulfill a government purpose and need." There has been nothing in the public record to substantiate this waiver whatever, nothing whatsoever. As a matter of fact, just routine reconnoitering, the term Brocade comes up, and what that means is anybody's guess. But I suspect there's a friend of the mayor getting a little preferential treatment here. Now, whether or not that is true remains to be seen. But absent facts that support the waiver, the giving special treatment of this waiver should be rejected, because you're going to have a flood gate of these things. And this revolving door policy was started for a reason. I'm sympathetic that the person got laid off. But they knew full well when they signed on what they were getting into.

>> Councilmember Nguyen: Thank you, Mr. Wall. Okay, we have a motion. All those in favor, opposed, hearing none motion carries.

>> City Manager Figone: H - 4 rather than H-2, staff will not be putting out a staff report on this issue. In reading the mayor's memo and he did give me a heads up on this I think the last paragraph is really kind of gets to the bottom line about what staff work is already underway through other agencies that we would envision leveraging. But I do think at some point there might be gaps that the city of San José staff would have to kill so I just wanted Joe to comment on what the council should expect in that regard.

>> Joe Horwedel: Thank you. Not having seen the work that's gone on, the groups that are working on the nomination, we're not aware that it meets the city standard for landmarking, so we're working with the presumption that it is. But certainly to be able to turn around something for the 27th is not a position where staff's going to be able to write a report since we got rid of the historic preservation staff as a part of our general fund cuts. So it's one that -- of trying to balance that, and knowing that there is some schedule, our goal is to put it on

the November historic landmarks commission meeting. Assuming that there's information, if I can't make it that date, it does move it to February. So we are trying to be mindful of schedule, but I also want the committee to be aware of, from the staffing side, there is no one there behind to do that work.

>> Councilmember Nguyen: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, chair. My assumptions from the memo is that this is the start of the process of looking at this building, through an outside party, doing research, can determine that it's historic, and then that will come back through the historic landmarks commission and come back to council at a future date.

>> Joe Horwedel: Well, that's correct. But our expectation would be to put it on Landmarks Commission meeting for November, to actually have them comment on whether it qualifies as a landmark or not, and take care of that in one shot.

>> Councilmember Oliverio: And then that would come back to the council?

>> Joe Horwedel: That would come back to the council end of November or early December.

>> Councilmember Nguyen: Thank you for the clarification. Okay, where are we -- H-8, a request for a sunshine waiver to broadcast and video record of October 6, 2011.

>> Councilmember Oliverio: Motion to approve.

>> Councilmember Constant: Not quite yet.

>> Councilmember Nguyen: Police and fire retirement board meeting. Councilmember Constant.

>> Councilmember Constant: Yes. Unfortunately I'm the person who created this conflict, unwittingly. So and due to maybe a gap in a process somehow, we weren't able to fully communicate that there was a conflict until fairly late. And I know Dennis and I have had some discussions and Ed and I have had some discussions. But I just want to clarify: The memo says the council chambers are not available, but my office did not reserve the chambers. So the chambers are available, and Ed, I think you checked on that as well, is that correct?

>> Ed Shikada: Yes, I believe that's accurate.

>> Councilmember Constant: I think it's important to note that when we first talked about having the retirement boards meet here -- well, not when we first, because it's been discussed many, many years -- many, many times over many, many years, but in relation to this change when we first talked about it, the intent was to have them meet in the chambers. In fact, we spent some money installing some equipment in the chambers so that it would work efficiently for the boards. However, a decision was made by somebody at some point to have them moved into the committee rooms. We've done everything that we have been able to do to accommodate both retirement boards, including moving the Public Safety, finance, and strategic sport committee out of our own committee room into another location so we could fulfill the desires of the council to have these important meetings in public, and have them broadcast. And I think -- I know not everyone on the boards agree with me, and we have had some very spirited discussions. But I think it is a council policy and I think it is a priority of the council and we do have the council chambers available. And I would much rather see the retirement board move 40 feet to my right than move two miles up the road. And it would allow us to maintain the video recording. So I don't support this. I will respect the two of you if you choose to do otherwise. But I think the instruction from this committee should be that we expect them to follow our policies, and that if they really have a problem with the policy, then they should work with us to see if we can amend the policies. But we have the facilities here in our public building that is built and designed to have public meetings, and I think it should be here.

>> Councilmember Nguyen: Okay.

>> Councilmember Oliverio: Based on the further explanation, I'm fine with that, Councilmember Constant.

>> Councilmember Nguyen: So the motion?

>> Councilmember Chirco: So my motion would be to deny the request with the sunshine waiver and make a recommendation to city staff to schedule the meeting instead in the council chambers, so that it can be broadcast as a standard policy.

>> Councilmember Oliverio: Second.

>> Councilmember Nguyen: Comments?

>> City Manager Figone: You know, that's fine. What I was going to say is if the committee did approve this, I've instructed staff that there will be no more conflicts. And we have scheduled out a hold for the next year. And I think we can only do that one year at a time according to our rules, but at least everyone on city staff is now on high alert on this issue so we don't keep running into it.

>> Councilmember Constant: And I think what's important to point out, that's what we did originally, and we booked them in the chambers. And that's what made -- the event I'm having was booked well in advance. So the decision was made to have it here. So it -- I think we're working on the policy issues, so it's not going to happen again, but for this case, I think this is what we should do. And I think Ed has been trying to say something.

>> I was just going to say, so long as the -- you've indicated and Ed, I guess, has confirmed that the chamber is available. Because otherwise, for whatever reason it's not, they will have to broadcast, do whatever they need to do, to broadcast out of the retirement offices because you haven't waived such --

>> Councilmember Constant: We have an opportunity next week to revisit this issue if there is a problem. So I'll add that on, that city manager's office will confirm and book the chambers and if there's any issue that it be brought back on them week's agenda here.

>> City Manager Figone: Maybe one other question for Dennis or you, Councilmember Constant since you're the liaison, has the item already been posted and is there a notification issue now that could cause some confusion?

>> Dennis Hawkins: To my knowledge it was not been noticed. The requirement or the noticing of the retirement board meeting on October 6th would take place seven days prior to that. So I think we have got time. I do think that there's some confusion as to whether or not the chambers were required for the disability days event or not, which is kind of how we got into this situation. So I think we've tried to clarify that, just to reassure the committee the reservations have been made for the retirement boards here at city hall for the foreseeable future. We did that several years ago. It was just we get into these tinkering situations from time to time where we need to accommodate other matters. And under an abundance of caution, this is part of the reason we brought this forward is we were working under the assumption and were advised that the retirement board needed to move its meeting to the retirement services office. So we were trying to get ahead of the game so that we could give proper notice to the community that the meeting, where it would be and that it would not be video recorded or weapon stream that day. We're trying to work through several issues with various party but if there is a problem we'll come back next week.

>> Councilmember Constant: And he let me just assure you disability awareness day is my event and we are not using the chambers. So if it's reserved for us, it's available.

>> Councilmember Nguyen: Okay. So I'm sorry, what was the motion again?

>> Councilmember Constant: The motion was no, on the waiver, refer staff to schedule the meeting in the council chambers. If there's any problems, to be back with us next week, same time same place.

>> Councilmember Oliverio: Second.

>> Councilmember Nguyen: Okay, we have a motion and second. All those in favor? Opposed, hearing none, motion carries. Thank you. We don't have any additions to the council committees. Appeals of the public records act requests, we have none. We are down to the open forum. David Wall.

>> David Wall: First off, I'd like to see all treatment plant advisor committee meetings be held in this room. I want the city clerk to run them. This group is far too out of control with the amount of money that's going through it, and people don't have access to meeting minutes, are always an atrocity. Let me put to you very succinctly: That water pollution control plant and its history, this period of time is the only period that I could ever imagine it failing. And if it fails, it will fail in part to substandard and incompetent management to begin with. So you need to take care of that, it should be all public meetings. The dress code should be eliminated for all senior staff. I mean, come on, you're cutting their salaries, it's not environmental, let them wear Hawaiian shirts. It's nomadic living, this business of motor homes, all over, I don't know if Stockton avenue is the Mason Dixon line with district 6, or district 3. A lot of them there, north of 11th street, lot of garbage at 10th and Hedding -- I mean 10th and Horning street. This is a dumping field. That need to change. There's a lot of stuff, too. Madam City Manager, I want staff to come up with a number of garbage trucks that are going to go into that nine-par anaerobic digester machine. I think it's first of all why that project wasn't integrated into the habitat plan, is an atrocity. But also, the number of those garbage trucks with reference to this nitrogen deposition business is another environmental atrocity. And I don't know why that that number hasn't been put forward. I suspect that it will be quite large to keep feeding that machine and what it needs to do. I think it's reasonable that you give directions to the very people that hoisted that project through your office, upon these learned councilmembers, to give them that type of idea so a person like me can't come up and say your habitat plan is a joke to begin with, with no --

>> Councilmember Nguyen: Thank you, Mr. Wall. The meeting is --

>> Councilmember Constant: I want to assure you, I have relaxed the dress code in district 1.

>> Councilmember Nguyen: The meeting is adjourned. Thank you everyone.