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>> Mayor Reed: Good afternoon, I'd like to call this meeting to order. This is Rules and Open Government Committee meeting for September 7th, 2011. Are there any changes to agendas order? No changes. We'll start with September 13th, council agendas. Anything on page 1, page 2 or 3? Page 4 or 5?

>> Councilmember Constant: Mayor just a quick question. I know we've gone over this a couple of times but on travel, 2.16, I don't think that requires any memo since it's just going to San Francisco.

>> Dennis Hawkins: Yes.

>> Councilmember Constant: I know there's been some confusion quite a bit lately so maybe we could get the travel guidelines redistributed so we could streamline things.

>> Dennis Hawkins: And I'll circulate a memo to the council offices clarifying.

>> Councilmember Constant: Thank you.

>> Mayor Reed: This 2.16 travel to San Francisco does not need council approval?

>> Dennis Hawkins: That's correct.

>> Mayor Reed: I'll drop it then, otherwise we'll get everybody confused what they could or could not do. Just let Councilmember Campos know that it's dropped. Anything else on page 4 or 5? Page 6 or 7, item 4.1, the medical marijuana collectives, item haven't been through all the staff work on this but we had a request from is Councilmember Liccardo with a resolution from the cities association, to adopt the resolution urging the federal government to do something. And I thought that was going to come back to the council when we took up the rest of the marijuana stuff, because I don't believe we took any action on it.

>> City Attorney Doyle: Let's go back, and if we needed to, have the committee authorize us to put that on the agenda to make sure we can adopt it, if it's a resolution.

>> Do you know what it's about?

>> City Attorney Doyle: It has to do with how Congress categorizes marijuana.

>> Councilmember Oliverio: Asking the FDA to --

>> City Attorney Doyle: Well, it's asking I think Congress to change the law.

>> Councilmember Oliverio: Okay.

>> Mayor Reed: Somebody to move it off of one schedule onto another schedule so it's treated like heroin or cocaine and other things, instead of in its own category. Anyway, there's a request that we have and I'd lost track of what we did it with it. That's the time to take it up.

>> City Attorney Doyle: Quite honestly I thought we took action.

>> Mayor Reed: We didn't.

>> City Attorney Doyle: We'll bring it back.

>> Mayor Reed: We'll hear the medical marijuana collectives last. Anything else on page 6 or 7.

>> Councilmember Constant: Mayor can I just ask a question on the marijuana issue? I know there was some concerns about the cultivation issues. And we had a chance to get a handle on that as well. Is that all going to be addressed during this time?

>> City Attorney Doyle: If what you're referring to are the size?

>> Councilmember Constant: Yes, everything related to the cultivation.

>> City Attorney Doyle: Cultivation was onsite versus offsite and there were a whole host of other issues and the City of Oakland tried to be more aggressive in how they were going to allow large scale and U.S. Attorney's Office chimed in and says no, you can't do that. And so we're prepared to talk about any and all of that.

>> Councilmember Constant: Okay, thanks.

>> Mayor Reed: Same thing happened on Chico when they were going to license cultivation I guess, U.S. attorney same U.S. attorney I think --

>> City Attorney Doyle: No, it's the eastern district. It wasn't Melinda.

>> Mayor Reed: We had some guidance from the U.S. attorney general's office from the national level since then too. All right anything else on page 6 or 7? Page 8 or 9? I have just a couple of changes to the amended agenda. Change the language on item 2.9 B and then a different set of recommendations on the city demonstration project. Different resolution or different -- something different about it.

>> City Attorney Doyle: It's a resolution vs. a discussion. And I think with that we would ask for a sunshine waiver on the legal document.

>> Mayor Reed: Okay. I have a request to add proclamation September 16th as Mexican Independence Day and commendation of residents of Watkins way on ceremonial items. Any other requests for additions or changes? Councilmember Constant.

>> Councilmember Constant: I was just going to make a motion or the approval with the adds and amendments with the explicit statement that if anything needs to be added for the resolution related to the medicinal marijuana that westbound added with a waiver of sunshine as required.

>> Second.

>> Mayor Reed: We have a motion, all in favor, opposed, none opposed, that's approved. Next we'll take up the September 20th draft agenda. I'm sorry, want to go back to the 13th, one thing I forgot to check. And that is the starting time for the closed session. My guess is, we're not going to have a very long labor discussion on 13th based on the status of where we are on all the negotiations, so I think we could go back to the 9:30 start time much to the disappointment of all the councilmembers who warrant to get there really early.

>> Councilmember Constant: Don't we get credit for time served? 9:30 is fine.

>> Mayor Reed: What does the City Attorney think of the rest of the closed session agenda?

>> City Attorney Doyle: I think we'll start coming in with a list of significant cases but I don't think we're prepared to start next week.

>> Mayor Reed: So we'll start at 9:30 on Tuesday.

>> City Manager Figone: Mr. Mayor, we'll have a personnel matter to take up with you.

>> Mayor Reed: But that's not going to take long, let's say 9:30. Back to the 20th agenda. 9:00 a.m., closed session start, probable. We can adjust that as we see how things are going. Anything else on page 1? Page 2 or 3? Page 4 or 5? Page 6 or 7?

>> Councilmember Constant: It could be deceptively short.

>> Mayor Reed: Deceptively short.

>> Councilmember Oliverio: (inaudible).

>> Mayor Reed: And 8 or 9 which are financing authority agendas for solar items. Other changes, additions, I have no written requests for changes. I'd like to talk about when we take up the declaration of fiscal and service level emergency. I'd like to do that at 2:00, if we can. Be sure we get that done. And then, any other things that need to be specially considered?

>> Councilmember Constant: So I'll make a motion to approve with that time-certain change.

>> Second.

>> Mayor Reed: Motion is to approve with the modification on the time. All in favor, opposed, none opposed, that's approved. Redevelopment Agency agenda September 13th. Nothing.

>> Nothing mayor.

>> Mayor Reed: 20th, nothing so far.

>> No.

>> Mayor Reed: Okay. City Attorney. Did.

>> City Attorney Doyle: We will have a closed session item for RDA on the 13th.

>> Mayor Reed: And probably the 20th as well but no other items to agendize.

>> Councilmember Constant: So do we then do a motion to cancel that except for the joint items, I don't think there were any but in case there were and the closed session? That's my motion.

>> Mayor Reed: Okay.

>> Second.

>> Mayor Reed: Motion is to cancel except for the joint items on the 13th. All in favor, opposed, none opposed, that's approved. Legislative update would be next. Betsy Shotwell.

>> Betsy Shotwell: Thank you, Mr. Mayor, members of the Committee, Betsy Shotwell, Director of Intergovernmental Relations. I had to put in a placeholder, not knowing what might have happened in the last few days. They are in session now, they are in hearing as we speak. They need to be done by midnight Friday, so I'll have a lot more information later. When we're done with this item I'll be racing back to stay current.

>> Mayor Reed: Any questions?

>> Councilmember Oliverio: Mayor, Betsy what's the name of the bill that's sitting on governor Brown's desk and another one with regards to medical cannabis, it's on his desk for his signature, trying to find that number. He signed AB 1300, and this another one will expire actually one day before our council meeting. If you could send me an e-mail that would be great, if you don't have it on the top of your head.

>> Betsy Shotwell: It is not on top of my head. I just remember reading it in the same article, I'll get that information.

>> Mayor Reed: The one he signed just makes it clear that we're entitled to do what we're entitled to do as local government.

>> City Attorney Doyle: We have our land use authority. Yes.

>> Mayor Reed: It is good for the governor to confirm that. Anything else on the state and federal? We don't have anything to update by way of federal. Okay. And we have a couple of matters regarding boards and commissions, first we'll take up public record. Anything on the public record the committee wants to talk about? We have one request to speak, David Wall.

>> David Wall: First I'd like to welcome Councilmember Constant back to rules, his presence is always missed or your presence is always great to see you. Item C. This is come about from Councilmember Liccardo's CED allegations of this hidden report with RDA which I do not say there was any type of hidden report. But when I look at Councilmember Liccardo's chairmanship of the transportation and environment committee I'm very dissatisfied as a citizen. And this is in reference to the municipal storm -- municipal regional storm drain permit. I've requested several times that the watershed protection division of ESD should report monthly as to the status of these storm drains. Councilmember Liccardo has just given them a Mulligan all the way to December to report. That's ineffective leadership. And I'm very concerned that in December another hidden report will come out that says hey ESD hasn't done anything or relatively little to support or protect these 29,000 storm drains. So I think Mr. Mayor you should transfer the chair to some other councilmember that might hold the administration accountable in this regard. Now, in item E, that deals with the arts, we see in the Mercury News a very good positive sign for the San José repertory theater and the economy in which they are now using San José State drama people as part of their business model. Would I like to see neighborhood services try to push this further down into the high school level to help funding the high school arts programs, via your T.O.T. taxes. There is another item in here, item D, much thanks to Councilmember Oliverio, for trying to save people's lives in school speed limit zones, thank you again, sir.

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

>> Councilmember Constant: Motion to note and file.

>> Second.

>> Mayor Reed: Motion is to note and file, all in favor, opposed, none opposed, that's approved. We have some matters on commission and boards appointments, we have appointments to the workforce investment network and neighborhoods commission.

>> Councilmember Oliverio: Motion to approve.

>> Councilmember Constant: Second.

>> Mayor Reed: Motion to approve all three of these items including getting the neighborhood commissions member on the September 13th agenda. As requested. All in favor? Opposed? None opposed, those are approved. Next item would be item H-2, my memorandum regarding the declaration of fiscal and service level emergency. As noted in my memorandum I'm recommending that we not set that up for council action on September 20th, that we defer the consideration of a declaration until after October 31st, when the negotiations with our bargaining units are scheduled to be completed. However, on the 20th, I want to bring the council up to date on the status of our 12-13 General Fund budget. Our fiscal condition. Projected increase to the pension cost and impacts on service delivery. And so that's my recommendation, that we not set this for action but rather, to keep the council informed so they can see some of the staff work that's been done on this matter.

>> Councilmember Oliverio: Motion to approve.

>> Councilmember Constant: Second.

>> Mayor Reed: Motion is to approve. We've got a request from David Wall to speak.

>> David Wall: This is obviously going to cause a lot of controversy within the city. But I have yet to see any formal type of organizational amputations that Councilmember Constant raised back in February of this year. You just raised the concepts. I think that you should be very prepared to start saying to people, exactly what is going to be cut. But also, out of the other corner of your mouth you might explain why you have so many communication directors, their staff, consultants, that are hired to construct ballot language, using very what I would call, my own words here, nefarious and sinister statistical means to tailor language that could entice, sway, or induce people to vote however you decide to construct this ballot. So if you got money to do all that, that's a problem in itself. Because it's just a mismanagement of city resources when you could be keeping people on the payroll to pick up garbage in the city or deal with graffiti or a whole bunch of other items. So this is going to cause a lot of problems, Mr. Mayor.

>> Mayor Reed: That concludes the public testimony. We have a motion.

>> Councilmember Constant: Motion to approve.

>> Mayor Reed: Motion is to approve. All in favor, opposed none opposed, that's approved. Next item is a request from Councilmember Rocha for staff analysis on real estate assets to be brought to the council before we deliberate on the rancho Del pueblo golf course item. I had one comment on that, which is that I think staff should be able to answer those questions on September 20th as part of the budget deliberations and maybe they will need a response to Councilmember Rocha's memo in more detail somewhere in the future. It's clear that for next year's budget is there some way we can sell some real estate to raise some one time money in the next fiscal year. I would anticipate the more important pieces of real estate I'm sure they're already on the staff's list, it isn't like we have to go hunting for them but the more important pieces of real estate we can talk about on the 20th as one of the alternatives to reducing services. Councilmember Constant.

>> Councilmember Constant: Thank you, Mayor, I was going to make a very similar recommendation, because I think that the process we're in now is as a direct result of the improved budget message that you put back out in

June. And I think this information is all good request but it will be most informative for next year's budget season so I'd make that motion.

>> Second.

>> Mayor Reed: Okay. I have two requests to speak on this, I think. Yes. David Wall and Carrie Hamilton.

>> David Wall: This is somewhat of an irony because this is fiscal emergency revisited. Councilmember Rocha rightfully, dutifully, calls into question what are the assets that the city has? And how can you actually declare a fiscal emergency if you have assets and you haven't depleted those assets? My own personal opinions is rancho Del, it should be left alone. Whether it's to be leased out as a golf course or not is another matter. But these land use decisions to balance your budgets and while you continue to keep city operations floating that are unsustainable like community centers, libraries, things of that nature, again, goes to the -- to the issue of bad decisions. Very bad decisions. Because you're trying to keep the illusion that San José, things aren't going to change. But you know very well that they are going to change and the sooner that you dramatically communicate that, articulate that to the public, the better off you're going to be. And you might find other support for revenue generation through that. But this piecemeal selling off property to developers is pretty asinine in my opinion.

>> Mayor Reed: Carrie Hamilton. Squeeze the handle and it will slide down.

>> Okay, thank you.

>> Mayor Reed: There you go.

>> Good afternoon, Mayor Reed and council committee members. Carrie Hamilton for siege. I just wanted to say that I think you know that we're very much in support of the concept of fiscal responsibility and have a deep understanding of how serious our City's budgetary situations are. But we also take general plan amendments very seriously. And understand that we can't just make general plan amendment decisions based on a budgetary

situation alone. And I think honesty is very important, in terms of presenting information regarding fiscal responsibility to the public. And I feel like there's been a great deal of deception regarding the issue of rancho Del pueblo in terms of what's been presented to the public. The bond debt, for instance, isn't all about what is on the golf courses. This issue is not just about golf, it is about social equity and open space, we shouldn't be defining the guiding principles of the general plan before the general plan itself is even adopted and it really saddens me to see the city going down that road and not being honest with the public and having to go through massive public information requests to get honest information for our community about what's really happening. So I think that when we're talking about liquidating assets and going down that road, we need to keep social equity in mind, and we need to be looking at all of our assets. And it's very sad when we take the approach that the city seems to have been taking on this issue. Around I hope that you'll consider that and I hope you will consider how serious this general plan amendment is when it comes before you. Thank you very much.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Just wanted to make a brief comments in relation to the comments. While folks may think that we're rushing into this we've been talking about this for at least the five years that I've been here. And I know that we'll get a lot of comments about the social equity, as was just pointed out, but there are three golf courses in a three-mile radius and we're losing money and it is about fiscal equity and it's about how residents all over the city are paying the price for assets that are bleeding us dry. And I know that we've had lots of discussions about this and places like the Hayes mansion and we must take action. So I hope we continue on the path that we're on.

>> Mayor Reed: I'd like to invite everybody who cares about this, you should come to our meeting on September 20th and hear about the budget. Because next year we're faced with the budget and the question is not how many community centers and how many libraries will close but whether we will have any that are left. Because we have a very difficult budget to deal with next year and having to choose between community center, libraries, swimming pools and golf courses, is the kind of thing that we are going to have to do. So that's why we're in this process. We've been at it for years now and we're finally getting down to the end of it, I think. But it really is driven by a

budget issue. So come back on September 20th and 2:00 in the afternoon we're going to take up beginning to look at next year's budget and the impacts of our pension costs and the other things that are driving the budget, and real estate will be one of those things we'll consider Councilmember Rocha's request to look at the broader real estate issues because that is an opportunity we have to generate some one time funding so save services for next year. So we have a motion to --

>> Councilmember Constant: Just one more thing mayor I think we should add. There are at least two more community meetings on rancho Del pueblo, one being held in the east side I believe tomorrow night and one being handled on the West side a couple of weeks following that.

>> Mayor Reed: Okay, anything else? We have a motion to approve, all in favor, opposed, none opposed, that's approved. I think that concludes the agenda items. Open forum, we have some requests to speak under open forum. Yolanda Cruz and David Wall.

>> My name is Yolanda Cruz. I'm the president of AFSCME MEF and I'm here on behalf of the nonmanagement retirement coalition. We just concluded negotiations with the city of where we spoke of ground rules, and one of the issues that we took very -- we heard loud and clear from some councilmembers in June was that they thought that open negotiations should be something that we should do. We started initial comments with our initial proposal was to have open negotiations for everybody. The city then rejected that proposal. We then suggested they be open only to councilmembers and to our members and today we were provided with another proposal that states that there will be no open negotiations. We would like -- we are making a request here. As we made a request in several councilmembers that we spoke to last week. That the city -- we are not in objection to open negotiations. But if the city desires to not have open negotiations we'd like to have a letter stating that it is the city who does not want the negotiations in public. And we will be more than willing to move forward with that. So that's just -- we wanted to get this on public records. That is the city who does not want to do it and we will continue to come to public meetings saying that until we receive a letter and that can be posted. Thank you.

>> Mayor Reed: David Wall.

>> David Wall: For some time, I've been communicating the issue of nomadic living in San José. The Mercury News finally wrote about it themselves on September 3rd. The people in these motor homes, they're all over the place at least in district 3 and all areas of the city, I haven't gone to every district so I can't say this. But it's something to -- the police I'm sure know all about it but it is of concern. And the other thing I want to tell you Mr. Mayor, I may not be at TPAC tomorrow so this is a theory I have, just a theory. The toxic events that maybe occurring at the plant periodically is probably not due to the plant itself, but what's coming into the plant. And this is a function of more solids and less hydraulic loading. In other words you have more people here, but water conservation is what it is. The use of reclaimed water and the collection system caused the, well it's a decrease of water be it reclaimed water or whatever. The solids will precipitate out and begin to anaerobically decompose in the system, thereby releasing toxins that normally would be diluted by regular flows. So I suggest that you reconsider re-enacting the trunk line monitoring program source control throughout the city to start taking these samples and running it through the lab just to see. And that's what source control is all about to begin, with and with an ongoing EPA audit it would look kind of good if you were actually looking at the trunk lines. But it's this phenomenon of water conservation with high solid loadings that the sewer crews and source control would be able to pick out and that's what I think would cause the next generation of plant failure not in the plant itself but the failure of toxicity requirements for a permit. Thank you.

>> Mayor Reed: That concludes the open forum. Concludes our meeting. We're adjourned.