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>> Mayor Reed: Come to order. This is Rules and Open Government committee meeting August 22nd, 2012. Any changes to the agenda order? No, all right. Let's look at the council agenda for August 28th. Anything on page 1? Page 2 or 3? Page 4 or 5? Page 6 or 7? Page 8 or 9?

>> Vice Mayor Nguyen: I have a question.

>> Mayor Reed: Okay.

>> Vice Mayor Nguyen: I think on page 7 on 2.4 to 2.16, since we didn't hear these items at the Public Safety, Finance and Strategic Support committee I'm not sure it should be read as recommended by the public safety committee. Think those should be struck out, right?

>> Dennis Hawkins: There should be a revised agenda with revised language and 2.14, 15 and 16, are now described as referred by Public Safety.

>> Vice Mayor Nguyen: Okay.

>> Mayor Reed: Not recommended?

>> Dennis Hawkins: That's correct, because the committee did not take action on it. But it was cross-referenced to the council.

>> Mayor Reed: Okay, anything else on 6 or 7? Then page 8, I have a note we need a sunshine waiver on item 3.4, the special operations premium pay pilot program for firefighters.

>> City Attorney Doyle: Yes, so there was a resolution that was posted on Monday, August 20th, but not in the ten days, so we need a sunshine waiver.

>> Councilmember Oliverio: Is that time sensitive?

>> City Attorney Doyle: I don't have an answer to that. I think it is time-sensitive, it may be time sensitive from the firefighters' standpoint.

>> Councilmember Oliverio: Well, we could just kick it to the next meeting.

>> City Attorney Doyle: Well, it is posted, it was just posted Monday, instead of the Friday before.

>> Mayor Reed: That is -- the next meeting would be two weeks --

>> City Attorney Doyle: That would be September 11th.

>> Councilmember Oliverio: Is that an issue, I mean, is it time sensitive?

>> City Attorney Doyle: It is for the -- yeah, I think it is.

>> Thank you.

>> Mayor Reed: Because we can't implement it until we get the ordinance here, so Alex Gurza, do you want to comment on that? I know you're trying to work with local 230 on this.

>> Alex Gurza: Yes, it is an agreement with local 230, in the sense of it would just delay implementation for a week.

>> Mayor Reed: Two weeks.

>> Alex Gurza: Two weeks sorry, sorry, that is the only issue.

>> Debra Figone: It is administrative issues with retro-pay and all this Alex given the start date of this agreement is the 28th?

>> Alex Gurza: No, I think the start date is contingent upon approval by the city council, and so it just depends on the date it is finally approved.

>> City Attorney Doyle: It's not to minimize this. The memo was out on time. It's just the legal document, the resolution that was posted on mop instead of Friday.

>> Alex Gurza: Yes, actually we distributed our memo 14 days in advance in the early distribution packet. As Rick indicated, it's the resolution that's associated with it.

>> Mayor Reed: Anything else on page 8 or 9? Page 10 or 11, 9.1 the recognized obligation payment schedules, we need a sunshine waiver on that.

>> Richard Keit: Correct. We can't even complete it until we know what happens tomorrow at the oversight board and what their action is.

>> Mayor Reed: So the whole cycle on all the redevelopment stuff is really too short to get two weeks and ten days notice on everything. Even to comply with the state ordinance so that one is time-sensitive and we don't have it yet. Anything else on 10 or 11? 11 includes the financing authority. I have some requests for additions. A commendation to Yoliana Reese, a District 4 resident, from Councilmember Chu. Ordinance regarding all Federated and Police and Fire Retirement Boards on personnel matters, item 4.2, to add a section thereto on monitoring fee, and somewhere in the end of the agenda, response to Santa Clara County civil grand jury report on continuity and fire service delivery all need to be added. And we need sunshine waivers on all of these.

>> City Attorney Doyle: On all the those items, yes.

>> Mayor Reed: The response to the grand jury can that wait?

>> City Attorney Doyle: I think it's due the following week, and without it getting a court extension, it's --

>> Mayor Reed: And we don't meet for two weeks after this.

>> City Attorney Doyle: Right.

>> Mayor Reed: Any other requests for additions? Councilmember Constant.

>> Councilmember Constant: I just had a general question it may just be since I've been gone. Did we ever do the response to the grand jury ton City Hall accounting?

>> City Attorney Doyle: Not yet, September 11th.

>> Councilmember Constant: Okay then I'll do the big motion here, go the motion to approve as amended with the sunshine waivers as requested. And that includes tall adds.

>> Vice Mayor Nguyen: And the addition? Second.

>> Mayor Reed: Okay, have a second. The ordinance regarding the role of Federated and Police and Fire retirement boards, we'll have the text of that out by Friday?

>> City Attorney Doyle: We'll have that out by Friday.

>> Debra Figone: And we'll also have a cover memo to explain all the efforts that are underway to make sure we're working collaboratively with our boards.

>> Mayor Reed: And the reason to get the ordinance on quickly Councilmember Oliverio is we're in the middle of this and we're trying to facilitate the hiring that needs to be done with the retirement board's cooperation.

>> Councilmember Oliverio: I would just argue, we don't have a second tier implemented, so that's sort of a disappointment.

>> City Attorney Doyle: Hopefully the second tier second reading is next Tuesday. So it is -- it is on its way.

>> Councilmember Oliverio: Police and Fire --

>> Mayor Reed: Police and Fire ash straying provisions still need to be done, right? Any other additions? We have a motion to approve with the waivers. Including the additions, Mr. Wall, you want to speak.

>> First I'd like to welcome back Councilmember Constant to these proceedings and City Hall in general. Your presence was missed with reference to the rest of your brother and sister councilmembers taking advantage of your absence. Item 2.13, certification and submittal of the 2011 and 2012 storm water permit annual report. Mr. Mayor, you should have very serious concerns about approximately only 116 storm drains out of over about 30,000 that are protected. This municipal regional storm drain permit is very nasty business, if they decide to enforce it upon the City of San José. Item 3.5. Approval of a conduit financing for rocketship 7 Alma Academy elementary school TEFRA hearing. I'm a little bit concerned about these rocketship schools being publicly funded, whether all City of San José students get to pretend or attend to these things with reference to United States citizenship. Thank you very much.

>> Mayor Reed: That concludes the public testimony. We have a motion to approve the agenda. On the motion all in favor, opposed, none opposed, motion carries. September 4th we do not meet. Due to the holiday schedule. Upcoming study session agendas, and meeting schedules, same question. I guess. Upcoming study session dates we're holding I think the 10th of September and the 27th of September, a study session

dates. Councilmember Rocha has asked that we have the ordinance priority-setting discussion, top 10 list discussion at a study session instead of trying to put it into a council meeting where we sometimes run out of time. I would suggest we do that on probably the 27th of September, depending on when the staff was -- we talked about that last time wasn't clear when the staff would be prepared to do that. But we thought the 27th would be workable.

>> Debra Figone: Yes, definitely workable.

>> Councilmember Oliverio: Mayor.

>> Mayor Reed: Yes, councilmember.

>> Councilmember Oliverio: I'm understanding September 27th we will be using the ordinance priority at that time, versus doing it at a council meeting is what you're saying.

>> Mayor Reed: Yes, instead of -- it's the same amount of time I think either way but it would be a separate meeting we wouldn't have to worry about the pressure of the rest of the agenda. The package of that stuff and the councilmembers request to talk about study sessions would go into that. I don't know if it's a morning or afternoon on the 27th.

>> Councilmember Oliverio: I have 1:30 on my calendar, Dennis.

>> Dennis Hawkins: I'll have to look, I'm sorry, I don't recall.

>> Mayor Reed: I'm pretty sure, I think it's an afternoon meeting.

>> Councilmember Constant: The only thing I would note, mayor, is that's right during the NLC committee meetings. So I know I'll be gone, I don't know if any of my colleagues will be gone on different committees that we're represented on.

>> Mayor Reed: Well, we have some travel requests in for National League of Cities. I just don't remember what they are.

>> Dennis Hawkins: I believe Councilmember Chu is also planning on attending the national league of cities meeting. I don't recall other than yourself, Councilmember Constant, and Councilmember Chu, I can check, but those are the two I recall.

>> Mayor Reed: That would make the meeting shorter.

>> Councilmember Constant: Yeah, but you would be missing 20% of us by vote and about 30% of us by weight.

>> Mayor Reed: That's an issue with that, is September 10th too early to practically be able to do that, you think?

>> Debra Figone: Actually, I think we'd be okay, Mayor, because we were targeting the council meeting of the 11th. So if you are inclined to want to have it beyond the 10th --

>> Mayor Reed: Let Councilmember Constant check his calendar for the 10th, and see if anybody else has anything else that will interfere with that. Because I think the entire council will want to be there for the priority setting.

>> Mr. Mayor, I think we released the September 10th date last week.

>> Councilmember Oliverio: That's a shame, October.

>> Dennis Hawkins: That's correct, we did -- the committee did release that last week. We could probably reset it.

>> Mayor Reed: We could, but then we'd run the risk of losing councilmembers who have already made commitments to other things once we release it. Councilmember Rocha's primary interest is having enough time to have a discussion of the items, instead of you know being at the end of a council agenda and having to just vote. And you know we could structure some other meeting in the month of September to build that amount of time for it.

>> Councilmember Oliverio: I just don't understand why a council meeting wouldn't be a 99 enough time when everyone's there to discuss any matter that comes before the city.

>> Mayor Reed: Sometimes the agenda gets a little crowded.

>> Councilmember Oliverio: That's fair and then the rules committee can schedule something lighter.

>> Mayor Reed: It's that or go into October. What study sessions do we have in October?

>> We have October 29th.

>> Councilmember Constant: Wouldn't we normally have Columbus Day is in October, does that adjust our council schedule? Because we would have that Tuesday I believe which is --

>> Dennis Hawkins: I think it's October 9th.

>> Councilmember Constant: -- October 9th.

>> We don't have that currently held. We do have the week before on the 5th the city-county meeting. So nothing was scheduled to hold around that.

>> Councilmember Oliverio: That meeting's still firm?

>> Yes.

>> Councilmember Constant: I would think that we could check with the councilmembers on the 9th. Since it's you know mid week. And we know we don't have a council meeting that day, that might be a day especially with over a month notice.

>> Mayor Reed: Why don't we do that, let's poll the councilmembers and see if we can get the council on the 9th and if not then the choice is the end of October. For a study session or at carving out some time, more time than usual for one of the other regular council meetings in September.

>> Debra Figone: Keeping a meeting light intentionally.

>> Mayor Reed: Yes.

>> Dennis Hawkins: I will poll the council for October 9th and we'll bring that back to the committee next week.

>> Mayor Reed: Okay. Anything else on study session agendas? I think not. Legislative update. State report, Betsy Shotwell, nothing to add?

>> Betsy Shotwell: Nothing to add.

>> Mayor Reed: With the idea that no news is good news, there's no news. I will add that I've had a lot of conversations with a lot of different people speculating about what the legislature might do with regard to a couple of items. Before the end of the session. Pension reform being one of them. And I think as usual, it's impossible to know what the legislature might do. Because I don't think the legislature's decided what they're going to do. So we'll just have to wait and see like everybody else. And we talked about meeting schedules. Anything else under meeting schedules that we missed? The public record, Mr. Wall you want to speak on the public record?

>> Items C through K are worthy of attention. Item C, titled the city has accumulated large balances and ratepayer funds, and slower than expected capital spending has led to large sewer fund balances. This is kind of in contrast because the auditor's report was issued the Wednesday following the city council meeting in which you basically raised the rates again for sewer service and use charge. Item H, environmental services a guy a department at a critical juncture, the audit report it has purse. Now I'm of the opinion that this is to help the administration. Who can't really comprehend the sewer service and use charge that the auditor made it really simple for them. This is in cartoon fashion. Even a kindergartener could understand it. And since the sewer service and use charge has not been modified since 1982, with reference to findings number 5 in this audit report, the city has some very serious explaining to do to the public. Outside of that Mr. Mayor, the memo that was given to you today, dated today's date, focuses in on the ability, that links to energy generation at the water pollution control plant. I think this should be a very serious topic for you to discuss and remedy before we get into any heavy wet weather flows. Thank you sir.

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

>> Councilmember Oliverio: Motion to note and file.

>> Vice Mayor Nguyen: Second.

>> Mayor Reed: Motion is to note and file the public record. All in favor, opposed, none opposed, that's approved. Boards commissions and committees, I have a recommendation to approve Fabiola Czech to the workforce investment board.

>> Motion to approve.

>> Second.

>> Mayor Reed: Motion is to approve. On the motion, all in favor, opposed, none opposed, that's approved. We have some items in three different categories I guess here. First is a recommendation for city positions on five resolutions for the annual league of California cities conference. We need to get that onto the council agenda for next week.

>> Betsy Shotwell: Betsy Shotwell, Director of Intergovernmental Relations. Every year the league conference has a few resolutions to look at, review and vote on, and this process assists in analyzing the documents the resolutions providing support for our voting delegates at the business meeting in September. And I'd be happy to answer any questions.

>> Mayor Reed: Okay, questions?

>> Councilmember Constant: Motion to approve.

>> Second.

>> Mayor Reed: Motion is to approve. Mr. Wall you have a comment. Although I think you might be -- I might be premature. If you want to talk about cap in trade AB 32 is the next item.

>> Well sir there's two items here that are germane.

>> Mayor Reed: Okay.

>> One of which is the California desert protection act 211 would I think the City's Green Vision shouldn't just end at the borders of the City of San José. I particularly have been to several of the deserts mentioned in this and I think they should deserve less than fence-sitting by honorable councilmembers on this issue. As far as your referencing AB 32, I think it should be suspended for a variety of reasons to be discussed on the next agenda item. Thank you.

>> Mayor Reed: Okay, that concludes the public testimony. We have a motion on the recommendations to put on the council agenda for Tuesday.

>> Councilmember Oliverio: For discussion.

>> Mayor Reed: On the motion, all in favor, opposed, none opposed, that's approved.

>> Betsy Shotwell: Thank you.

>> Mayor Reed: We have a set of guiding principles for legislative advocacy regarding whatever the state's going to do on cap and trade so that the city can participate in making sure that if there's money, we get our share. I think it's sort of a summary what it is. Betsy Shotwell.

>> Betsy Shotwell: Thank you, mayor. Hans Larsen, director of transportation, will take the lead in a brief overview.

>> Hans Larsen: Yes, thank you. Mr. Mayor, members of the committee, I'm Hans Larsen. Director of Transportation. You have a staff report from Leslye Corsiglia, Kerrie Romanow and myself. Our three departments put together a report on this topic and we also reviewed this recently with the transportation and

environment committee on August 13th. I just wanted to touch on this very briefly and then Leslye and I and other staff are here to take any questions you have. So we are recommending approval of guiding principles on this topic. And it allows us to be flexible and we're looking at a very dynamic legislative environment required the cap and trade program. There are currently four active bills on the topic. And generally they are addressing how to spend potential revenues that come from the program. Just a little bit of background. When the state approved AB 32, the global warming solutions act, it set very strict targets for greenhouse gas emissions and one of the implementation measures was to establish a cap and trade program where you would cap emissions on polluters and then they could establish purchasing emission credits and then those could be pumped and sold and traded and revenues from that program could go towards other measures that reduce greenhouse gas emissions. So a lot of the program is going to be initiated this year. So the legislation as I mentioned is addressing with how to deal with the revenues. We think the city's very well positioned to benefit from the program the reference because of our policy goals related to the Green Vision, the new envision 2040 general plan our housing investment strategy that targets our goals regarding clean tech jobs, energy, affordable housing, transportation. And so again, you have the staff report here. We can take any questions. We are sort of advocating for flexibility because this is a very dynamic environment. And looking at this from just the principles perspective, what is it we want to accomplish. And then use this as we work through a very dynamic environment certainly in the next few months, to then reassess you know what our best go-forward strategy would be. So with that, happy to take any questions.

>> Mayor Reed: Okay. Any other comments?

>> Betsy Shotwell: No, again, be happy to take any questions.

>> Mayor Reed: Questions, Pierluigi.

>> Councilmember Oliverio: Hans, this is a state system based on the legislation, does this require cities to now have full time people to be a part of this process or really we're just giving input into the time plan and then the city will based on certain actions receive money to offset greenhouse gases?

>> Hans Larsen: Yes, it is really not defined how these revenues would be distributed. Generally the California air resources board is in the lead position. Some of the scenarios are whether the state keeps all the money and they decide in a somewhat closed process on how they're going to use the revenues or whether they open it up and distribute it to cities, and to other entities. So that's really where kind of the policy making is happening in terms of who has the control of the revenues and how they are distributed. As part of our guiding principles and the feedback we had from the transportation and environment committee there was an emphasis that it be an inclusive and open process. But in terms of efficiency, that we not create new bureaucracies that would distribute the money, but generally distribute it through existing mechanisms. So one example is metropolitan transportation commission is advocating that moneys get allocated to metropolitan planning organizations, structures that are already in place, and let them figure out how to deal with the transportation component of the program.

>> Councilmember Oliverio: Okay, so but we wouldn't be creating our own cap and trade system at the city level, it's purely at the state level?

>> Hans Larsen: We would not, yes.

>> Councilmember Oliverio: The acronym MPO?

>> Hans Larsen: The metropolitan planning organization.

>> Councilmember Oliverio: Like an ABAG or something?

>> Hans Larsen: That's Like MTC within the Bay Area.

>> Councilmember Oliverio: Thank you.

>> Mayor Reed: Mr. Wall.

>> This cap and trade program is just bad legislation and progress. For reasons that learned director of transportation has just spoken to because of allocation methods. However, I think what is even more germane, and worse than anything else that has not been discussed is just, this is just a tax scam. It is a tax scam to keep the state of California, in a position of doling out money as it sees fit. It really doesn't go to the issue of dealing with the environment. Point one: Everybody that's going to be subject to this is going to be arguing, cities that have refineries or whatnot, are going to be arguing wind currents and pollutants from one jurisdiction bleeding into another like the Santa Clara Valley habitat plan. Problems with nitrogenous deposition. But above all, and let me quote on page 2, "transportation fuel natural gas and other fuel sectors will be subject to the cap starting in 2015. Period close quotes. Here, everybody in this room, everybody in the state of California is going to have to pay for their refrigerators or their cars or whatever else they dream up. I would say that the City of San José would say this is bad legislation, take your cap and trade and shove it. Thank you.

>> Mayor Reed: That concludes the public testimony.

>> Councilmember Constant: I would just say it's one more source of income for the state to take away after they promise it. But we'll see how that goes in the future and if we could just figure out how to cap the hot air in Sacramento we'd probably be better off.

>> Mayor Reed: Okay. We have a staff recommended set of guidelines. Are we going to -- we need a motion on those. And get it on the council agenda, I guess.

>> Vice Mayor Nguyen: Motion to approve.

>> Councilmember Oliverio: Second.

>> Mayor Reed: Motion, to put it on the agenda next week.

>> Betsy Shotwell: Thank you.

>> Mayor Reed: All in favor, opposed, none opposed, that's approved. Number 4, approve the district 6 outside movie night as a city council special event.

>> Vice Mayor Nguyen: Motion to approve.

>> Councilmember Oliverio: Second.

>> Mayor Reed: All in favor, opposed, none opposed, that's approved. I think the last thing we have is open forum. Mr. Wall.

>> Two items. The first item: Deals with the successor agency administration funding. Which I don't have a problem with, if it comes from the tax increments that it was so based. So then you have a decision to make. From January to June of 2013, you're going to have to cough up \$1.3 million to keep the administrative side functioning. Or, you make the decision to give up your successor agency business and transfer your redevelopment problems to the state of California. Because you just can't afford it. Now, this runs into the face of how some of you got the city in the massive Redevelopment Agency debt in the first place. What projects you want to keep alive, as if you can control them with the successor agency, whereas can you not control them on the enforceable obligations if the state takes it over. This is very shameful behavior not on the successor agency administrative side, they have done very good work on behalf of the city, I am thankful to them for trying to get you out of the mess you put yourselves in. The second part of the issue is why am I denied in further participation in director for ESD considering your acting environmental services director is so grossly pathetic with references to all the issues I've raised of late and over the past decade or so. It is a point of curiosity, really. Other than that it's good to have Councilmember Constant back in the saddle and have a good afternoon.

>> Mayor Reed: Martha O'Connell.

>> When I spoke against the increase of the sales tax I said something that wasn't true. I since found out I did the research and I'd like to put into the public record that my allegation that someone from PRNS went to China on our nickel was wrong. That's one of the few trips that the host country paid for. So I'd like to retract that statement but encourage you guys not to travel when we're in a budget crisis. Secondly, the law of unintended consequences, the changing of the date for the clerk's report, it's not Dennis's fault, it's not you guys' fault but the senior commission has been hearing this item on its agenda for three years. And we had an agreement with the clerk that we would get to see it and discuss it before it was released. And our September meeting is the second Thursday. And we won't get to see the document. And I asked Dennis yesterday if there's just some way that we could get a draft or something that we could discuss. And he said no, because it had to go to you guys first. So I'm asking that you reconsider, and somehow give some of the commissions that are meeting between now and then, a chance to see it so we can discuss it and make a recommendation. Thank you for your consideration.

>> Mayor Reed: Thank you. Before we adjourn I'm going to go back to the study session polling the council on dates because I got myself confused on all the date. We're going to poll on October 9th but how about the September date, we know we have at least one person out on September 10th? Okay.

>> Dennis Hawkins: So just October 9th.

>> Mayor Reed: Is the candidate tentative date and we'll see. All right.

>> Debra Figone: And then in the meantime as we're planning agenda items we'll look ahead to keep a meeting time.

>> Mayor Reed: See if we could have a light agenda where it could be the main thing on the agenda.

>> Debra Figone: Absolutely.

>> Councilmember Oliverio: And just the topic brought up by the speaker, Dennis, I know we talked about having it on September 25th, the reports on commissions. Does it make any sense to you, I guess it will come to us if you are reaching a point where the report is if it needs to go to October or something like that?

>> Dennis Hawkins: Well I think the council was very clear in its direction for September 25th. And so staff are working to achieve that date. Our goal is to have the report out on September 14th, a ten-day notice of the report for that September 25th council meeting. And that was the issue that Martha raised is their meeting was September 14th and I don't think it would be appropriate to release the report until it's ready to go to the council.

>> Councilmember Oliverio: And then other curiosity, commissions have the flexibility to schedule meetings differently, I mean, if they meet a certain day of the week or the month, they are welcome to reschedule to a different date?

>> Dennis Hawkins: They could convene a special meeting, if necessary. I'd defer to the departments that staff those commissions, because there are staffing issues as well.

>> Councilmember Oliverio: Understood, that's why you're doing the report.

>> Dennis Hawkins: Correct.

>> Councilmember Oliverio: Thank you.

>> Mayor Reed: Okay we're done we're going to adjourn.