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>> Mayor Reed: Rules and Open Government committee meeting for October 12th, 2011. First question is whether or not there are any changes to the agenda order. I understood that Councilmember Chu wanted to change the date for hearing a couple of his requests on resolutions.

>> Dennis Hawkins: Yes, Mr. Mayor. We have a request from Councilmember Chu to defer items H-3 and H-4 to next week.

>> Mayor Reed: And H-3 was the suicide prevention strategic plan and H-4 was the health eating active living something or other plan.

>> Dennis Hawkins: Correct.

>> Mayor Reed: Next week, any other changes? All right start with the October 18th agenda for the city council meeting. Any changes on page 1? Page 2 or 3? Page 4 or 5?

>> Dennis Hawkins: Mr. Mayor, if I could, on item 2.15 and 2.16. We have replacement memos from Councilmember Liccardo correcting some dates.

>> Mayor Reed: Okay so those dates will be corrected in the amended agenda?

>> Dennis Hawkins: That's correct.

>> Mayor Reed: All right. Anything else on page 4 or 5? Page 6 or 7? One of the things we'll need to talk about is the timing on this. We'll come back to the end. Page 6 or 7? Anything about page 8 or 9?

>> City Attorney Doyle: Mr. Mayor just to note, item 3.5 that will require two-thirds vote to approve.

>> Mayor Reed: That's meaning the campaign -- municipal campaign ordinance will require a two-thirds vote. 3.6, planning commission interviews, Dennis.

>> Dennis Hawkins: Sorry, Mr. Mayor, yes, we have received a withdrawal of one candidate today, Megan fluke, so we are down to eight candidates, roughly two hours of council time for that.

>> Mayor Reed: Okay, when we get to the end we'll talk about when to set that. Anything else on page 8 or 9? Page 10 or 11? That's it. Page -- additions, I have a request to add breast cancer awareness month as a proclamation. Another excused absence for Councilmember Chu. Any other additions? All right let's go back and talk about the timing of the Planning Commissioner interviews. We don't have an evening agenda, right?

>> Not before 3:30.

>> Mayor Reed: Not before 3:30, you think that's safe, we'll get to 3:30 with all the rest of the stuff? I think so. The annual report's in there, we got habitat plan is on there again, so not before 3:30. If we get there, 3:30 gets us out by 5:30, thereabouts. Sound reasonable?

>> Dennis Hawkins: Yes.

>> Mayor Reed: Our official timers, clock this out to the minute. We could always take a break if we need to. I rather doubt we'll have to worry about taking a break. Any other changes to the agenda? Closed session's at 9:00 a.m. I have a request let's see, let me check my letters and numbers, Mr. Wall. A number one, you want to talk about this agenda?

>> David Wall: Yes, sir. Good afternoon, Your Honors. With reference to the October 18th agenda item number 7.2, I would request that you defer that for at least two weeks. This is a 106-page excellently crafted agreement by the attorney's office. As to form. But as to structure, by the environmental services department with business-type terms and for the lack of a better word philosophies, this has -- I have very grave concerns. Specifically, one

area, on allowing the contractor to have sole authority on rejecting loads coming into this program. There could be a lot of areas for shenanigans and this is dealing with a lot of money. Point 2, is the money. They want to amend the agreement to have the city direct -- directly fund them instead of invoicing the city. I think the city would be ill served by this direct deposit business in which they want to operate. This agreement is fraught with other types of putting all the onus on the contractor. There is a lot of indemnification language which is superlative. Liquidated damages all over the place. But there's not enough layers of oversight by the city, in my opinion, to monitor this operation. And at 270,000 tons per year, Mr. Mayor, that's a little over 20 tons a month. And there's a lot of money dealing with this rejection of loads. And the monitoring of loads. This is a perfect idea of maybe the local enforcement agency, the LEA portion of PBCE they could be taking a look at these loads. But I would defer this and start looking at the layers of oversight that this plan doesn't have. Thank you.

>> Mayor Reed: That concludes the public testimony. Is there a motion?

>> Councilmember Constant: Motion to approve with the additions and the time-certain amendment.

>> Councilmember Herrera: Second.

>> Mayor Reed: Motion is to approve as amended. All in favor, opposed, none opposed, that's approved. The item is the October 25th council agenda. Anything on page 1? I have a note here we may need to cancel the evening session simply because we've moved the general plan piece off of it to November 1st. And there's no reason to have an evening session. So unless there's something on here that's going to last into the evening --

>> City Attorney Doyle: Ceremonial item.

>> Dennis Hawkins: Mr. Mayor. On the ceremonial item, I've communicated with Councilmember Campos' office. And have not heard back from them whether we'll have the ceremonial in the afternoon of the 2th or defer it till the 1st, but that's in process.

>> Mayor Reed: Anything else on page 1? Page 2 or 3? Page 4 or 5? Page 6 or 7? The general plan update will get moved to the 1st. Those changes on page 7 and 8 will be done on the amended agenda. I have some requests for additions, commendation to Kelly newell, third grade teacher, Councilmember Kalra. Proclamation for persons with disabilities month, Councilmember Pyle, and then some actions related to the 2012 municipal election cycle to set the voluntary expenditure limits to be added. Any other additions?

>> Councilmember Oliverio: Total of five ceremonials.

>> Mayor Reed: Ceremonials? I'm sorry?

>> Councilmember Oliverio: I said total of five.

>> Mayor Reed: Including the one that's not going to be held in the evening? Might be four, might be five.

>> Councilmember Oliverio: Might be 6.

>> With the district that has submitted a request for the afternoon and evening to work out so we will only have four that afternoon session.

>> Mayor Reed: Yes, there is certainly nothing on there that looks all that time sensitive unless we get some declaration of months and we have a whole month to do it in. Part of the month is gone. So you'll talk to them and try to get it down to four ceremonials. Good. Any other changes? Is there a motion to include cancelling the evening session, I suppose?

>> Councilmember Constant: So moved.

>> Councilmember Herrera: Second.

>> Mayor Reed: Motion to approve with changes and cancellation of the evening session. All in favor, opposed, none opposed, that's approved. Agency meeting October 18th.

>> No items mayor.

>> Mayor Reed: And nothing for the 25th?

>> Correct.

>> Mayor Reed: Okay.

>> Councilmember Constant: So I'll make a motion that we cancel the Redevelopment Agency meeting of the 18th, except any items that might be joint or in closed session. And we'll hold off on the 26th until next week.

>> There's no joint, I'm not sure of any closed session right now.

>> City Attorney Doyle: We will have a closed session next week.

>> Mayor Reed: Motion is to do regular business items.

>> Councilmember Herrera: Motion.

>> Second.

>> Mayor Reed: All in favor, opposed, none opposed, that's approved. Upcoming study session agendas will be next. I have an agenda for the labor negotiations update special meeting October 17th. I have a couple of letters that I've received, one from Nancy Ostrowsky, dated October 12th. One dated from Robert Sapien dated October 12th, about that meeting. And I guess I want to talk a little bit about what this meeting should not be. This is not a

negotiating session. It's not a direct-dealing session. It's not a bypasses session. Because all those would be either a violation of our charter or the rules under the Meyers Milius Brown Act. It's an update so that our staff can bring us up to date in a public way like they do on a very shortened basis every week but this case more extensive. But I am concerned about the direct-dealing and the bypassing because if you look at what's happened in the last two weeks since the proposals were made public, the bargaining units have had more time with their actuaries, and our councilmembers, than they have had available for our negotiating team. So the negotiations need to be done at the table. And whatever happens between now and Monday, I think could be productive. But by Monday, we ought not to have any questions that haven't been answered at the negotiating table, that our staff can then update us on the status of that, with their assessment, evaluation of whatever may be done. But this is not a time for anybody to present a proposal to the city council. And it shouldn't be taken as that. And it should definitely not slow down the negotiations that need to take place. And I understand that at least Police and Fire have a meeting scheduled this afternoon. Their actuary will be either in the meeting or available in the meeting. And I think that's a critical thing to do because our negotiating team can't really negotiate unless they have the information about the proposals. So it would be a mistake to stop the process and wait till Monday and then try to make a presentation to the council. That's really not the purpose of the meeting, and it would be inappropriate for that to be used in that fashion. But I do want our staff to focus their efforts to be able to present to the council and the public the information that is important and get that done. Because Monday's coming. But this is not a direct-dealing session. It's not a bypassing session and if anybody gets off into those territories I'll have the gavel and we'll have to cut it off and go into closed session or whatever may be appropriate at that time. But we haven't gotten off to a good start. It's been two weeks and we still really haven't had any engagement by the actuaries either with our negotiating team or our actuary. So it's not promising but there's still a few days left so I'm hoping things will speed up and whatever questions our staff has about the nature of the proposal will be presented at the bargaining table so there can be some give and take. That's the nature of negotiations. So with that, I have probably a couple more comments from councilmembers. Vice Mayor.

>> Councilmember Nguyen: Thank you. Mayor, in both of the letters that we received, there was a request that enough or adequate time would be given to the actuaries to present to us, just the contents of their proposal. I

was just wondering if we need to designate a certain amount of time for the actuaries to present the contents of the proposal. I wonder if there is room for us to ask any questions to these actuaries?

>> Mayor Reed: Well, I think there will be certainly time for councilmembers to ask questions, just like at any council meeting. What I would anticipate doing is start off with our staff presentation, take public comment, and then get into council questions sort of in the way that we do. I think during the public comment I would allocate some extra time for those that have proposals. There have been two proposals that have been made. If those bargaining units want to take five minutes to explain their proposal I think that would be helpful. And then after we get into the questions, if the questions haven't been answered by our staff or others then the councilmembers can ask questions about it. But this does not necessarily, and is not intended to be, a sort of a debate among actuaries. As exciting as that would be. That's probably not very helpful in the council's deliberations. And so I'm not going to allow that to sort of become actuaries debate day. It just doesn't move us along. But there will be time for council to ask questions. That's the only topic on the agenda so we have the afternoon. And it's also noticed so that if we need to, we can go into closed session, either before, during or after. So that if we need to have some of those conversations in executive session, we can do that. Any other comments or questions on it? I don't have any cards to speak on it.

>> Councilmember Oliverio: Just one question. Alex. So from where the -- these proposals have been made in the public arena to now, have you been able to has your team been able to garner answers to questions you've had as of you know today? Alex Gurza.

>> Alex Gurza: Deputy City Manager. Councilmember Oliverio, in part. There are several questions we have. We have been able to meet with IFPTE. Although we haven't been able to meet directly with their actuary, they followed up and provided some information that we understand came from their actuary but as the mayor indicated this afternoon, at 3:00 p.m. we have a meet and confer negotiation session with Police and Fire, their actuary will be available by phone or in person and our actuary, the City's actuary is also present. So we can start getting some of the questions answered on the Police and Fire side. On the Police and Fire proposal there are also many questions about the proposal because it includes going out of our pension system and into the state

system, into PERS. And so we ask questions about that. They indicated that it might be helpful to have somebody from PERS now during a meet-and-confer session to answer questions. That is scheduled for Friday afternoon. So I would say we have received some answers but there are many, many questions that we have yet to talk to them about so hopefully between now and Monday, we'll be able to have a much better understanding of their proposals and the implications and be able to present that to the city council during the special meeting.

>> Councilmember Oliverio: Thank you, Alex. I just hope that as I stated before, to make it a productive meeting on the 17th that really all the questions that would be coming from OER need to be answered. That way we can maximize our time, thank you. And not be a last-minute answer but be something in your sessions today, tomorrow, et cetera. Thank you.

>> Mayor Reed: I'd like to note just because I want to complain about it is the letters that got sent to us about this meeting about the negotiations didn't even go to the bargaining team. It came directly to us. Which I think if nothing else is just poor form. Anything else on this? We got the agenda, we need a motion to approve.

>> Councilmember Nguyen: Motion.

>> Councilmember Constant: Second.

>> Mayor Reed: Motion is to approve the agenda. , opposed, none opposed, that's approved. Taking us to the next item on the agenda which is the agenda for the city-agency-county Board of Supervisors meeting October 28th to be held here in the council chambers. This is our annual get together with county Board of Supervisors. These topics that are on the agenda are ones that we've kicked back and forth between the president of the board, Cortese and myself and the City Manager and the county exec and the lawyers and there's lots of things we could talk about. We've tried to narrow it down so we can get it done in the scope of this meeting. I think the one that is the most substantive for both of us is the realignment AB 109 the county reentry program. Because that realignment is already happening and we're working on that with the county. The reentry program I think is a very interesting joint effort that we're making that started before the realignment that's

important and probably the board knows a lot more about it probably than the council does but I think it's really an important one to get council up to speed on this issue. And then the others are more or less updates, I think on previous things. It's been a while since we've heard of anything on the waive status. Anything else that we ought to get done in between 1:30 and 4:00, we can always adjourn early.

>> Councilmember Nguyen: Move to approve the agenda.

>> Second.

>> Mayor Reed: Motion is to approve the agenda. All in favor, opposed, none opposed, that's approved. Our next item is the alleviate update. Betsy Shotwell is here to report on the Sacramento situation.

>> Betsy Shotwell: Thank you mayor, members of the committee, Betsy Shotwell, Director of Intergovernmental Relations, if I could give an update on some of the bills and the actions the governor took over the weekend and at the end of the week since we met last Wednesday. First off he signed 745 bills this year and vetoed 125, and while that may sound like a lot of bills I read it's actually the fewest number of bills the legislature has forwarded to the governor since 1967. So as I've been saying I think that's reflective obviously of the budget and the situation that the state is undergoing. Since so many bills are appropriations or in the past have been appropriation-type bills. One of the bills I wanted to bring to your attention, that the city took a position to oppose was AB 438, and that was the bill relating to the cities withdrawing from the county library systems. And this adds layers of contract provisions and requirements and so those cities that are in a county library system they choose to withdraw, will have to face a long road of provisions and requirements to do that. How this plays out, I don't know. It just -- we'll see. Again, as I've said in the past it doesn't directly affect us. It's just something the governor signed so we will be mindful of that next year should other similar kinds of legislation of introduced. The other bill the city took a position of opposing was AB646. I have to read this. It imposes compulsory fact-finding at the request of employee union. This measure provides that in the event of impasse. After the parties agree to a mediator, and the mediator cannot effect a settlement within 30 days, the employee organization can request that the parties differences be submitted to a fact-finding panel. The city staff is reviewing this, analyzing this and it goes into

effect January 1st. So we will have to be working with obviously the city attorney's office and staff to determine how this may play out. So --

>> Mayor Reed: Well, just on that I don't think you have to know all the answers to know that it's going to extend the amount of time that it takes to negotiate a contract. So after you go through the negotiations, and then impasse procedures, now we have this add-on. So whether it takes a month or six months, it's adding to the time which then effectively shrinks the amount of time available to negotiate agreements.

>> Betsy Shotwell: Yes.

>> Mayor Reed: So you back that up and I'm not sure what that does to negotiating time tables that we have but it certainly has an impact on them. Pierluigi.

>> Councilmember Oliverio: Mayor, and then for the City Attorney I believe wasn't the investigative hearings limited to 30 days in that bill?

>> Betsy Shotwell: That's correct, 30 days.

>> Councilmember Oliverio: Add on, couldn't it be more than 30 days which would be to your scenario?

>> City Attorney Doyle: Well, you're leaving it to a third party to come up with the fact finding decision. And it's very much like arbitration. You don't know when that decision is going to come out. So --

>> Councilmember Oliverio: Do we know who the fact finders are?

>> City Attorney Doyle: It would be through a process of selecting, basically mutual, but you know you select one they select another then you get a third party who's the neutral. That's how I understand it's intended to work. You know we've had some experience with that with arbitration but you know we're looking at it. It raises a

whole host of new issues. One of the concerns is will you at the end of the day in June have a -- if you don't have an agreed upon contract will you have the ability to impose if your fact finding process hasn't gone through and will you have to adopt the budget with the uncertainty of not knowing what your labor costs are good to be? That could be a real possibility. Those types of things I think are more practical but it's a concern that we need to at least alert the council and so you know what the game plan looks like or the field looks like, when you go into labor negotiations. Like here.

>> Councilmember Oliverio: City Attorney faced with that uncertainty at the time the city has to adopt a budget the only uncertainty you have would be layoff if you can't come to an agreement on --

>> City Attorney Doyle: That's something I want to prejudge. I'm just saying there may be uncertainty and how you deal with that uncertainty we have to tackle and talk about.

>> Councilmember Oliverio: Does this affect all public agencies or just cities?

>> City Attorney Doyle: Yes, Meyers Milius Brown is deemed applicable to all cities --

>> Councilmember Oliverio: Schools, counties, water districts.

>> City Attorney Doyle: And charter cities included.

>> Councilmember Oliverio: All right, thank you.

>> Betsy Shotwell: Okay, and in another bill, I wanted to bring to your attention, AB 512, by Rich Gordon, the governor signed that on Thursday. This amends the local government renewable energy self-generational bill credit transfer program, that's an at on to city sponsored legislation by assembly member Laird a few years ago. And what this does is expands the definition of an eligible renewable generating facility under the program by increasing the current facility cap of one megahertz to include facilities with a generating cavity up to five

megahertz. So that adds opportunities there. We'll see if they can be taken advantage of. Another bill I wanted to bring to your attention the last one AB 353. This body discuss they had a few weeks ago. This has to do with the prohibiting of police to impound cars at sobriety checkpoints if the driver is sober but doesn't have a driver's license. This bill was passed so now an authorized individual can be determined with a license to take the car, or drive it away and if no one is available the car will be towed but the car doesn't have to sit for 30 days as an impoundment. I wanted to bring that to your attention that the governor did sign that. If I could lastly on the budget as noted that the state is about \$700 million short of what their hopeful estimate was as far as revenues. And if they don't reach -- if they're not able to see a thousand -- I mean excuse me, a billion, I'm getting my millions and trillions. If they don't see a billion there by December, then automatic triggers will take place, the health community, health services community, education community obviously is very concerned. But the controllers and treasurer's office say it's premature to judge as to what the revenues will look like by December but it's something to keep in mind as we move forward.

>> Mayor Reed: Okay.

>> Betsy Shotwell: Okay. Thank you very much.

>> Mayor Reed: Thanks for the update. Public record, anything from the record the committee would like to pull to discuss? Have a couple of requests to speak. Mr. Wall.

>> David Wall: First look at number H, item H, look at that spreadsheet from the City Manager's office on the back. This is from a TPAC document from tomorrow, Mr. Mayor, and vice mayor. You should make inquiries as to this toxicity testing allocation. \$200,000, \$100,000 apiece for two different laboratories. This is commonplace when and if there is a problem. There is an article about -- oh, speaking of the article. That vanity fair item was censored or not able to, for you know, I put it on as an attachment, try to click on it, it goes to nowhere. You know there's sometimes where this works out with the City Clerk's office, sometimes it doesn't. I find no fault with City Clerk. I find fault with some unknown entity that prohibits that document, Mr. Mayor, that makes you an international rock star from not being shared with all those that would like to see that there are errors in it. Item E,

interesting person from District 3, writes a letter that I think you should make some inquiries or have Mr. Liccardo when he's done traveling all over the world and not taking care of his district look into. Other than that, item F is for your own perusal. I've started alerting the transportation and environment committee to really start doing some of their jobs of looking into what's going on at the water pollution control plant. Thank you.

>> Mayor Reed: Concludes the public testimony on the public record.

>> Councilmember Constant: I'll make a motion to note and file. And congratulate Mr. Wall on mentioning vanity fair.

>> Councilmember Nguyen: Second.

>> Mayor Reed: Motion is to note and file. All in favor, opposed, none opposed, that's approved. Next item would be the report on posting public calendars of city officials on the city's website. I notice that we've still got a pretty good record. Compliance, although July was I think a bad month, because a lot of people were out. I think that explains some of the issues in July. Tom is here, you want to speak anything on this just for questions? Pete?

>> Councilmember Constant: I just wanted to make a comment. Overall you know there's been significant improvement. But there are some that continue to have the same problems with an 80% or better failure rate. And I know I've brought this up in the past. If we're going to have policies I know when we first made the policy I talked about you know what happens if people don't follow it? And we didn't have -- we don't have any teeth in it. But I know we had an issue about a year, year and a half ago where we had some folks that had been out of compliance for a long time. And I don't remember how that was dealt with.

>> Mayor Reed: The mayor spoke to certain councilmembers.

>> Councilmember Constant: Okay, so perhaps the mayor would like to do that again. Because I think when you have better than 80% failure rate two quarters in a row, I think that's significant.

>> Councilmember Constant: Okay.

>> Just wanted to mention that I think the individual that you were looking at there is a new staffer, and I believe there was some education involved in that, so it should be fine from now on.

>> Mayor Reed: We will follow up and make sure staff have whatever training they need on some of these technical issues and harder than they appear. To those of us who don't have to do it, which would be me, I know there would be some difficulty so we will follow up on that out of my office. Anything else on that?

>> Councilmember Constant: Motion to approve.

>> Mayor Reed: Motion is to approve. Mr. Wall you want to speak on this?

>> David Wall: Last week, I checked it just by accident I was checking the Web pages. Councilmember Constant is perfect. I mean he's up to like just a few hours. My own personal opinion? It's a waste of your time. I mean it's a complete waste of your time, your staff's time. It's even a waste of the City's time to have to read threw 14-page memorandum on this issue, H-2 for today's agenda. But I think oh and the only person that really didn't do it very well because he's really smart is Councilmember Rocha. I mean the rest of you are about a month behind. But he was like ten months behind. But it's only because he's smarter than most people and I think to solve this whole thing I think you need to have a box at the top of your calendar that says, I don't have time for this crap. And correct it off initially and be done with it because I really think it's a waste of your time. Thank you.

>> Councilmember Constant: Well, if you do it right it takes hardly no time to do so it's pretty easy.

>> Mayor Reed: Anything else on this? I just need a motion to accept the report.

>> Councilmember Constant: I made one.

>> Mayor Reed: Already made. All in favor, opposed, none opposed, that's approved. Items 3 and 4 will be taken up next week.

>> Want a motion on those?

>> Mayor Reed: We'll just do it. The last item then would be open forum. Unless there's a public records act request that I don't know about. All right, Mr. Wall.

>> David Wall: I want to thank San José police department. Specifically officers John Lebos, his number is 3997, and Martin Tracy, his number is 3742. Mr. Mayor, these officers came out, a citizen complained about a couple of problem individuals living in their cars next to a park. People were using their park vehicles as a residence but also as a base camp for nefarious operations either in the park itself or in the downtown area. Police officers came out, under the dictates of community policing, took the requisite information, did investigation, and resolved the problem, unbelievable speed and precision, Mr. Mayor. You really should take the time, when you get to have police briefings, to ferret out the police that are taking care, the ones that are left, that are taking care of the city and doing an outstanding job. And I'm really thankful to them and I'm going to write a letter of thanks for what they did and a lot of other people are very grateful for what they did. But this issue of nomadic living, either motor homes or cars and using these as base camps for nefarious operations turns out these two people had suspended licenses, okay? My own inquiries into the matter, not the police, one was an illegal alien without a license. You know, this business about counting cars and people without licenses. Illegal aliens are of no value to this nation. San José police are doing an enormously excellent job and you should take time in your briefing, as a matter of fact, Mr. Mayor, shine some of these travel business and go do ride-alongs be their backups. Learn something from the streets, you'd really learn a lot. Thank you.

>> Mayor Reed: Your time is up. That concludes our meeting. We're adjourned.