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City of San José Rules and Open Government Committee meeting, Wednesday, March 18th, 2009.
>> Mayor Reed: Rules and Open Government committee meeting for March 18th, 2009. The first question is whether or not there are any changes to our agenda order that we need to take up. No? Okay. First item then is review the city council agenda for March 24th. Welcome back, Councilmember Constant.
>> Councilmember Constant: Thank you.
>> Mayor Reed: Hope you had better luck getting back than you had leaving.
>> Councilmember Constant: Yes, late, that's why I'm here.
>> Lee Price: Mr. Mayor, one thing I just passed out is a running list of items that you added, from your meeting yesterday, that you have a chance of what's not on the printed agenda.
>> Mayor Reed: Original printed agenda, changes on page 1. Page 2 or 3? Page 4 or 5. 3.5 is the appointment to fill anticipated vacancies on the police and fire retirement board. We talked about when to set it last week, and if we set it not before 4:00, we will be okay. 4 or 5, changes? 6 or 7? 8 or 9, page 8, item 5.4, the Cesar Chavez walk, I'd like to take it basically at 2:00, so the Chavez family could attend.
>> Lee Price: Not before 2:00 or 2:00?
>> Mayor Reed: Right about 2:00. Looking at the ceremonials. Anything else on 8 or 9? Page 9 or 10. And anything on the items that were deferred from March 24th, the list that we've gotten?
>> I will note that on page 1, 6.X is the airport ground transportation program and fee adjustments, we're deferring that item to April 14th. Other than that --
>> Mayor Reed: April 14th?
>> 14th.
>> Mayor Reed: And then we had, I see, three land use items deferred, I think at that time request of Councilmember Chu. Those will be on in the afternoon.
>> Yes, sir.
>> Mayor Reed: Okay.
>> Including one from Councilmember Liccardo's district.
>> Mayor Reed: Any other additions? We do have the San José housing authority board, commission's recommendation, to submit a letter to housing authority, that will be on a separate agenda. Anything else? I have one more request for addition, Councilmember Nguyen's travel to Australia. Anything else on additions?
>> Councilmember Pyle: Move to approve.
>> Second.
>> Mayor Reed: Motion is to approve. All in favor, opposed, none opposed, that passes unanimously. March 31st, no meeting, Cesar Chavez birthday. See you at the breakfast. Redevelopment, March 24th agenda, anything on page 1, page 2 or 3? Page 4 or 5? Or 6? One request for change, item 8.3, agenda language change, I think.
>> Gary Miskimon with the redevelopment agency. The changes are purely technical. There is no change in the report that you received but omissions of the words like city council or redevelopment agency in each of the subparagraphs, so this is simply correcting the technical language of 8.3.
>> Mayor Reed: Okay.
>> Councilmember Pyle: Motion to approve.
>> Second.
>> Mayor Reed: Motion is to approve and we'll take up the agency agenda after we've done the city council agenda housing authority and then agency. Motion is to approve as amended, all in favor? Opposed? None opposed, that's approved. No meeting of agency on March 31st. Next item, no legislative reports unless Pete constant wants to give us an update from his trip. We'll save that for next week. We have no meeting schedules, nothing, public record, anything from the public record the committee wants to pull to discuss?
>> Motion to note and file.
>> Mayor Reed: Motion is to note and file. All in favor? Opposed? None opposed, that's approved. We don't have any appointments to boards, commissions and committees. City Clerk, when will we be doing everything else that happens on June 30th, are you already in the recruitment cycle?
>> Lee Price: Mr. Mayor, the screening already disclosed, and the project diversity committee is starting their meeting with the applicants. We'll send up the recommendations to the council liaisons and bring them to the Rules and Open Government Committee for the appointments. And next week we'll bring forward the appointments that are still outstanding.

>> Mayor Reed: All right. Item 10.1 is proposed changes to the municipal code title 20 to modify the hearing process for certain rezoning and code amendment proposals. This has been deferred for a couple of times. It started a year ago, with the referral from the council to look at some issues with the Planning Commission, in getting things done. And I know that I think our direction from Rules was to go to the Planning Commission, get comments from the Planning Commission, and ultimately bring it back. So that's where we are now. And I see Jim Zito has joined us I assume representing the Planning Commission and Laurel Prevetti.
>> City Attorney Doyle: By way of background, the Municipal Code requires that any zoning change go through the Planning Commission first before it comes back to council, so that's the basis of the referral.
>> Mayor Reed: Okay, Laurel.
>> Laurel Prevetti: Thank you very much. Good afternoon. This afternoon we're here to report on the Planning Commission's influence with respect to the proposed change to title 20. The initial idea from councilmember Williams was to essentially streamline the time line for certain zoning actions, so that way they could get to the council in a timely manner. We did attach for your benefit a chart tracking the deferral actions, and you'll note that it is typical for deferrals to occur because the applicants aren't ready. We have to notice at least two weeks in advance of our public hearings. So sometimes we guess in terms of whether or not the applicant will have completed all of their requirements. Sometimes they haven't, and so they will request a deferral. Other times we will request a deferral, staff will request a deferral. And you can see that also, at times, our Planning Commission requests deferral. And really, those are the least frequent deferrals. So we felt having some data might assist the Rules Committee in terms of whether or not this ordinance should move forward. And with that let me introduce the chair of our Planning Commission, Jim Zito who can summarize the issue.
>> Jim Zito: Thank you very much, Mr. Mayor and committee. What it seems is a delicate balance between timeliness of the zoning, applicants that come before us, and trying to vet the issue as much as we can to come to a well -- how can I say -- informed decision. Without discussion, we had reviewed some of the deferrals we had, and looking at them we realized that most of the time we had asked for deferral, almost 100% of the time we asked for deferral were for several either technical reasons where there were issues with the staff report, or the applicant didn't have their paperwork in order or something that we didn't understand that needs clarification. So those kinds of issues. Another possibility would be where members of the audience, the people who are affected by the zoning, would come and say that they didn't feel they had enough time to review the situation, maybe there weren't enough meetings, and being sensitive to the sunshine owners and outreach goals that we're trying to reach, we had looked at that and weighed that very carefully between those who said, I didn't get to see my peace on it, or there weren't enough meetings that were appropriate for the scope of the issue before us. Those were what we weighed in order to decide whether to defer. In order to reach closure of the item discussed or missing. For those reasons we felt that given the fact that frankly only 16% of the deferrals that came before the Planning Commission were because of the Planning Commission's recommendation as opposed to the applicant or staff, or predeferred, we felt that there really was no need, given the, you know, weighing that against the ability to get the information that we needed to truly vet and make an intelligent decision. That's what this came down to. We took the current situation which was a 60-day maximum where it would go to council, and council would essentially make a decision, if we couldn't within 60 days, down to 21 days. And it was rare that 21 days would have given us enough time to do the things we needed to do if it was in fact a bona fide deferral, that was a real concern of ours.
>> Mayor Reed: There were a custom issues that got raised during the time we were discussing this and one of this has to do with how much outreach is enough. And one of my concerns was that we have an outreach policy that the council has set. Either the commission follows that policy, or they don't. And if the commission thinks that there hasn't been enough outreach, even though they're following the policy, then maybe there's something wrong with the policy. And I'd like to see, then, the commission saying you know, this policy is not working, we're getting just not enough outreach, the policy should be changed, as opposed to we don't want to follow the policy. I don't get a sense that that's a problem at this time. But if there is a problem with the policy, you know, it's a council-set policy and it needs to come back to us, with the recommendation of the commission, to fix whatever the council sees broken, as opposed to let's have another community meeting, rather than two or three or how many ever required under the outreach policy.
>> Jim Zito: Agreed. The procedures followed, within 500 feet, or did people not get notice, and they can prove it, or we would typically err on the side of the person of concern, and say you know, we can't say

that you're lying to us. You say you're within 500 feet and you didn't get a notice, and five other people are saying the same thing, we'll defer it to make sure that happened. Those kinds of things. I don't think there is anything wrong with the outreach policy, what we see oso far, sparse a technical problem with that. The other issue a lot of times that we see is, there are pieces of the staff report that are either unclear, and it's not a bad reflection on staff, because they do a heck of a job, but sometimes those questions that we come up with say, does this mean X or Y, and we don't have an immediate answer on that. And maybe there was something that the applicant should have provided in the staff report that we had a question about and it wasn't provided, like sometimes it would be, maybe, a fire report or something like that, that still in progress or something, that is not part of that and we say we really want to read that because given the current proposal there will be some questions on that. So given those typical issues, typically more technical than they are subjective if you will, I understand what you're saying Mr. Mayor, and I don't think the Commission at this point has a problem with the outreach policy as currently stated, to answer that question.
>> Mayor Reed: Okay, Councilmember Constant.
>> Councilmember Constant: You know, I remember this incident coming up that kind of sparked all this. And I know it was frustrated to many of us involved because of the -- what appeared to be a purposeful deferral, just to kind of circumvent the process or slow the process down. And reading through the reports, and granted, I read it really quickly because I just got here, and I read it as I'm sitting here, it doesn't appear to me like the Planning Commission had any discussion on, okay, if the council's not going to change this ordinance, what are we going to do to make sure that this doesn't happen in the future? It's just kind of silent on that. And my concern is making sure that we don't have this type of situation again. Because what I see happen here, in several areas of the city, not just the Planning Commission, is someone will be diligently playing by our rule book, and then doing everything they've been told to do, and then right when they think they're at completion, someone throws a hurdle in front of them that they didn't even know about. And sometimes, like in the case that sparked this, it ended up being significantly more than a month deferral and time is money. And especially in projects of this nature, and the economy we're seeing ourselves in now, and where we may or may not be going in the future, not being able to stay timely to me is just not acceptable. Now, if there's a valid reason like the noticing issue or many of those other issues that come up, we have to make sure that we follow the rules, and that everybody has an opportunity to go through the process and be heard, but when something pops up and it just doesn't seem like there's a real valid reason, that's what concerns me. So at the Planning Commission, was there any discussion like that? Or what are our alternatives, other than saying, if we as a council -- because I think what's got to be really clear here is, we're not saying in all cases 21 days. We're saying in cases where the council says, we need you to have this meeting, and the Planning Commission chooses not to do it, bearing in mind that the Planning Commission is an advisory body to the council. So just any discussions that you may have had around there.
>> Jim Zito: To my recollection there wasn't anything specific to that. I don't know if the director has anything.
>> Laurel Prevetti: Thank you. I think back when this all happened, and I think we know the actual zoning that the council was very concerned about. And then in April, when we did also have the blip of deferrals, the Commission, I think, got the message very quickly that that was a concern of the council. And so since April, we've seen a marked improvement. I think the commission, in the way they're performing their business, has been incredibly efficient. I mean, last week we were out of there in 45 minutes, all items were heard. So I think that the concern that the council expressed through the Rules Committee was communicated. So I think that there's no need for an ordinance fix. Joe and I are there at the commission trying to resolve the issues in real time, so that way, the commission can make decision. So we feel that it's our staff obligation to make sure the commission has what it needs to respond to the issues. So we've taken it as we need to demonstrate our commitment to timely processing, and we've actually modified our own interactions with the commission, so we can be sure that they can handle their items in a timely manner. So it may be more subtle than actual rule change. But I think the deferral performance communicates that in fact change has occurred.
>> Councilmember Constant: That may be the case with the current commission. But the commission has turnover. And how do we know we're not going to see this in a year or two years? So I'm just wondering how we can achieve that with at least at minimum a policy or procedure change where I, as a councilmember, can feel confident that it's documented and written as part of the structure that, if the Planning Commission gets a council referral, it's acted on timely, versus just saying, okay, we learned our

lesson, we're not going to do it again, but in two years, no one on there may still be on there, we have another group and we end up with the same situation with another project that's costing somebody who wants to do business with San José a lot of time and a lot of money. So that's where I'm having trouble saying we're not going to go forward.
>> City Attorney Doyle: When councilmember Williams brought this forward, I want to remind the committee this is a legislative act we're talking about. Zoning is a legislative act. Only the city council can adopt the zoning ordinance. And it has to go under the municipal code to the Planning Commission first in a advisory capacity. So it's probably that very rare instance, but if and when the council were to say this is a priority and we want you to take this up, you know, as soon as possible, because whether we have a July break or a December break or whatever, we need to get this heard before the end of the term, that was through the councilmembers' concern, bringing this forward, that the council would not be able to take that legislative action in a timely manner so it gives you that flexibility. I think Laurel is right, it's going to be a rare instance if it does ever come up again. But that was to give the council the flexibility.
>> Councilmember Constant: Kind of in summary, I think personally, we should go along with this. Because as we heard, it was a very rare instance. And this would only take effect when the council is giving direction for a timely hearing. Right now our direction is fairly meaningless if they chose to defer. We saw that happen to us just a year ago. So I don't think that would affect 98% of the hearings that they hear, that would actual be bound by the regular processes. Is that not correct, Laurel?
>> Laurel Prevetti: That's correct, it would not. However, we would need to work, if -- should this ordinance be enacted, we would have to look how are we going to know, then, council is referring to? So I think it might be faster just to get on to a commission agenda, have them make a recommendation then bring it before you through our normal noticing. This would actually add a step in terms of having the full coin to identify the item that needs the more timely processing so there's a couple of mechanics that we would have to work out. But if it was the wish of the Rules Committee we would work through those.
>> Councilmember Constant: Refresh my memory. How did this come out of process and come to the council for direction?
>> Laurel Prevetti: The item that kind precipitated this is, it was the North San José zoning. The Planning Commission felt they did not have enough information to make their recommendation. So it pushed it past the council decision make time. We are mindful of the July recess and December furlough. Part of it is our own scheduling and as I say, I think we've seen the actual behavior change to make sure things get done. So it was a combination of a challenging policy environment, together with a recess which is an unusual combination of factors that led to that instance.
>> Councilmember Constant: So my only comment to my colleagues is, I don't mind us perhaps going in the direction that's being recommended. But I don't think I can feel comfortable doing it until we've seen a policy or procedure change that's documented by the Planning Commission, so we can have the confidence that it, in fact, won't happen again. I don't see that and it doesn't even sound like that discussion has been had, so that's my personal opinion.
>> Mayor Reed: Councilmember Pyle.
>> Councilmember Pyle: I think we have a --
>> Mayor Reed: Can you get your microphone?
>> Councilmember Pyle: I think a 2% problem doesn't mean that we have to reverse everything in order to accommodate that. And secondly, maybe members of the Planning Commission will change, but the staff hopefully will not. And there will be some continuity there. It seems to me that this is adding another layer to something that -- where it's really not required. I think the figures that are demonstrated here clearly indicate that whatever problem there was has certainly been clarified, and so for that reason, I do not think that there is a need to make that change.
>> Mayor Reed: Councilmember Nguyen.
>> Councilmember Nguyen: And I'm in concurrence with Councilmember Pyle. We -- you know, we deal with series of projects, matters and issues, on a biweekly basis regarding the land use issues. And you know, apparently we're going to encounter one or two difficult issues to deal with. I feel it's sever enacting a new ruling, but I feel we should be more efficient in dealing with land use projects, because we definitely don't want people to waste time and more money on the project they've been working on for a very long time but at the same time, you know, this happened once and I think that we really need to look at the whole process, whole ordinance before we decide to enact or change something.
>> Mayor Reed: How about we get the commission or staff just give us a written statement of how it is they handle deferrals. Which will probably be helpful to the public, as well. So we have what's described

here seems to be workable but at least it's in writing so the next commission will have the benefit of the work that's been done. I think I'd be considerable with that. We don't necessarily have to put it into an ordinance.
>> Councilmember Constant: I agree, something at the -- whether it be rules of order or process guidelines or whatever documents that they have. But I think that's important. I don't think we should just let it go way, because even though we'll have staff there, there's nothing that says the Planning Commission has to agree with staff. In fact, it's often that our -- a lot of our commissions don't agree with staff and we want them to be able to have that flexibility and not feel like they have to follow staff. But if it's in a guideline, and I don't know what they have for guidelines, but if it's in part of their guidelines and it's stated so that staff can refer to it and remind any future commissions, look, this is what we're working under and this is why the council has asked for this date and in your processes and procedures, this is what's expected of you. So it's a lot more -- people are a lot more aware. That's what I would like -- I don't know if that's -- if we should just ask for this just to be deferred, not deferred, but continued for a few weeks until they actually do that, and then take an action, or if we do it with a memo -- I mean, a -- sorry, I'm really sleepy here. Just to request --
>> Mayor Reed: What day is it?
>> Councilmember Constant: The 18th, am I right? Okay, good.
>> Mayor Reed: Why don't we just refer this to the Planning staff. Let them come up with written policy, practice, procedure someplace, and you know, just not take any action on this, and let that be handled and then they can report back on that, and that probably will be sufficient. I'd just like to add that before I was on the city council I had 14 years as a Planning Commissioner, city and county. And there was rarely a contested item that didn't have somebody saying, "I didn't get the notice." And I think having a written policy of when you do deferrals would be helpful to the commission so they say, all the rules got followed, all the notices were done legally, and our policy is to proceed on these things even though somebody didn't get the notice, because it's always the case. I always found it somewhat amusician that some people would come to the meeting to complain about not getting notice and say, you know, defer this because here I am standing in front of you and I want you to take it up in a few weeks. But that's just the life of the Planning Commissioner, it happens quite often and having a policy I think would be helpful. So I recommend we refer this back to the planning staff to work on.
>> Laurel Prevetti: Mr. Mayor, if I may ask a clarifying, would it be sufficient for us to report back in the form of an information memorandum with the attached policy or procedure? Would that --
>> Mayor Reed: I think that would be fine.
>> Laurel Prevetti: Thank you.
>> Councilmember Constant: So that would be the motion.
>> Mayor Reed: Motion to refer to staff. All in favor, opposed, thanks Jim for your work.
>> Jim Zito: You're welcome.
>> Mayor Reed: Item 10.2 is the release of inclusionary housing ordinance recommendation, we have an extended time line to consider, with recommendations and some alternatives from the staff. Leslye Krutko.
>> Leslye Krutko: Thank you, mayor. Leslye Krutko, director of housing. We are recommending a change to the schedule that we previously brought forward to you. Originally we hoped to have the draft ordinance out for public review in February. And because of the complexity of this ordinance, it's taken a lot of time just to get all of the legal language together. And now staff is going line by line over that ordinance. So there's no real hurry in our perspective because the triggers that we're working with are pretty far out into the future. So we want to do this right. We want to have public -- time for public review. We want to make sure that the staff work is the best it can be, so that we don't rush it through and make errors. So our recommendation, we gave two options. But we really recommend the option that gives us more time, and that would have us going in August. So for whatever reason, this issue has gone before council in December and June. Every time which is when you're the busiest. So we're saying let's wait until August and then we can address it then.
>> Councilmember Constant: I'll make that motion, for option B.
>> Mayor Reed: Motion for option B. Is there a second?
>> Councilmember Pyle: Yes, but I would like to make a comment.
>> Mayor Reed: Councilmember Pyle.
>> Councilmember Pyle: I would like to say there's no question when the rest of us are not as busy as we might be because of this issue, you are busier than most people. So I think it's important for the public

out there who might be watching us to know that there is definitely a difference in the housing department. And we're glad for that, because we wouldn't want everybody to come to a grinding halt. Really appreciate all the work that you do, Leslye.
>> Leslye Krutko: Thank you, Nancy.
>> Councilmember Pyle: It really helps to have that understanding.
>> Mayor Reed: Okay, motion to approve alternative B on the schedule. All in favor, opposed, none opposed, that's approved. 10.3 is Councilmember Pyle's request for designation for some meetings in Finland and Estonia on economic relations.
>> Councilmember Pyle: Yes, Mr. Mayor, my husband and I scheduled a trip to the Baltic states and to Russia in January. And I thought at the time it would make sense to me to stop in Talinn, E.stonia and to connect with the Oulu, Finland, to try to represent the city. I want you to all know that there won't be one penny spent by the City of San José, but I want a chance to speak officially. I will report back.
>> Mayor Reed: We have had people from Oulu Finland and Tallinn, Estonia.
>> Councilmember Pyle: The prime minister and president were here and the Oulu people were here also.
>> Mayor Reed: Make sure you try out your cell phone when you are in Estonia. They were bragging on their broadband and things that they don't yet have here.
>> Councilmember Pyle: I'll try that out.
>> Councilmember Constant: Let me know if you need any of those great San José post cards, I'll donate them to your cause.
>> Mayor Reed: Nice gifts to give out. Motion is to approve. All in favor, opposed, matter approved. 10.4. Expenditure approval for the blue and gold wounded in service award banquet.
>> Councilmember Constant: I put this forward, our outreach expenditure policy and employee recognition policy somehow don't cover an event like this. I think it's important that when we have events like this that honor our employees from outside groups that we as councilmembers should be able to host them, and let them be there for the recognition, that these outside groups give. And this particular event which occurred last week, so hopefully you guys approve it, is designed to really honor those Public Safety officers who are seriously injured in the line of duty. And I think it's something that we should do, and every year I would like to be able to host these officers like I've done in the past. It's just that our policies have been tightened down so much, it doesn't quite fit into the policy, much like the volunteer event that your office had a while back. So I would just like to move this for approval and hope you guys can support it.
>> Councilmember Pyle: Move for approval. Was that a motion?
>> Mayor Reed: Yes, it was.
>> Councilmember Pyle: Second.
>> Mayor Reed: And a second. Somebody's phone is trying to be answered. Motion is to approve, all in favor, opposed, none opposed, that's approved. We have nothing to add to council committee agendas today. Have nothing on open government issues. Takes us to open forum. Anybody wish to address us under open forum? Mr. Wahl.
>> As the to subject matter jurisdiction, I have nothing appropriate so I have to have your ruling, you covered the mayor's gang prevention task issue?
>> Mayor Reed: That's within our subject matter jurisdiction.
>> Talking about the matter they're looking at and I would recommend the fair ground, the great central location. The issue of neighborhood effects, you don't want to use the pool, you're going to end one damage that's going to have to be repaired. The actual county fairgrounds could easily be rehabilitated and conformed for that purpose. Personally, I don't think it's going to work. But this is just an idea for you. As to postcards, I have quite a few of them that I don't think Finland may want to see. And Pete, as to the police, this is not being disrespectful by any means. I'm not making any judgments. It's my conversation with the beat cops. You've got a lot of friends that are irritated for whatever reason, and I really can't comment, because I'm not a police officer. So I'll leave it at that and bless all of you. Thank you.
>> Mayor Reed: Anybody else? None. That concludes our meeting. We're adjourned.
>> Councilmember Constant: That was quick Mr. Mayor but not as quick as I'd like.