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>> Mayor Reed: I'd like to call the meeting to order. This is Rules and Open Government committee meeting for January 19th. Any changes to our agenda order? None. Then we'll take up the January 25th final agenda. I'd like to have a couple of things to think about as we go through here, and that is items that we may move off this agenda to the 1st, just because the 1st is much shorter than the 25th. And we'll come back to that when we get to that, and let's talk about it. Any changes on page 1? Page 2 or 3? I've got a note that we need a sunshine waiver on item 2.7, San Francisco Bay Area Water Quality Improvement Fund grant applications.

>> That's correct, that went out today.

>> Mayor Reed: So that's approval of actions to get money from somebody else?

>> To submit a grant application.

>> Mayor Reed: Anything else on page 2 or 3? Page 4 or 5? Page 6? Or 7?

>> City Attorney Doyle: Mr. Mayor, I'm asking for sunshine waiver on item 3.2. Your memo is in the packet but the actual draft resolution won't be posted until later today.

>> Mayor Reed: The resolution is implementing --

>> City Attorney Doyle: The proposed --

>> Mayor Reed: The memo that's already out with the language.

>> City Attorney Doyle: That's correct.

>> Mayor Reed: Okay. 2.16 is the independent auditor's report on the Hayes mansion. I would like to have some discussion about that but I think it could wait till the 1st, if we wanted to move. Anything else on 6 or 7? Page 8 or 9, I think 3.5 the independent audit of police department staffing, wouldn't hurt if we move it a week, something that would generate some discussion.

>> And 4.1 could also move a week, I checked with staff.

>> Mayor Reed: 4.1 is cultural connections, cultural plan. That could go out a week. Be nice to have some time to discuss that. Anything else on 8 or 9?

>> Mayor, I don't know if at this point we want to discuss 3.4, staff is recommending just hearing it last in the afternoon. We've lightened the agenda quite a bit now, but just so people don't have to wait, they have items.

>> Mayor Reed: That is the second tier retirement benefits discussion?

>> Yes.

>> City Attorney Doyle: Last on the calendar before redevelopment, only because we had that on the agenda the city-county -- excuse me the city-state issue as well that might have some conversation, so --

>> Mayor Reed: Let's think about that when we get through the whole agenda and try to figure out what's the best place to put that. Anything else on 8 or 9? Page 10 or 11? Page 12 or 13?

>> Excuse me mayor, I'm sorry. On page 12 the Diridon station item that was released, instead of 14 days, 13 days ahead of this council agenda so I need the 14-day waiver.

>> Mayor Reed: That's set to be heard in the evening right after the good neighbor committee recommendations. Anything else on 12 or 13? 14 or 15? That's the end of that. I have a request to add commendation to Northern California innocence project, the evening session. And a request to add an agreement with the housing trust of Santa Clara County for construction of the Ford Monterey special needs apartments. As well. And then I wanted to talk about the special meeting that we've noticed for this afternoon and the agenda items that are on that. And consider adding those to the council agenda for Tuesday in the event that the council doesn't get a quorum this afternoon. Or doesn't get eight votes to have this on less than four days' notice, Tuesday would be a time when we could take those up. Because if we don't get eight votes we can't even continue this afternoon's action to Tuesday, we can't notice it.

>> City Attorney Doyle: You can continue the matter for seven days, if the council decided to continue the item to Tuesday, you could do that and the noticing would be posted by the clerk. So you could either add it here as part of the agenda or, this afternoon, you can continue the item, as well.

>> Councilmember Constant: Only if we get eight votes to discuss it though.

>> City Attorney Doyle: That's correct.

>> Councilmember Constant: I would feel more comfortable.

>> Mayor Reed: Only if we get a quorum.

>> City Attorney Doyle: That's a summary I made.

>> Councilmember Constant: Mayor I'd feel more comfortable just adding it in, just to be sure. And I'm sure whatever we do today, we'll still have follow-up discussion, and Tuesday would be a good time to do that.

>> Mayor Reed: That would be a joint item?

>> That's correct.

>> We'll need a waiver on that.

>> Mayor Reed: Right, obviously we would need a sunshine waiver on that to put that on as well. Anything else we would like to add to Tuesday's agenda?

>> Not on our side.

>> Mayor Reed: How about resolving the problems with North Korea? Take it all on here, and fill it up since we don't have much more going on. Let's decide the question of when to have the second tier negotiations, item 3.4, whether that should be last, or at a time certain.

>> Not before 3:00.

>> Mayor Reed: Well we could set it not before 3:00 and the question is do we try take it up before 3:00 ahead of these other things and I think that would be a better thing to do, give us more certainty on nap I have no idea what we need to do on the rest of the agenda but this one is kind of important to everybody and the city. If we say not before 3:00 and just take it at 3:00 as close as we can, deal with it, get it done and then move on to the whatever we're doing with the state perhaps. So if we set that one not before 3:00 with the intention of taking it up as close to 3:00 as possible jumping it ahead on the agenda if necessary. And then that would -- let's see, there's 3.2, the council labor negotiations guidelines, needs to be taken up. I think prior to 3.4, so we just set those at the same time. Lot of interest by the same people, for sure. The other thing of note that's not on the agenda is the swearing-in ceremony, I'm hosting for the Vice Mayor between council meetings at 5:30, then we have of course the 7:00 hearing, as well. So we don't have a lot of extra time in the day to work through things. So if there's anything else we might move to the -- from the 25th to the 1st, on the agenda, let's take those suggestions now. Other than ones we've already mentioned.

>> Excuse me mayor. If we set those not before 3:00 would we do the Redevelopment Agency if we have time? Because there isn't that much on the afternoon session.

>> Mayor Reed: Yeah, I think we would get as much done as we possibly can before 3:00.

>> Councilmember Constant: Really doesn't seem like there's that much more that's going to take a lot of time for us to defer.

>> Mayor Reed: Yeah because we have a couple long items in the evening, and so I think we probably have enough time in the afternoon to get it all done before the evening session. Okay, any other comments or changes on that particular agenda?

>> Councilmember Constant: So I'll take a stab at the motion then. So I'll move approval with the sunshine waivers as required and the adds, so approve with adds, additions, amendments and waivers.

>> Councilmember Oliverio: Second.

>> Mayor Reed: Okay we have a motion to approve as amended added and waived. Would note that the item we discussed about response to the state actions is already on the agenda for the 25th. We're just talking about modifying that to allow us the opportunity to take some action if we need to because we're already planning to get a report from the agency and give directions to staff. That's been out there on the agenda for some time. I don't know, it's been on the agenda since I've seen the drafts of the agenda. Any further discussion of the agenda for the 25th? All in favor? Opposed, none opposed, that's approved. Next agenda item then is if February 1st draft agenda which we've already started talking about a little bit but let's go back to page 1 see if there are any changes on page 1. Page 2 or 3? Page 4 or 5? We have one request, at least one, one request to add appeals hearing board interviews, add that, and we'll get a supplemental memo next week sometime, there are apparently two people to be interviewed. Anything else on the

February 1st agenda? Do we need a sunshine waiver on the appeals hearing board interviews? No, because supplement just tells us who the applicants are that we might interview. So this will be amended to reflect the items we're pushing off of the 25th to the 1st, as well. Anything else?

>> Councilmember Nguyen: Motion to approve.

>> Councilmember Constant: Second.

>> Mayor Reed: Motion to approve as amended. All in favor, opposed, none opposed, that's approved. Redevelopment Agency, January 25th agenda. Anything on page 1? Page 2 or 3? We will have the modifications on the language for what we're doing with the state budget issues.

>> Mr. Mayor if I may item 8.1 the proposed state budget actions impacts to the agency budgeting that item requires a sunshine waiver because it was not distributed last Friday to meet the ten day waiver.

>> Mayor Reed: Okay. And then I have a request to add an approval of an amendment to agreement with AE com for environmental monitoring services and the capital employment assistance agreement with maxim and capital assistance agreement with SunPower.

>> That's correct, the AE com item will also require a sunshine amendment for the ten day waiver since it's being added now. The Maxim and the SunPower items require a sunshine waiver for 14 days because we are obligating a total of \$1 million in public funds between the agency and the City of San José.

>> Mayor Reed: Okay, any other changes?

>> No, sir.

>> Councilmember Constant: So just a motion to approve with the additions, and the waivers as required.

>> Councilmember Nguyen: Second.

>> Mayor Reed: Motion is to approve with the additions and the waivers. All in favor? Opposed? None opposed, that's approved. February 1st Redevelopment Agency we have nothing set, is that correct?

>> That's correct, there are no items set at this time. We will come back to next week's rules committee if there's anything set between now and that time, we'll just hold it open for any emergencies between now and then.

>> Mayor Reed: Okay, that concludes that agenda discussions. Review of upcoming study session agendas. We have the neighborhood association/youth commission 2011/2012 priority setting session January 25th, brief agenda for us to look at. And see if there are any changes to that, or not.

>> City Manager Figone: I'm sorry mayor, did you say the 25th? It is the 29th.

>> Mayor Reed: I did say the wrong date; 29th. We have other things on the 25th. I don't know what they are, but I know something else is going on, but it is Saturday, January 29th, right here in the committee rooms for neighborhood association and/or youth commissioners. Motion is to approve the agenda. All in favor? Opposed? None opposed, that's approved. Legislative update. What's been happening in Sacramento? Anything going on there, Betsy?

>> Betsy Shotwell: No, just the usual. Actually, it is the usual. Thank you, Mr. Mayor, members of the committee, Betsy Shotwell, director of intergovernmental relations. I did put this on as a placeholder, as I've been doing, not knowing what might take place in Sacramento since last week. I really don't have a lot of new information on the city side, I mean, things like the COPS program funding and booking fees that will be dependent if they can get the tax extender ballot measures on a June ballot special election. So that's out there. Really, with the 4:00 meeting in play I would probably defer to the 4:00 meeting for discussion of items

that are in play at this point, unless obviously Jan if you have anything to add. I'd be happy to take questions, I say take, because I'm not sure I can answer many questions. Keep your questions and comments in mind, our lobbyist Roxann Miller is working on this hourly as we say.

>> Mayor Reed: I am scheduled to meet with the governor as well as the legislative leaders on the 26th as part of our big ten mayors visit to Sacramento. Obviously we'll be talking about the budget, the Redevelopment Agency, and the enterprise zones in particular. And I know that the trip that Councilmember Pyle is taking the lead on is scheduled to go to Sacramento in February sometime that we'll be certainly in conversation with our representatives in Sacramento on a regular basis on all of these issues. But I will be going with the big ten mayors on the 26th and those meetings are confirmed with the governor and others.

>> Betsy Shotwell: Great, thank you.

>> Mayor Reed: anything else on the state update? Continue this conversations at 4:00, I think.

>> Betsy Shotwell: Yes.

>> Mayor Reed: Federal?

>> Betsy Shotwell: No not at the moment. We're waiting as Congress is assembled, sworn and settle out, with regards to if there are funding opportunities for the city and where we will be finding those funding opportunities and that's what we're working on with our lobbyist. Thank you.

>> Mayor Reed: Meeting schedules, none other than what we've discussed. Public record? Anything the committee would like to pull for discussion?

>> Councilmember Nguyen: Motion to note and file.

>> Mayor Reed: Motion to note and file. Have one request to speak on the public record. Mr. Wall.

>> David Wall: Good afternoon, it's always a pleasure to be in the presence of Your Honors and associated other people who sit before me. Item number C Mr. Mayor, speaks for itself. Environmental services department, a department which creates more positions than any other department in the city during this budgetary time period, is suspect with this new position. Inquiry should be made as to what is contained in reference within the four corners of this document. I'm not at all sympathetic to the management structure of the environment services department or in the appointing authority in particular. What we have here is, Mr. Mayor, a position over the pretreatment plant. Now that position, that program is required by the EPA for discharge permit. You have four other program manager positions within watershed division. I would think that you could do with one less and consolidate. Lastly Mr. Mayor there was a document referenced at TPAC Thursday I have had it provided to you with reference to how it was properly addressed. There is a nice ancillary document written by Councilmember Chu that dovetails into the content within that letter, putting onus of odor production on the city and Milpitas. Back to this document right here. There should be inquiries. Made. Thank you.

>> Mayor Reed: All in favor, opposed, none opposed, that's approved. Boards committees and commissions, we have some recommendations, I'm not sure where they all came from, two sets, reappointment of Buu Thai, Al reinig, and Nathaniel Montgomery, to the project diversity screening committee, for a term to expire December 31st, '12. And the appointment of Hobin Kim to the Project Diversity Screening Committee for December 31, 2012, and appoint Jeannie Lofranco at chair of the project diversity screening committee for unexpired term ending on December 21, 2011. We can take those together as one motion.

>> Councilmember Constant: Motion to approve.

>> Councilmember Nguyen: Second.

>> Mayor Reed: Motion is to approve both sets of recommendations. Discussion? All in favor, opposed, none opposed, that's approved. I think the next item is the Item H-2, request the civil service commission to re-evaluation layoff criteria, we have a memorandum from Councilmember Oliverio, we have some folks here who want to speak to that. But let's start with the memorandum. Councilmember Oliverio, do you want to speak to your memo?

>> Councilmember Oliverio: Thank you, mayor and Rules committee. Before you is a memo that I have put into the City Clerk's office. It's following the city charter. The city charter allows for the civil service commission to look at, review, amend civil service rules and bring them to the council for adoption or amendment. We are clearly in some tough fiscal times, times we don't want to be in, and unfortunately those times have created layoffs. Those layoffs are painful for the individuals and also painful to the organization that provides services to the residents. In addition to layoffs we have the amount of bumping that occurs in the organization, causes a fair amount of chaos and today, our civil service rules denote that 100% of that decision is based on seniority, weeks of service, months of service, and nothing else. And I think it's imperative that we have a civil service commission, this is their ability to review the civil service rules and bring us back a report to council to review in 90 days. So I would simply ask that this rules committee move this memo to staff, where then staff can evaluate time and effort and bring it back for council consideration on February 15th, giving a fair amount of time to staff to evaluate, and then council can rule whether or not the civil service commission should do as it's done in the city charter.

>> Mayor Reed: Okay, I'd like to hear what the staff has to say in terms of the work, the process, the workload, anything else on how we go about doing this. This is the first for all I can remember where we've referred things to the civil service commission so I'm not really up on the process.

>> City Manager Figone: And Rick can certainly chime in here. I think referring this to staff is a good next step so we can weigh in on the scoping as well as the workload. And I do think we should discuss the role of the commission in our -- as we take this offline. I understand the words of the charter but how those have been applied in the past I think is important, and also, the relationship to the meet and confer, the process,

I'm not really clear in my own mind mayor to be able to speak to that but I would assume we would have a meet-and-confer component depending on the issues that would get layered into this. And so I do think that we can bring you back the parameters for how to move this forward, and if there is any other dimensions that should be considered, you know one of the other things that we have wrestled with is, through the bumping process, is -- are the classifications that are maybe more current than some of the classifications held by the employees. We find ourselves working really harder than we should be to find placement but it's not always the best match for the individual as well as the work they are doing. I can imagine us drawing upon some of our experience over the past two years and perhaps factoring that into whatever we want to bring to the commission. I understand urgency is -- the sense of urgency here, we may need a sunshine waiver at the time we are, you know, being prepared to bring this back to you. I won't, you know, we'll do our level best to hit the 14th or the 15th, whatever the date would be, but I just want to alert the committee that we may have trouble getting the memo out within the time frame.

>> Mayor Reed: City Attorney.

>> City Attorney Doyle: I would just echo the City Manager. I think this is something we would bring back, obviously the civil service rules are one component. There are many of the MOAs that the unions have procedures dealing with layoffs. And frequently they -- well they do supersede civil service rules so there is meet-and-confer issues as well. All those issues can be addressed and how we come back with whatever recommendations, I think classification issue is one that we could add, as well. So you know, we'll work together with the City Manager's office.

>> Councilmember Oliverio: Mayor, City Attorney, if I understand the meet-and-confer process, a meet and confer would get triggered once the civil service commission came out with a recommendation that was being presented to council, not prior to the concept of actually just discussing something.

>> City Attorney Doyle: I think to the extent the council would direct staff as part of the labor negotiations to move forward, that's probably the best place for it. Because just because the commission makes a

recommendation doesn't mean the council's going to take the action to amend the rules. It is at the time the council wants to amend the rules or the MOAs, I'm looking at Alex Gurza in the audience, if the council has desire to move forward with those negotiations.

>> Councilmember Oliverio: Thank you.

>> Mayor Reed: I have a question about the role of the civil service commission. If we decide we want to do something other than what we're doing now is it the council's job with our staff to figure out what that is? Go to the civil service commission, say we think this is what we'd like to do, or do we give it to the civil service commission and say tell us what you think we ought to do? And it seems to me that having our staff engage in this, Alex and Rick and the manager and everybody to figure out what it is we would like to do and then give that to the civil service commission for comment and to our bargaining units, how we all do that at the same time is the magic that Alex Gurza has to perform. In order to make all these things happen along with everything else he has to perform. We need to deal with this unfortunately we are looking at another year Woo where we are likely to have layoffs and given the way the pension costs are likely to go up we may have several years of layoffs. And so doing it strictly the way we are doing it now are having consequences that aren't the best. We need to work on this. I'm not sure about that process so I think giving it to the staff and letting them figure out that process before it goes to the council is a good way to do it. Pete.

>> Councilmember Constant: Thank you, mayor. I concur with both that we need to look at what Pierluigi has brought up here. I think that performance should definitely be part of the mix when we're making decisions. But I also agree with the City Manager that the classification issues and which relates directly to what Pierluigi was saying about the bumping issues really needs to be looked at and analyzed. My concern would be as always how fast or slow things move around here. And we have -- I know the City Manager's office and Alex particularly has a lot of stuff on their plate right now. But we also know that we have a very limited amount of time between now and the time any potential layoffs would take effect, is less than six months. So how -- how long do we envision it taking staff to thoroughly look at this, so that we can have the

appropriate referral to the civil service commission? Because I think the charter's really clear. We have to send it to the civil service commission before we can take any final action. So just kind of looking at the time frame, with only six months, and with what we're doing, what can we achieve, and what can we look forward to as the rules committee and as a council for turn around on this stuff?

>> City Manager Figone: I think that's a good question and one we'll probably answer better once we get our minds around this. I would think realistically we need to set priorities to the issues that we scope and refer to the commission. And so to the degree there is classifications and the performance issue and maybe any others that we hadn't thought of yet that at least should be considered without overwhelming the system we probably need to set some priorities. So I think the turn around time will be based in great measure on how much we take on.

>> Councilmember Constant: So with that in mind I would say that at least from what we have in front of us now, that these two items together are a top priority, and that we need to go forward. If there are other things that surface from the staff, where you and Alex think that we really have to get this before the civil service commission as well, that maybe we should entertain that but not necessarily at the expense of these two issues. Because the impact of several hundred layoffs, not only to the affected employees and how many people are going to be touched by it, but the impact to the services that reach our residents, and what Pierluigi is alluding to, very directly, is we want to make sure that whomever we have left are the most productive people who can provide the most services to our residents across the board. So I think we have to keep that as a significant priority moving forward. So that's my 3 cents.

>> City Manager Figone: Mayor, can Alex also weigh in I guess to the degree there are also other dimensions?

>> Mayor Reed: Sure, Alex.

>> Alex Gurza: Alex Gurza, director of employee relations. The charter provision I haven't looked at recently. As the City Manager has mentioned we have union contract provisions that if there are any provisions that conflict with the civil service rules the contract provisions supersede. How does it relate to this? There are many contracts where there is a layoff provision in the contract and it talks about layoffs being in inverse order of seniority. So even if the council were to change the civil service rules if you still had a union contract where it said there is an inverse order of seniority, that would govern, so there is definitely labor relations implications. So in terms of timing, if the council were to decide that it wanted to make this change I think in my view a couple of decisions is, would you like before you even decided to do anything, the civil service commission's thoughts on it but regardless of how long that took we would then still need to be able to weave it into the negotiation that are beginning very, very soon. Really because there's labor relations implications it's the city council deciding that it wants to address this issue and if you would like to have it affect the reductions that unfortunately may happen soon, it's really the sooner that that decision is made. So I hope that helps set that context.

>> Mayor Reed: Vice Mayor.

>> Councilmember Nguyen: Thank you. I totally appreciate Councilmember Oliverio's intent with the memo. But like the City Manager said I think that there are a lot of questions that are open on the table. Here we have a memo that would trigger a lot of issues, relating to the meet-and-confer classifications and the other thing we also need to look at is the age discrimination issue. I think where we're trying to save you know thousands of dollars in regards to trying to balance a budget, but if we're putting our city in legal jeopardy I think that's something that we also need to consider. So I completely support the fact that this is going to staff for a more thorough review, trying to answer some of the questions that are raised here today. But I also want us to be more cautious in terms of the unintended consequences that a change like this will bring to our city. And also to the morale of the workforce. I have a question for Alex do we require senior managers or supervisors to conduct annual work performance review for all subordinates? And is that process being carried out on an annual basis? Because once when this memo surfaced I heard a lot of employees talking about how they haven't received an annual review for the last couple of years. My

concern is that, I'll give you a brief scenario but if I've been working for the city for the last ten years and my supervisor decided that he doesn't want to give, conduct an annual would be performance review for me and I don't want to push the issue because I don't want to get fired versus somebody who has been here for five years and he or she as a supervisor is very thorough with the process and has conducted a work performance review for the past five years, if this system is intact I don't think it is fair for someone who has been there for ten years believes that he or she has done a great job and then to realize that he or she is going to get laid off because an annual performance review was not intact. I think the immediate thing we need to do is we need to look at how what the current system that we have and really talk to our senior manager's and make sure that an annual performance review is what we need to do for our employees.

>> Alex Gurza: Actually, you raise an excellent point. We haven't had a lot of time to think about this but the administration would concur with you, if the council would ask us to consider a performance measure to it, we would have to make sure that that performance review is being carried out. Every employee should be receiving an annual performance appraisal. Pam the situation that you mentioned, employers not always getting it and we would want to make sure that that system is in place so that then performance there is a record then on which to base that decision. So we would have to make sure that every employee is receiving that so you don't have the situations that you mention, where an employee may not have had a performance appraisal which they really should be getting. So we need to work on that aspect of it which would be a very important element.

>> Councilmember Nguyen: Thank you.

>> City Attorney Doyle: And mayor and committee I just want to note that the timing issue if you want to begin this debate with the civil service commission and staff does get back by the 15th of February, the commission has 90 days to respond, once the council makes the request. And so the question would be if the council makes the request and the commission has 90 days I can fairly say this commission is overworked. They have -- the number of discipline cases has doubled and they -- and those are mostly night meetings but I can't guarantee that their workload, I can't speak about their workload because I know they've

been very busy. So that's another factor in terms of timing. This maybe a longer conversation than some may desire.

>> Councilmember Oliverio: But Rick, regardless of current workload of the commission, the charter states that once the request is there you must reply back within 90 --

>> City Attorney Doyle: Once the request is made by the city council.

>> Councilmember Oliverio: so that civil service commission might meet once for two hours or twice for two hours, I don't know, but they'll come up with this --

>> City Attorney Doyle: That really goes to the mayor's question of who makes the request. If it's from the staff to the commission, the commission comes forward. Or should the council make the request, the 90 days is triggered from the day the council makes the request.

>> Mayor Reed: I would certainly think it would be much more likely to get a quicker response from the civil service commission if we the council and the staff do the work and figure out what is the best thing to do, talk to our bargaining units figure out what might work as opposed to having the commission take it up from scratch. Because that will take longer as we've seen with all of our commissions. I do have people who want to speak so we'll get to that in a minute.

>> Councilmember Constant: So one of the things I'm sure staff is going to look at, but just to make sure it's explicit is a list of which MOUs contain specific language on layoff procedures and I think that's important because -- and also how the unrepresented unit 99, what the implications in those employees would be. As far as the employment valleys is, this has been an ongoing problem for way more than a decade. Because I remember when I was in the police department this was an ongoing problem. It took quite a bit of work to get the police department to do the annual evaluations. I think it should be from a management standpoint, every supervisor that supervises even one person should be evaluated on their ability to do performance

evaluations. And that should be something that's a specific line item. If you have subordinates and you don't do your performance evaluations that should be noted in your performance evaluation. People should be held accountable. Because as a former employee who once went three years without one, it's -- I don't think it's fair to the employees. That being said, though, I don't think any city employee or any employee anywhere should be concerned about being evaluated on their performance and the stability of their job should be dependent on their performance. Because that is the real world. And you know, we've received a lot of information, or constituent contacts on this particular issue, at least I have in my office. And many people outside of government are just shocked to see that performance has absolutely nothing to do with continued employment. So I think it is something that we should be doing. And as far as issues of potential employee morale or anything like that I can tell you that the vast majority of people are employed by private sector companies who utilize this who have always used employees performance, not only in retention issues but also in pay issues. And we kind of ignore it in both cases. We have step increases regardless of performance, and we have job protection regardless of performance, neither one of which I think is healthy, for the workforce, because the good employees often become overburdened with work because of those who are not pulling their weight and quite frankly, the residents who receive the services we provide are short changed by not being provided the best services that they should be provided.

>> Mayor Reed: Are there comments before we hear the public testimony? Let's take the public testimony now, Bill Wallace followed by Pat Saucedo.

>> Bill Wallace. I'm -- you want the address also?

>> Mayor Reed: It's up to you.

>> Okay, anyway I live in San José. Anyway, excuse me, I'm opposed to this recommendation for this reason: Years ago, most of the employees associations in conjunction with management set up under calm circumstances, a good layoff policy. in many cases, I hear it coming out here about evaluations. Whenever an evaluation is done, under political circumstances, it's not going to go good for the employee. I also hear,

read in the memorandum, a smacking of discrimination. I see discrimination in here, in terms of older workers. Okay? And I hear people just very loosely saying that older workers are just not as productive. Well, I don't believe that. I don't think you have the facts to prove that and I don't think you should run on that basis. Old workers are very productive. They teach the younger workers. Okay? And I think that you should rethink this policy of what you're doing. This is not good for the workforce as a whole. We celebrated on Monday the legacy of Martin Luther King. And he lived and he died so that everybody, everybody would have an opportunity to be treated equally and fairly. I want you to think about what you're doing. This is putting a situation where it's not going to be -- you're not going to be treating people equally and you're going to be looking at people in a political situation, and I'm totally against it. Thank you very much.

>> Mayor Reed: Pat Saucedo and then Jerry Mungai.

>> Pat Saucedo: Pat Saucedo, San José Silicon Valley Chamber of Commerce. On the issue before us, after listening to the discussion by the committee and the staff, the chamber does strongly support the memo and the concept of the memo, that we need to look at layoff criteria. If the appropriate steps are to send to the civil service commission and to the staff for a focused evaluation so that we can stay on track to provide the City Manager and to provide your staff with the best management practices should we face the daunting task of additional layoffs this next year, I think it's incumbent and the chamber believes it's incumbent upon the committee, and the council, to take the steps necessary to provide those tools to the City Manager and the staff. It's going to be a difficult year and providing best management practices whether it's performance, whether it is also the classification issues, I think it's important we do everything we can to provide those tools. As we move forward through this very challenging financial year for the City of San José to provide services to protect those employees that need to be protected, and to provide some clarity to assist them, that currently and I know even from when I was on council, it's not the best system that we have and it is time to make those changes. Thank you.

>> Mayor Reed: Jerry Mungai followed by David Wall.

>> Thank you, mayor. Councilman Pete Constant said it wasn't fair to the employees about not having a performance evaluation. It's not fair also to those who pay the bills. We're not getting, as you pointed out, the best services possible for our money. Councilman Oliverio's idea is a no-brainer and it's long overdue. We all in our daily lives, private lives, hire and fire suppliers based on performance criteria, price, quality, speed, courtesy, whatever. So there's no reason why we couldn't translate that policy into the public sector as is now done in the private sector and by the way, those private sectors that are booming are those who do not have unionized workforces. It can be done relatively objectively and it is done all the time in the private sector. The current system means the younger potentially more qualified individuals with least seniority are those laid off. The remaining workforce is -- has a longer longevity, higher salary base and therefore a greater pension liability. So I wholly support your proposal. And I hope that we are not going to have a situation where there's a thousand reasons why it can't be implemented. Thank you.

>> Mayor Reed: David Wall followed by Ben Field.

>> David Wall: I applaud Councilmember Oliverio for your continued look at the budget. There's only been one citizen that understands the entire organization and how it works, that sets before you at any point in time. This citizen has routinely called for opening up the city charter, putting that on to revise the city charter. The problem relies first of all with the appointing authority. It is the appointing authority's entire responsibility for these performance appraisals. They are nothing but a collapse of everything that they do and don't do. Employee relations and organized labor have watered down the civil service protections to employees to such a point that the performance appraisal system as it exists today is nothing more than a weapon system. They are not truthful for the most part, they are not standardized throughout the city. There is no form of redress and there is no protection for city employees that have to undergo this. And this primarily is the responsibility of the City Manager. And this should not be excused and is one of the reasons why I have called for regime change, the elimination of employee relations because these people have allowed this problem to exist for decades mind you, decades. The issue ever the civil service commission is itself is another major mistake, this is a very corrupt system. These people do not have the necessary tools

to deal with these performance appraisals or city employees, and above all people have forgotten what civil service was created to do in the first place, is to guard against corruption in government. And I'll tell you, ladies and gentlemen, this whole thing is a mess. What you need to do, start reviewing the city charter in its entirety and with the City Manager with, Mr. Mayor because of your contract with the employment contract with the City Manager, put the City Manager on notice six months notice, of separation of service, so --

>> Mayor Reed: Sorry your time is up. Ben Field followed by -- Gail service.

>> Mr. Mayor, members of the rules committee --

>> Councilmember Constant: Speak into the mic.

>> Can't hear me?

>> Mayor Reed: Yes, not picking up, thank you.

>> My name is Ben Field. I work for the South Bay labor council. Mr. Mayor, members of the Rules Committee, the current seniority system does not stop the city from letting go underperforming workers. It creates an objective standard which can be used to determine the order of layoffs. If that objective standard is replaced by a subjective one, it will politicize the city's labor force. The message to city workers will be that if you disagree with management or the elected leadership you run the risk of being laid off. If you support the elected leadership your chances of being laid off are slimmer. It will chill the free expression of ideas by city workers who will be afraid to speak out. During the civil rights era, seniority systems protected against racial discrimination and other forms of discrimination. And that seniority system still creates those protections. In short, the proposal would turn back the clock toward a time when the treatment of employees was governed by patronage politics. San José has long prided itself on being a good government city. This proposal heads in the wrong direction.

>> Mayor Reed: John Mukar, followed by Kay Denise McKenzie.

>> Honorable mayor and councilmembers, it's unfortunate that we have to stand here addressing you at this time when we have a lot more important issue to deal with, like Ben just mentioned, the city have a process to get rid of underperforming employees. It just needs to be implemented. Performance evaluations have not been implemented to many, many employees for many years. And that will create just issues. Seniority process was set up to protect the employees in this awful process of layoffs. And any changes in it making it credible. Any changes to that will just cause a wide range of discrimination and personal decisions that a manager can take to get rid of employees. So I urge you not to head down that direction, and keep the process whole and in force, the requirement that already exists that underperforming employees there is a process to be followed as-is and leave the civil service and seniority layoffs whole. Thank you.

>> Mayor Reed: Kay Denise McKenzie followed by Dan Rodriguez.

>> Good afternoon, honorable mayor and Rules committee meshes. My name is Kay Denise McKenzie, president of CAMP IFPTE local 21. I want to say first of all that I appreciate the discussion that you've had here this afternoon. It was more than I was expecting in terms of when I wrote my comments. But I would like to point out that the council memo wherever it may be directed clearly suggests that the city would save money with a different layoff process that allows for laying off older workers thereby inviting the practice of age discrimination as well as other issues. And as John said, the currently system is set up to work, if it's used properly, such that employees with the most seniority should be those that are most productive. And if there is an issue with the system, then that issue needs to be addressed. Not the creation of a new system, that would be vulnerable to political favoritism and discriminatory practices. So I ask, please do not add this item to an upcoming city council agenda or refer it to staff or the civil service commission for additional work or review. Thank you.

>> Mayor Reed: Dan Rodriguez followed by Carol Garvey.

>> Good afternoon, Mr. Mayor and members of the Rules Committee. My name is Dan Rodriguez. I'm with the international brotherhood of electrical workers as a business rep. I just came here to let you know that this idea that we have about changing the civil service rules is not just a bad idea, it's a very bad idea. These rules were established a long time ago for a very specific reason. That is to avoid corruption, to avoid political favor for people who got elected and got new jobs because all of a sudden they supported the right candidate. If you allow this to happen, you may be okay right now, because you're in power right now. But when you're no longer in power and other people get in, they're going to change the people that are in here, and you may not like the decisions they make at that point. Right now as you've heard before you have a process in place that works. Why would you want to change that to a process that may not work that may make things even worse and leave you open for lawsuits? It doesn't sound like a very good idea. Thinking outside the box is okay. But please try to stay within the law. Thank you.

>> Mayor Reed: Carol Garvey followed by Bob Lindley.

>> Can you hear me?

>> Councilmember Constant: Squeeze the handle and it will come right down.

>> Hello. Mayor Reed, Vice Mayor Nguyen, councilmembers constant, Oliverio and administrative and regular staff. Thank you so much for this discussion. It is, like Kay Denise McKenzie said, much more enlightening than I thought it would be. My name is Carol Garvey, and I was a dispatcher for 26 and a half years for the county and dispatched for San José Police and Fire for 12 of those years. You know, layoffs are painful. They're painful for everybody. The people that are doing the bumping, the people that are being bumped, the people arranging the bumping, but mostly to the people that are being laid off and that is why we have to have a system in place that is equitable and fair and make sure that, you know, the least amount of pain is being caused to the least amount of people. You know, when you have -- other than the seniority system which is in place and seems to be working quite well, there are so many variables that can really cause problems such as you know punitive type layoffs, or people who are using it for punitive reasons, or

favoritism, or just, you know, there's disparate treatment that is just not fair to everybody in the long run. And, you know, I think this memo is I mean just very mean spirited. You know, the proposal is very unfair to the most loyal and long-serving workers. And I mean I see a lot of gray hair around here. I think and probably there would be more gray hair if some of us didn't use you know some of the nice hair care products that are on the market today. I think one of the hardest working people here has gray hair. So you know to say that people that are getting older are not good workers --

>> Mayor Reed: Sorry your time is up.

>> Is very unfair. Thank you.

>> Mayor Reed: Bob Lindley followed by Tina Morrill.

>> Yeah, mayor, Mr. Mayor, and committee members, thank you for listening to me. I want to say one thing about seniority, or a couple of things, maybe. Seniority provides an easily understood and direct measure, a rule that can be used that everybody can understand and that will be perceived as fair for a layoff procedure. Seniority applies equally to all employees, every employee that works a year gets another year of seniority. As regards to evaluations, I've heard some of the other people comment that perhaps there is a deficit in the evaluation procedure. As to productivity, I think employee performance and elimination of unperforming or incompetent employees should be an ongoing process. It shouldn't even be limited to an evaluation at the end of each year. If a supervisor or a manager sees an employee not performing properly, steps should be taken to make this deficiency evident to the employee and allow the employee to improve. As to age, I have a lot of experience as an older worker. And I know that older workers are always -
- often assigned more difficult, more sensitive tasks and older workers also are possessors of organizational memory valuable to the organization.

>> Mayor Reed: Your time is up.

>> Thank you very much.

>> Mayor Reed: Tina Morrill followed by Henry Sorvene.

>> Good afternoon, my name is Tina Morrill I live in district 3, I came in late so I missed some of the conversation. I am a community member, I want to see the right person doing the right job. I don't want senior people being able to bump junior folks and then having to learn a job quickly on the fly. That's a concern of mine. Maybe that's a process change, I don't know. It just seems that seniors should not be allowed to bump other people just because they are senior. That said we don't want to lose our intellectual capital, either. There is a balance that has to happen, some success planning that has to happen. I am for the memo. I think the seniority system is old, it's antiquated but don't get rid of the seniors. Age doesn't have anything to do with enthusiasm or level of being able to work. I feel like employee performance is something that should drive the layoff process. As somebody from private industry I see that when there are competent managers who are well trained and held to a standard they are able to do good performance reviews with their employees and their employees thrive as a result, so I like the memo. Thank you very much.

>> Mayor Reed: Henry Sorvene and I think that's the last.

>> Thank you honorable. Mayor and members of the Rules committee. Henry Sorvene, resident of San José, and I'm embarrassed to say I'm one of your older, more highly compensated employees.

>> Mayor Reed: Where is the gray hair, Henry?

>> Yeah, I know, maybe I'm using one of those coloring --

>> Mayor Reed: Just checking.

>> -- that people allude to. It's a difficult thing to have to decide how to budget a city and keep it moving forward. You have to make some very difficult choices. One of the things I would suggest that you do in this measure before you today is to heavily consider also the implications. I know what you have to do doesn't come easy but the implication is that you know older people perhaps need to be evaluated by a different criteria. So be it, make that the question. Don't come over and say that appraisals don't work. I use them all the time, I request them all the time. If someone is gone several years without evaluation they have a right to request one. The mechanism works. If you wish to use some other criteria, evaluate it along those lines but don't make it smack like you're looking to get rid of some of your people that are a little older in the toot as it were. Thank you so much.

>> Mayor Reed: I think we have one more request to speak, card coming in. Come on down.

>> Well, talk about just in time! My name is Bobby young, I'm a resident of this city in District 10. There's an opportunity here, to set an example for cities who are willing to take us out of the 1930s, civil servant mentality, into a world where we understand that efficiency and change and the willingness to look at things differently presents itself. We also have an opportunity here, since we are the largest city in the Bay Area, to provide leadership for other cities who are wrestling with this same situation in their own fiscal challenges. In that regard, I support these willingness -- the willingness on the part of the Rules commission to look at different ways of doing this and I certainly support the memorandum from Councilmember Oliverio. Thank you.

>> Mayor Reed: Okay, thank you. That concludes the public testimony. Councilmember Constant.

>> Councilmember Constant: So a few things. First of all I think that we should not lose sight of what Councilmember Oliverio's recommendation is. It says very clearly, as to use employee performance as a tool. It didn't say as the only decision making factor. And I think that's important. And as I said earlier I don't think anybody should be afraid of being graded on their performance or being held accountable for their performance. We've heard many times from people who say the system is working. I can tell you that there

are a lot of people who have communicated with me who argue that the system doesn't work. And I think that a lot of the discussion that happened here is really confusing the difference between age and seniority. You can be -- have a lot of seniority in an organization, and still be young, or you could have little seniority in an organization and be older-aged. So I think it's really important that age is not a factor, and it wouldn't be appropriate for us to ever grade someone on their age. But seniority is the system that we have. And perhaps you know maybe the appropriate wording would have been to use seniority gap instead of the word age gap in the memorandum. But I think it's clear by the rest of the context of the memorandum that Pierluigi put out that is he talking about seniority and not about age. And there is -- we heard a lot of comments about discrimination. And there is a world of difference between discriminating against somebody for their age or what they look like or their religion, and evaluating someone based on their performance. And that's specifically what Pierluigi put out here, is performance. Using performance as a tool, which is completely reasonable, that is not discrimination, that is merely setting a standard and an expectation of what the public deserves from city employees, and a tool that the city can use on when we regrettably are faced with a significantly reduced workforce going forward. There were some comments about you know it be used as a political tool by us and other elected officials to get rid of employees we don't like. That's simply not true. We have a City Manager form of government and all the employees report to the City Manager's office. None of them report to us, and I can tell you that we've never been asked to opine on an individual employee's performance for their performance appraisal and I don't think any of us would even venture to even do this. We're not like some cities where the elected leaders also run the administration of the city. So accusations that this will lead to political terminations I think are completely unbased -- are not based in any -- any true fact of what would happen here and I think seniority should have its privileges for employees, when it comes to either bidding for shifts or applying for promotions or other things. But seniority should not be used as a guaranteed ultimate protection against having to do your job or performing well. And I think that's just, as I mentioned earlier, common sense. If you went out and polled the general public I think would you see in a strong margin that people believe that public employees should be evaluated not only on their performance but when it's time to have massive layoffs when we are unfortunately anticipated to do that that should be one of the factors. With that in mind, if Pierluigi doesn't mind, I would like to take a stab at a motion on your memo, and that would be to refer this memorandum to

the City Manager, to evaluate and provide guidance and input regarding the seniority issues outlined in this memorandum, along with related classification issues that have been identified in this discussion and others that the City Manager may have, and return to the city council via the Rules Committee, hopefully by March 1st. I tried to kind of pencil out the dates that we would have here in order to get it to the civil service commission and back to the city council. And I think that would provide us time. And that if they are unable to do that for any reason, they just report back to the Rules Committee on the challenges that are being experienced. And I think that covers it.

>> Councilmember Oliverio: I'd certainly second it. I'm just curious on looking at the calendars, the reason I gave February 15th as a desirable date for the meeting is the 22nd, there is no meeting so you lose that week and you go into March 1st. I'd kind of like to see the stretch goal to hit the 15th in the worst case scenario, understanding if you want to have a better conversation for the council, understand that directly, and if it falls to March 1st. I would certainly like a stretch goal for the 15th, if that seems attainable, because it seems like the prior discussion seemed like that wasn't a possibility.

>> Councilmember Constant: And the reason I picked the 1st is, I was also trying to count in our sunshine time. And I don't think the 15th, given the fact that we're at already the 18th, it would give less than ten days for stuff to really get worked on and to get the staff report out and to get the required sunshine. So that's how I kind of calculated it. If the City Manager wants to give any input on dates --

>> City Manager Figone: I think the way Councilmember Oliverio framed it is fine. I think the 1st is what's realistic, but we are going to work on this in earnest, and an update is completely acceptable to me, and you know, whether it's info memo or back here at rules, we'll keep you apprised of our progress.

>> Councilmember Constant: So Pierluigi, would it okay then to modify the motion for an update to the Rules committee on the 15th, if they're unable to complete it by then, with an ultimate goal --

>> Councilmember Oliverio: You mean the 9th?

>> Councilmember Constant: Whatever date you gave, the 9th, I'm sorry.

>> Councilmember Oliverio: Yeah, February 9th.

>> Councilmember Constant: With an ultimate goal of no later than March 1st.

>> Councilmember Oliverio: That would be fine.

>> Mayor Reed: All right, we have a motion on the floor, further discussion of the motion?

>> Alex Gurza: Mayor Reed, may I provide just one piece of information?

>> Mayor Reed: Certainly.

>> Alex Gurza: I didn't want to leave anybody with a misimpression, when I mentioned that we have layoff provisions in certain union contracts, that does not mean to imply that the seniority based system doesn't apply to other employees. In fact it applies to every person that's considered a classified city employee which is almost 100%. There's only about a couple hundred of us that are at will unclassified employees so I just wanted to mention that. Sometimes it's duplicated in union contracts but the system applies to almost every city employee.

>> Mayor Reed: Anybody else on the motion? All in favor, opposed, none opposed, that's approved. Thank you very much. That is much of the work we have here today. Open forum is the last item on the agenda. I believe.

>> We have committee work plan, the assistant.

>> Mayor Reed: I'm sorry, we do have a committee work plan, Public Safety committee. Want to wait until Councilmember Constant comes back I think on that one. David Wall I think we'll take the open forum. You are on the CED work plan? That's not on our agenda. Public Safety work plan is on the agenda. Let's take open forum anyway. Did you want to speak on open forum?

>> David Wall: Yes. (inaudible).

>> Mayor Reed: Open forum, come on.

>> Hi again, I'm John McAdam engineer with the City of San José. I usually don't do that but I quote public record, item C from Mr. David Wall, I know David and I say I usually don't agree with a lot of his writings but this one hits home because this position was mine in the past and now it's three positions and I agree with what he said in his memo and I recommend it to be investigated. Thank you.

>> Mayor Reed: Okay, Mr. Wall, open forum.

>> David Wall: Since there's discrepancy, Mr. Mayor, as to what's on an agenda, I'll just speak on open forum on the CED thing, if that's agreeable to you.

>> Mayor Reed: Okay.

>> David Wall: CED is a very, as all the committees that meet, council committees, are very good. They are run by very good people. This is one committee though in my opinion that needs to hold the administration accountable as to economic development results and that should go directly to their performance. If they cannot produce viable economic results tax revenue to the city per program, as they are funded, within the city administration, you're going to have to excuse them from service, and get people that can perform. I think that is very reasonable. I also want you to consider very seriously, taking parking enforcement out of wherever you have it or parking compliance and make it parking enforcement. Also,

bring back vehicle abatement back to code enforcement. Because they were doing a very good job and they were bringing in revenue, state revenue to the city for doing this. This parking compliance model is not work. It's costing the city too much money. They are not solving any problems and they need to be more performance based especially with reference to this municipal regional storm drain permit. This thing is very, very nasty, Mr. Mayor, and you need to have cars, vehicles off the streets to clean them, to deal with your storm drains. This will be very costly if you do not start going down this path and from an environmental mayor this is something that should be right up your alley. Get these vehicles off the street. Thank you.

>> Mayor Reed: That concludes the open forum. We have one last item of business that's Public Safety, finance and strategic support work plan. Councilmember Constant.

>> Councilmember Constant: Motion to approve.

>> Councilmember Oliverio: Second.

>> Mayor Reed: Motion is to approve the work plan. All in favor, opposed, none opposed, now I think we're done. We're done, we're adjourned special council meeting in 45 minutes.