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>> Mayor Reed: I'd like to call the meeting to order. This is Rules and Open Government Committee meeting of October 6th, 2010. Any change to our agenda order that we need to talk about, City Clerk.

>> Lee Price: Mr. Mayor, item C, review of upcoming study sessions, we do have the October 15th joint meeting with the county board of supervisors agenda, so can you give it one more look before it goes out.

>> Mayor Reed: Okay. Then we don't have to do much for the October 12th council meeting, that agenda is cancelled although we do have a study session that day so we're not going to run out of things to work on but it won't be a regular meeting. So we'll take up the agenda for October 19th city council meeting. Anything on page 1? Page 2 or 3? Page 4 or 5? Anything on page 6 or 7? Page 8 or 9? Or 10? There was one item that the committee looked at last week, I think it was a request from Milpitas for agenda item regarding a treatment plant, I believe that was referred to the T PAC agenda, it is not on the 19th agenda, that is going to T PAC?

>> Ed Shikada: That's correct.

>> Mayor Reed: Other requests for additions? I have a request for a proclamation for national safe week, national protect your identity week and a commendation to Darren Shaw, California Association of Community Managers. Any other additions or changes?

>> Councilmember Constant: Make the motion to approve.

>> Councilmember Chirco: Second.

>> Mayor Reed: Motion is to approve with the additions. All in favor? Opposed, none opposed, that's approved. Now turn to the Redevelopment Agency agendas, October 12th, nothing. Meeting was cancelled. Due to the holiday. October 19th, draft agenda for the agency. Anything on page 1? Page 2 or 3? We have one request for a change, travel for the executive director to Seattle, October 27th and 29th. Any other changes or additions?

>> Mr. Mayor no there are no other additions or changes.

>> Motion to approve.

>> Second.

>> Mayor Reed: Motion is to approve as agenda. All in favor, opposed, none opposed, that's approved. Study session, we take up the county joint meeting under meeting schedules, I think.

>> Did you all get one?

>> No, passing one down there.

>> Mayor Reed: I think we've seen this one before.

>> Lee Price: It's the final version.

>> TTYs same, the order's changed.

>> Mayor Reed: So the topics have not changed.

>> Content still the same.

>> Mayor Reed: Any action we need to take on this or just for information?

>> Just for information. Just note that you are meeting on October the 12th for pavement management and then you are meeting on October the 15th for the joint meeting with the RDA and the board of supervisors.

>> Mayor Reed: So the October 15th meeting with the supervisors is 9:00 a.m. in the county board chambers. The study session on pavement maintenance on the 12th is here in our council chambers at what time?

>> Lee Price: 1:30.

>> Mayor Reed: 1:30. Public record is the next -- I'm sorry, Councilmember Pyle. Microphone.

>> Councilmember Pyle: Any provisions for parking over there? It's a little difficult at times.

>> Usually we reserve the circular part right in front. I'll make sure we do the same with general services.

>> City Attorney Doyle: If you still have your pass it works.

>> Councilmember Pyle: I do.

>> City Attorney Doyle: The city lot. The old city lot.

>> Mayor Reed: Okay. Good enough, Councilmember Pyle?

>> Councilmember Pyle: Uh-huh.

>> City Attorney Doyle: If you get a ticket, you didn't hear that from me.

>> Mayor Reed: Yes, don't rely on the advice of counsel. Okay, on the public record. Anything committee would like to pull for discussion? Item A, is a letter from supervisor Yeager about Alviso marina slough. I think that's

another issue we have with the county. Add it to our compendium of issues. What's next on the list, 46? We worked it down from --

>> We worked it down it's like 30 or something.

>> Mayor Reed: 30 something. Then the other question I had, conversation I had with the City Attorney yesterday, about BCDC, bay conservation and development committee, conditions around the bay based on sea level possibilities. If BCDC were to expand its jurisdiction probably makes anything we want to do around vessel sanitation, mooring of boats in the slough their territory.

>> City Attorney Doyle: It would be, it could be joint. I don't know what our role is now. I think it's best to get referred. Separately we have independent concerns ton BCDC.

>> Mayor Reed: Add it to the compendium of things that the county wants us to pay attention to. Anything else on the public record that anybody wants to pull and discuss?

>> Councilmember Constant: Motion to note and file.

>> Mayor Reed: I have one request from the public to speak on the public record. David Wall.

>> Sorry mayor, just to clarify we will add it to the compendium after the October 15th session.

>> Mayor Reed: We have the compendium. We update periodically. It will go there. Mr. Wall.

>> David Wall: Good to see you all. Once again I want to bring forward to you, item K, Consortium for Police Leadership in Equity report, a public record that is currently and constantly being denied access to the public on the City's web page. Yesterday, I referenced the video archive for the public safety, finance, strategic support committee meeting on the 16th, which this report was released, it's not a draft report. It's a complete report. It has

been distributed as the video archive will show you to various police chiefs throughout the nation. It is funded in part by the City of San José, a vast amount of police time is being used to gather this report. And the express reason why it's not or they requested it not to be posted on the Web page, because if it is, they cannot -- journals won't pick it up and circle it in the academic community. This is to their benefit, and I do not know why the City of San José is conferring all of this tax revenue through the police department in kind and not either capturing revenue on the back side of this, because this group, a political entity, in my opinion, with their own biased opinions on police officers who arrest people who are foreign nationals in the country illegally and do not report them to the immigration services. This is not for detaining people just at will because you look different or whatever. But here we have a group empowered by the council, to go under our police department, malign our police officers, there are only 60 who participated in this out of 1200, that is less than 5%. So what type of scientific report is this? In my opinion this is swill. But yet it will be codified and once it does become codified the Mercury News is certain to bring it to the forefront to say look we were right all along with all the drunk Hispanics that were picked up. But they didn't report in their news.

>> Mayor Reed: Sorry your time is up. Anybody else want to speak on the public record items? I think not, so that concludes the public testimony. Question for the City Attorney about posting documents and the public record. The report that Mr. Wall refers to is something anybody comes to the clerk's office they can get a copy. So hard copies are available but it was given to us on condition that we not post it on the Web are we required to post public records on the Web?

>> City Attorney Doyle: No, you're not required to. That's a matter of policy. The document is there, it's available. If somebody wants it, a copy will be made.

>> Mayor Reed: And what's the cost of it?

>> Lee Price: 22 cents per page.

>> Mayor Reed: But it is available to the public.

>> Lee Price: Yes, it is. And they can view it. They don't have to pay for it. They can just come to our office and view it if they'd like to.

>> Mayor Reed: Anything else on the public record? Vice Mayor.

>> Councilmember Chirco: I'd like to understand why it is not posted on the Web. It's a public document but it's only available on hard copy.

>> Lee Price: I'm wondering if Councilmember Constant may want to answer it as a member of the Public Safety, Finance and Strategic Support Committee. But the committee themselves honored the request of the CPLE representative who provided the report to the committee and as part of their action to accept that status report, they agreed to honor that request. You may want to add, I don't know.

>> Councilmember Constant: I don't have very much to add other than I specifically questioned the intention during the meeting of whether they understood that it was in fact a public record. And everybody there did agree, and that they understood it was a public record. They were requesting that it did not go online, so that it would not be widely distributed before it was peer-reviewed. And presented for publication. So based on the totality of the discussion, the committee made the decision to honor that request. So it is available, and anybody who wants to see it can go to the Clerk's office and get a full copy. Pursuant to the public records act.

>> Mayor Reed: If I could just ask, enter the question, copyright law, this is their property, intellectual property. If it's copyrighted and we have been given permission to use it, a book or anything else, doesn't mean we can distribute it further than the limits of our license.

>> City Attorney Doyle: And that's generally true. I don't know with respect to the fact that it's a public report record if that changes anything. We'd have to report back to you in terms of that. The bottom line is that it was given to the city, and the condition and the at least the committee agreed that they would not provide it,

electronically, it would only be provided if somebody made a request, in hard copy, at the clerk's office. And in honoring that commitment that was made by the committee now, you know, if -- I mean this committee can revisit it or the council can revisit it if they want to. I suggest you agendize it separately.

>> Mayor Reed: I want to know the rules. If I go to the library can I check out a book. I can read the book.

>> City Attorney Doyle: You can't publish it though.

>> Mayor Reed: I can't post it online. In fact I don't think our library can post the books online. There are limits of what can you do with something if you have possession and even though it might be a public record. Vice Mayor.

>> Councilmember Chirco: I'd like an explanation brought back to rules. I certainly respect the committee. But since this question has been asked, I think we should be able to get an answer.

>> Mayor Reed: Yeah, we can have it brought back.

>> City Attorney Doyle: It's not a problem.

>> Councilmember Constant: If I can just reply, I think from the committee's perspective it was either not have the document available to review and use it as part of our ongoing efforts to fulfill our work plan, because we would say we would release it and they wouldn't give it to us, or have the benefit of the document, comply with the state law, if someone comes in and requests it, but not widely distributed electronically. So I think we achieved a balance that allowed us to use the information in the committee meeting and have a level of trust with the persons providing us the information.

>> Councilmember Chirco: I would like a memo with an explanation to all the council so that we have a better understanding of what occurred broader than just the four councilmembers that were at that committee meeting. Because I know nothing about this.

>> Lee Price: Info memo or do you want that to come back to the committee?

>> Councilmember Chirco: We can start with an info memo and if I'm not satisfied I'll ask that it be agendaized.

>> Mayor Reed: Anything else on the public record? So we have two things here. We're taking some action on the county request, and this item. So motion on the record?

>> Councilmember Chirco: Move to note and file the rest.

>> Mayor Reed: Motion is to note and file the rest for the public record for those two items that we've discussed. All in favor, opposed, none opposed, those are approved. Moving us on to nothing to do under boards commissions and committees directly. But we have a workload assessment or council requests and referrals, report of activities from the auditor and the commission or committee question under H-3 which we'll get to but nobody to appoint on committees. So we'll move to workload assessment for council requests and referrals, I think. That's item H-1.

>> There is nothing under that today.

>> Mayor Reed: Okay, nothing under there. H-2 is a Mom memo from the City Auditor to Mayor Reed and the council dated October 1 regarding monthly report of activities for September. City Auditor is here, Sharon Erickson.

>> Sharon Erickson: Good afternoon. We issued two reports during the month of September. The first was the audit of the procurement card transactions. It went to the Public Safety committee on September 16th and you heard it at the council meeting on September 28th. And September 29th we snuck in under the wire getting it out in September, we issued our report on pension sustainability. That report will be -- we issued early. So that we could present that tonight to the general fund structural deficit elimination plan task force meeting, that is

tonight. We will be presenting a shortened version of the report to the Police and Fire board tomorrow morning. There will be a brown bag for employees on October 12th. And we'll be presented to the Federated retirement board on October 14th. All of that before it's heard by the public safety, finance and strategic support committee on October 21st. So I wanted to make sure you kind of knew the roll-out on that. We are trying to make sure because of the sensitivity of the subject, that all parties have an opportunity to hear directly from us the results of our work. And then also for on the docket for October, we have got our semiannual follow-up report on audit recommendations, the audit of take-home vehicles, and airport concessions. And then in November, we've got the annual CAFRs are due to come out, and we're pushing and hope that we can make that date. And we've got the report back on our review of Team San José, also in November. So we're busy.

>> Mayor Reed: Comments or questions?

>> Councilmember Constant: Motion to accept the report.

>> Mayor Reed: Motion is to accept, second? I just want to thank you for getting the work on the pension sustainability questions out for this task force to be able to consider it. I've read it. It's very good. There's a lot of good information that they need to have to begin their process of helping us figure out what to do next. It's good work and I know it was done in a timely manner which we appreciate, even though we accelerated the time. All in favor, opposed, none opposed, that's approved. We have a memo from City Clerk on approving next steps in implementation of the manager's budget addendum 16. City Clerk.

>> Lee Price: Thank you. I just wanted to make sure that each of the committee members received a copy of the replacement memo. There was really one change and it was the addition of a sentence that got left out. Just briefly, I will note for the background the council is part of the adoption of this year's budget adopted manager's budget addendum which we call MBAs, number 16 regarding boards and commissions. And MBA 16 did three things. First of all it reduced the total number of meetings annually for the City's advisory boards and commissions so I say advisory many I'm talking about your parks and recreation commission, senior citizens commission. I'm not talking about your quasijudicial boards or commissions like civil service, retirement boards, the Planning

Commission, your appeals hearings boards, just to clarify. So in addition to reducing the total number of meetings overall, we also introduced two tools. One is a template for a work plan and the other is a template for an annual report. The committee now has on your standing agenda place holders to approval commission and committee work plans. And those will start coming to the Rules Committee next week. We have the first two coming next week so we're very excited about that. The work plans give some structure around the mission and scope for the advisory boards and committees so that they can outline what it is they'll be doing for the next year and those documents will come to you for your approval. This item is on the agenda this afternoon because the committee last week considered the request by Martha O'Connell under the public record to provide some clear direction on the implementation of MDA number 18 as it relates to subcommittees of boards and commissions. And it was a very timely question to be presented. So in coordination to the City Manager's office the city attorney's office and also the housing director, Leslye Krutko, who has been working very, very closely with me and others on board and commission structural improvements, we put out this memo to essentially lay out the implementation plan for MBA 16. So beginning next week we'll be meeting with department heads and support staff to go over MBA 16, what does it mean, what steps do you need to take and also took this as an opportunity to address the issue of subcommittee meetings and the intervals at which they may meet. So I just wanted to clarify that all boards and commissions don't have standing subcommittees but occasionally they'll convene an ad hoc committee to go out and do research. An ad hoc committee is temporary in nature their meetings are not subject to the Brown Act but they have a very specific defined purpose. Long standing committees do have an obligation to adhere not only to the Brown Act but our own open government reforms. The work plan is really the opportunity for boards and commissions to lay out their work plan for the year and to identify any need at that time for subcommittees whether they be standing or ad hoc. But our recommendation is that subcommittees should not be meeting more regularly than the committee as a whole unless for an ad hoc purpose they've been identified and there's a need to meet more often so that they can meet that objective. So with that I'll just you know answer any questions that you have and I think you may have some public comments on this.

>> Mayor Reed: Do I. I think at one time you tried to calculate the number of hours that could be saved with these changes. And it was thousands of hours of staff time.

>> Lee Price: Yes.

>> Mayor Reed: Not an insignificant amount of dollars spent on that. So I think that's better than eliminating commissions which was sort of the other alternative, how to save some cost on that.

>> Lee Price: Right, because the work that the boards and commissions do for the council is very relevant and it's very important and we want to continue that, but by the same token without frustrating their work we want to make sure that we're balancing the workload for the commission, for the council. But primarily for the staff who support the boards and commissions.

>> Mayor Reed: When we look at the work plans starting next week will the work plans speak to the issue of subcommittees and is that just part of the work plan of how they'll carry out their work, they may have a subcommittee on some topic, and that will be part of what we see?

>> Lee Price: Yes, that's correct. We're asking that the work plans identify if there's a need of a subcommittee of some sort to get that objective met. What you'll have next week is the disability advisory commission and the housing and community development commission. The DAC has identified subcommittees that will help them achieve their goals, the housing and community development work plan does not identify any standing committees although they expect they may need some ad hoc committees to achieve those goals and again those are very short time frame.

>> Mayor Reed: Okay, any questions for the City Clerk? I do have some requests to speak on this item.

>> Councilmember Chirco: I'd like to hear the public speakers.

>> Mayor Reed: Martha O'Connell and David Wall. If you squeeze the handle the whole thing will slide down. There you go.

>> Okay, first of all, I'd like to thank Lee for this fabulous letter that was turned around in a week, and it gives us some guidance so we know what to do. I know you guys are caught between saving money and allowing the commissions to function and I'm speaking as a citizen. I need to say that and not as a commissioner. There's only one problem that I see with this, and I'm giving you a heads up. And it's good to have stuff in writing because we can tell you what a potential problem is before it happens. And that is, this issue of the ad hoc committees, are temporarily format and are not subject to the Brown Act. I'm really concerned, as a strong advocate of open and transparent government, that we not have commissions trying to do an end run around the Brown Act and saying okay you took away our subcommittees so now we're going to establish a ton of ad hoc committees. I think that particularly the senior commission youth commission disability commission and human rights commission needs interact with the public and I would hate to see a lot of their work given over to ad hoc committees, where the public is not allowed. I'm not sure if they can come, Lee, I'm not -- I'm kind of confused by the wording. Are they barred? Or what? But anyway, I'm just bringing this to your attention so that you can think about that as you're approving work plans and try to keep the process as open and transparent as possible for the folks.

>> Mayor Reed: David Wall.

>> David Wall: Martha brings up some very valid and poignant points about these ad hoc committees, and the Brown Act. But above all closing off these subcommittees or -- to the public. And I want to reference one idea from this memo. I have a significant problem as a citizen taxpayer to see the director of housing, the wife of the director of economic development, involved at any type of board or commission decision, period. To me, this is a material conflict of interest, because it mentions that you've just mentioned Mr. Mayor about housing and community development. True there is an argument that the administration needs to be in there to give guidance and possible ideas and whatnot. But as a material player in the formation of these ad hoc committees the administration should have no business into it at all. And I'm very much concerned about the suppression of information and the association of like minds that we've seen in other departments specifically the police department, with creating public policy of like minds. And appointing people out of the blue of like minds for a specific targeted political agenda to create public policy. This is significant and I think you should review this. Thank you.

>> Mayor Reed: Believe that's it. Public testimony on this item. Anyone else, all right, Vice Mayor.

>> Councilmember Chirco: Lee, could you define ad hoc, and single issue, short term, and how kind of the guiding principles within the boards and commissions?

>> Lee Price: And I'll ask Rick to jump in if more legal guidance is needed. Ad hocs truly are temporary. And under our open government sunshine rules we've defined ad hoc as six months or less, temporary, formed or used for a specific purpose. So I'll give you a pretty good example if you will allow me to do that. So our elections commission is a five-member commission. And they are occasionally asked by the council to take up a matter and do some research and come back with some sort of recommendation. So the elections commission often will -- well not often, occasionally will form an ad hoc committee of two members of the elections commission. So that they can meet, or do some online research or perhaps some telephone research, to look at maybe lobbying activity in the other six or seven cities in the state of California that have lobbying regulations. Or look at voluntary expenditure limits as it relates to campaign finance regulations and, again, very limited group of cities have voluntary expenditure limits. But they'll do some very short term research and then come back to the full commission with their -- with their findings and determination. We have learned this and therefore we recommend that the commission consider this and then the commission as a whole makes a determination and moves that forward to the city council. That's just one example of an ad hoc committee. Where they are meeting very short, short term, and eventually whatever they have come up with is going to be discussed fully by the committee as a whole before a recommendation is formulated. Ad hoc committees generally are not open to the public for that very reason. It may be two members who are independently doing some research online or by telephone, they may meet for coffee and you know, come up with their report and generally staff does not attend those meetings. They're not noticed and the public is not invited. But again, these are meant to be very short term and very specific. Not ongoing. And to the point that Ms. O'Connell brought up. We too want to make sure that the process stays open and transparent and part of the training is, to make sure that staff, at all levels that supports boards and commission, understand what an ad hoc committee is and work with them to make sure that we don't

inadvertently violate the Brown Act by use of e-mail and those kinds of things to bring in more people that should be working together on a recommendation. I don't know if there's anything else you want to add to that Rick.

>> Councilmember Chirco: So they tend to be -- they are single subject committees. They're appointed and it's never a quorum.

>> Lee Price: That's correct.

>> Councilmember Chirco: And they're appointing in the public session and they bring back the report to public session.

>> Lee Price: Yes, very good summary, yes.

>> Councilmember Chirco: And they're short term in duration. I like that explanation. And having the subcommittees will be part of the work plan. So we're having to do a lot of business differently. But I think the ad hoc committee, as you defined it, serves a purpose. And it is all appointed in public session, reported out in public session, and it is not ever a majority of the committee. So I would -- unless there's more comments I would move to approve this.

>> Mayor Reed: Motion is to approve the recommendations on the implementation. As outlined in the memorandum from the City Clerk. Well, actually it's from Norberto Duenas, and Lee Price.

>> Councilmember Chirco: Lee Price and friends.

>> Mayor Reed: All in favor, opposed, none opposed, that's approved. And the city attorney's did not even have to step in to provide further clarification.

>> City Attorney Doyle: I enjoyed the -- I like that explanation response, because I don't usually get that.

>> Mayor Reed: Something to aspire to, Rick. I think that's all the business except for the open forum. David Wall.

>> David Wall: Today I'm going to read you something. It is not a report, so you don't have to be worried about admonishing me.

>> Councilmember Constant: Can we post it?

>> David Wall: Yes, you can post it. Agency: The fiduciary relation which results from the manifestation of consent by one person to another, that the other shall act on his behalf and subject to his control, and consent by the other so to act. Here it should be noted that the manifestation of consent sets up an objective and not a subjective test so that if one by mistake manifests to another that the latter should act on his behalf, even though he is in reality not willing that the latter should act for him, an agency relation has been created. Now, we apply this to the chief of the San José police. On this advisory board for the Consortium for Police Leadership in Equity. The chief, in my opinion, has stepped over, has exceeded his authority by becoming on this advisory board for whatever purpose and therefore has become an agent for CPLE. In addition, the San José police acting as a hub for five other police agencies in the Bay Area for this type activity, shows a furtherance of this agency. I contend that as soon as the chief of the San José police stepped over that line, he should be removed immediately from command. This book is called the Horn Book. And I think there are only three people in this room that knows what a hornbook is on agency theory. I'm sorry to say this, this is not what I want to do but this is the law as it's written. Thank you.

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