



COUNCIL AGENDA: 2/12/13
ITEM: 2.3(e)

RULES AND OPEN GOVERNMENT COMMITTEE

Meeting Report
May 30, 2012

PRESENT: Mayor Reed, Vice-Mayor Nguyen and Councilmember Oliverio

ABSENT: Councilmember Constant

STAFF: Assistant City Manager Ed Shikada, City Attorney Richard Doyle, City Clerk Dennis Hawkins, Assistant City Clerk Toni Taber, Successor Agency Managing Director Richard Keit, CMO Agenda Services Manager Leanna Bieganski, Mayor's Council Agenda Manager Sara Wright, and Deputy City Clerk Tamara Davis.

A. City Council

1. Review Final Agenda for June 5, 2012

Public Comments: David Wall provided comments on Item 3.3 expressing he does not believe contractors should not get sick and vacation time when City employee benefits are being reduced.

Action: The Committee approved the agenda as amended, and deferred Item 3.3 (Compensated Time off in City Living Wage Contracts) to the June 12, 2012 City Council Meeting. The Committee assigned a Time-Certain to Item 3.4 (Planning Commission Interviews) to be heard first after the ceremonial items.

Review of Agenda for June 11, 2012

Action: The Committee approved the June 11, 2012 Special Meeting Council Agenda.

Review of Draft Agenda for June 12, 2012

Public Comments: David Wall expressed his opinion about the Library Parcel Tax.

Action: The Committee approved the agenda as amended, with Sunshine Waivers for Items 3.6 (Approve the 2012-2013 Operating and Capital Budgets for the City of San Jose and Schedule of Fees and Charges) and 9.1 (Actions Related to the Successor Agency to the Redevelopment Agency).

B. Review of Upcoming Study Session Agenda - None

C. Legislative Update

1. State

Director of Intergovernmental Relations Betsy Shotwell updated the Committee on the status of AB 57, which would, if enacted, provide Oakland and San Jose permanent seats on the Metropolitan Transportation Commission. The bill is scheduled to be heard on June 12 by the Senate Housing and Transportation Committee. Assembly Bill 2231, a bill that would require cities to pay for sidewalk repairs, is on the assembly floor. Senate Bill 1220, a bill providing funding for low-moderate housing, must get out of its house of origin by June 1, or it will be dead for this session. Assembly Bill 1692, which would repeal a lot of the compromise legislation that passed last year on municipal bankruptcy, failed in a vote on the assembly floor. However, the bill was granted reconsideration and can be voted on again by June 1, 2012.

2. Federal --None

D. Meeting Schedules

1. Approve the cancellation of the June 26, 2012 City Council meeting. (City Clerk)

Document filed: Memorandum from City Clerk Dennis Hawkins to the Rules and Open Government Committee dated May 25, 2012 regarding Cancellation of June 26, 2012 City Council Meeting.

Public Comment: David Wall expressed his objection to the cancellation of the City Council meeting.

Action: The Committee approved the cancellation of the June 26, 2012 City Council Meeting.

2. Approve the Council Meeting Schedule and Study Session Schedule for August – December 2012. (City Manager)

Documents filed: Memorandum from CMO Agenda Services Manager Leanna Bieganski to the Rules and Open Government Committee dated May 23, 2012 regarding Council Meeting Schedule and Study Session Schedule for August-December 2012.

Action: The Committee approved the Council Meeting Schedule and Study Session Schedule for August-December 2012.

E. The Public Record

Document Filed: Memorandum from City Clerk Dennis Hawkins dated May 25, 2012 transmitting the Public Record for the week of May 18 - 24 2012.

Public Comments: David Wall pulled Item (d) and thanked the staff of Fire Engine Company 1A: Captain Cesar Martinez, Fire Engineer Brian Aquino, Firefighter Paramedic Sean Newcomb, and Firefighter Glen Gardner. Mr. Wall apologized to ADA Coordinated Gay Gale for misspelling her name in a memo. Mr. Wall also thanked Ms. Gale for getting the table and chairs set-up outside of the Wing Committee Rooms.

Action: The Public Record was noted and filed.

F. Boards, Commissions and Committees - None

1. Appointments

- a. Approve the re-appointments of Richard Holden and Jessica Zenk to the Arts Commission to full terms ending June 30, 2015. (Councilmember Liccardo)
- b. Approve the appointments of Peter Allen and Tina Morrill to the Arts Commission to full terms ending on June 30, 2015. (Councilmember Liccardo)
- c. Approve the re-appointment of Karl Vidt to the Disability Advisory Commission to a full term ending June 30, 2015. (Councilmember Pyle)
- d. Approve the appointments of Emma Elias and Earl Mizuguchi to the Disability Advisory Commission to full terms ending June 30, 2015. (Councilmember Pyle)
- e. Approve the appointment of Sam Pandey to the Housing and Community Development Commission to an unexpired term ending December 31, 2014. (Vice- Mayor Nguyen)
- f. Approve the appointment of Abraham Thompson to the Human Rights Commission to an un-expired term ending December 31, 2012. (Councilmember Chu)
- g. Approve the re-appointment of Robert Levy to the Parks and Recreation Commission to a full term ending on June 30, 2015. (Councilmember Pyle)
- h. Approve the appointments of Rudy Flores and Brian Quint to the Parks and Recreation Commission to full terms ending on June 30, 2015. (Councilmember Pyle)

- i. Approve the appointment of Arash Shokoubakhsh to the Small Business Development Commission to an un-expired term ending on December 31, 2014. (Councilmember Chu)
- j. Approve the appointment of Darrold Wagner to the Traffic Appeals Commission to a full term ending on June 30, 2015. (Vice-Mayor Nguyen)
- k. Approve the re-appointment of Patrick Hall, Judith (Marie) Hayter, and Joyce Rabourn to the Senior Citizens Commission to full terms ending June 30, 2015.

Documents filed: (1) Memorandum from Councilmember Sam Liccardo to the Rules and Open Government Committee dated May 22, 2012 regarding Arts Commission Reappointments, (2) Memorandum from Councilmember Sam Liccardo to the Rules and Open Government Committee dated May 22, 2012 regarding Arts Commission Appointments, (3) Memorandum from Councilmember Nancy Pyle to the Rules and Open Government Committee dated May 17, 2012 regarding Disability Advisory Commission Appointments, (4) Memorandum from Councilmember Nancy Pyle to the Rules and Open Government Committee dated May 21, 2012 regarding Disability Advisory Commission Appointments, (5) Memorandum from Vice-Mayor Nguyen to the Rules and Open Government Committee dated May 24, 2012 regarding Housing and Community Development Commission Appointments, (6) Memorandum from Councilmember Kansen Chu to the Rules and Open Government Committee dated May 21, 2012 regarding Human Rights Commission Appointments, (7) Memorandum from Councilmember Nancy Pyle to the Rules and Open Government Committee dated May 18, 2012 regarding Parks and Recreation Commission Reappointments, (8) Memorandum from Councilmember Nancy Pyle to the Rules and Open Government Committee dated May 24, 2012 regarding Parks and Recreation Commission Appointments, (9) Memorandum from Councilmember Kansen Chu to the Rules and Open Government Committee dated May 18, 2012 regarding Small Business Development Commission Appointments, (10) Memorandum from Vice-Mayor Nguyen to the Rules and Open Government Committee dated May 24, 2012 regarding Traffic Appeals Commission Appointments, (11) Memorandum from Councilmember Pete Constant to the Rules and Open Government Committee dated May 25, 2012 regarding Senior Citizens Commission Reappointments, and (12) REPLACEMENT Memorandum from Councilmember Pete Constant to the Rules and Open Government Committee dated May 29, 2012 regarding Senior Citizens Commission Reappointments.

Public Comments: David Wall expressed support for the nominated commissioners.

Martha O'Connell thanked Councilmember Constant for reappointing the Senior Citizens Commission incumbents.

Action: The Committee approved the appointments of commissioners from Items F1a - F1k and forwarded to the City Council for formal action on June 5, 2012 City Council Agenda.

2. Workplans
3. Annual Reports

G. Rules Committee Reviews, Recommendations and Approvals

1. Workload Assessment for Council Requests and Referrals
2. Discuss Prevailing Wages – Liquidated Damages Reduction Request (City Attorney)
 - a. Determine if the matter should be forwarded to the City Council for further review so that the City Council can:
 - i. Discuss more fully the implication and parameters of a mechanism for reducing and/or waiving liquidated damages; and
 - ii. Provide appropriate direction to city Staff regarding modifying of the liquidated damages requirement of Resolution No. 71584.

Document filed: Memorandum from City Attorney Richard Doyle to the Rules and Open Government Committee dated May 16, 2012 regarding Prevailing Wages – Liquidated Damages Reduction Request.

City Attorney Richard Doyle reminded the Committee that there is very little that can be done to reduce liquidated damages because the resolution does not provide an option to reduce or eliminate liquidated damages.

Public Comment: David Wall believes the Mayor should recuse himself from a vote on the issue, since Barry Swenson Builders donated \$100,000 to the Measure B campaign. Additionally, he believes that the living wage and prevailing wage ordinances should be repealed because there is no benefit to the city taxpayers.

Action: The Committee denied the request to reduce liquidated damages in the amount of \$115,692 assessed against the Barry Swenson Builders for prevailing wage violations.

3. Approve staffs' recommendation for AB 1939 (Pan) – Dog Licensing: Issuance: Puppy Licensing and place on the City Council Agenda for June 5, 2012 for formal action. (City Manager)

Document filed: Memorandum from Assistant City Manager Edward Shikada to the Rules and Open Government Committee dated May 18, 2012 regarding AB 1939 (Pan) – Dog Licensing: Issuance: Puppy Licensing

Action: The Committee approved staffs' recommendations and place Item G3, AB 1939 (Pan) – Dog Licensing: Issuance: Puppy Licensing, on the June 5, 2012 City Council Agenda for formal action.

4. Accept the status report on potential amendments to various provisions of Title 16 of the San Jose Municipal Code. (City Manager)

Document filed: Memorandum for Assistant City Manager Edward Shikada to the Rules and Open Government Committee dated May 18, 2012 regarding Follow-up Report on Cardrooms and Title 16 Revisions

Action: The Committee accepted the Report on Cardrooms and Title 16 Revisions.

5. Agendize the adoption of a resolution demonstrating San Jose's support of marriage equality for all residents. (Councilmembers Kalra, Rocha, and Chu)

Document filed: Memorandum from Councilmembers Kalra, Rocha, and Chu to the Rules and Open Government Committee dated May 25, 2012 regarding Marriage Equality – Replacement Memorandum, (2) Statement from Neil Mammer to the Rules and Open Government Committee dated May 30, 2012 regarding Freedom to Marry, (3) Emails from Californians for Justice to the Rules and Open Government Committee dated May 30, 2012 regarding Freedom to Marry, (4) Petition from Rick Infantino et al to the Rules and Open Government Committee dated May 30, 2012 regarding Freedom to Marry.

Public Comment:

Dave Sawkins – Expressed his opinion that this is a matter of the courts and it should be left there. He believes the issue will further divide the community.

Martha O'Connell supports same-sex marriage, but is opposed to having Mayor Reed sign a resolution that is against his moral conscience.

Deborah Zimmer, Charlotte Reed, and Angela Tai requested that as a matter of public interest and openness the entire City Council should be allowed to discuss the topic.

Sixteen community members spoke in support of Same-sex marriage:

Rick Impantino, Eric Lindberg, Rhonda Harper, Jo Kenny, Alice Salee, Wiggys Silverston, Barbara Grajski, Pastor Jethroe Moore II, Fred Hirsh, Steve Klein, Lenore Sheridan, Christine Milley, Tony Alexander, Shaian Mohammadi, Anna Schultz, and Kara Mooreyham

Eleven community members spoke in opposition to same-sex marriage:

Jane Soule, Gail DeSmet, Peter Soule, Neil Mammen, Reverend Dr. John Avery Palmer, Jeff Hannon, Jerry Mungai, Sam Gonzales, Francisco Nunez, Angel Rios, and Wes Meador

Action: Vice-Mayor Nguyen motioned to support the resolution with the elimination of the last sentence that reads, "be it further resolved that the council calls upon the mayor of San Jose to stand with more than 216 other U.S. mayors and with the U.S. Conference of Mayors by signing the Mayors for freedom of marry statement in support of the freedom of the same-sex couples to marry." The motion did not receive a second.

Councilmember Oliverio entered a substitute motion to have Mayor Reed meet with representatives from both parties and report back to the Rules Committee on the issue. The motion passed unanimously.

H. Review of additions to Council Committee Agendas/Workplans – None

1. Community and Economic Development Committee
2. Neighborhood Services and Education Committee
3. Transportation and Environment Committee
4. Public Safety, Finance and Strategic Support Committee
5. Rules and Open Government Committee

I. Open Government - None

J. Open Forum

David Wall discussed the agenda language and noted that the Redevelopment Agency still needs to be changed to the Successor Agency. Mr. Wall also stated that he should be heard on any item on the agenda and this is not the reality.

K. Adjournment

The meeting was adjourned at 3:22 p.m.



Mayor Chuck Reed
Rules and Open Government Committee