
RULES AND OPEN GOVERNMENT COMMITTEE

Meeting Report

August 7, 2013

PRESENT: Mayor Chuck Reed, Vice-Mayor Madison Nguyen, Councilmember Pete Constant and Councilmember Pierluigi Oliverio.

ABSENT: None.

STAFF: City Attorney Richard Doyle, Acting City Clerk Toni Taber, City Manager Debra Figone, Assistant City Manager Ed Shikada, Mayor's Council Assistant Richard Hong, Agenda Services Gloria Schmanek, and Deputy City Clerk Kathy Carrillo.

A. City Council (City Clerk)

1. Review August 13, 2013 Final Agenda
 - a. Add New Items to Final Agenda
 - b. Assign "Time Certain" to Agenda Items (if needed)
 - c. Review of Items that Meet Exception Rule (if needed)

Public Comment: David Wall suggested that Items 3.10, 4.3, and 4.5 be deferred.

Action: The Committee approved the amended Agenda with the following additions, amendments and Approved Sunshine Waiver:

2.x (Councilmember Constant's travel to Washington D.C.); 2.x (Councilmember Kalra's travel to Chicago); Approved 14-Day Sunshine Waiver for 3.x (Terms of an Agreement with the Association of Legal Professionals of San José (ALP)); Item 6.1 dropped from Council Agenda and referred back to the Airport Competitiveness Committee.

2. Review August 20, 2013 Draft Agenda
 - a. Add New Items to Draft Agenda
 - b. Assign "Time Certain" to Agenda Items (if needed)
 - c. Review of Items that Meet Exception Rule (if needed)

Public Comment: David Wall expressed his concerns on Item 2.8.

Action: The Committee approved the Agenda as amended:
Item 3.3 move to the Consent Calendar; Item 11.3 to be heard last.

B. Review of Upcoming Study Session Agenda(s)

C. Legislative Update

1. State – No Report
2. Federal – No Report.

D. Meeting Schedules

E. The Public Record

Documents Filed: Memorandum from the Acting City Clerk Toni Taber to Mayor and City Council dated August 2, 2013, transmitting the Public Record for the week of June 7, 2013 – August 1, 2013.

Public Comment: David Wall pulled Items E.j-m, and spoke on various topics.

Martha O'Connell pulled Item E.l, stating she found it to be offensive to woman.

Action: The Committee noted and filed the public record.

F. Boards, Commissions and Committees

1. Appointments

- a. Appoint Anthony Phan to the Library and Early Education Commission to a term ending June 30, 2017; and placing the item on the August 13, 2013 Agenda for action. (City Clerk)

Documents Filed: Memorandum from Toni J. Taber, Acting City Clerk dated July 29, 2013 to the Rules and Open Government Committee forwarding the recommendations.

Action: The Committee approved Item F.1.a and forwarded it to the City Council for formal action on August 13, 2013.

2. Work Plans

- a. Approve of the Ethics Commission Fiscal Year 2013-2014 Work Plan and the Elections Commission Fiscal Year 2012-2013 Annual Report. (City Clerk)

Documents Filed: Memorandum from Toni J. Taber, Acting City Clerk dated August 2, 2013 to the Rules and Open Government Committee forwarding the recommendations.

Action: The Committee approved the Ethics Commission Annual Report for FY 2012-2013 and Workplan for FY 2013-14.

- b. Approve of the City Auditor's Fiscal Year 2013-2014 Work Plan. (City Auditor)

Documents Filed: Memorandum from Sharon W. Erickson, City Auditor, dated August 1, 2013 to the Rules and Open Government Committee forwarding the recommendations.

Public Comments: David Wall spoke in support of the City Auditor's Work Plan.

Action: The Committee approved the City Auditor's Workplan for FY 2013-14.

- c. Approve the Airport Commission Work Plan for Fiscal Year 2013-2014 recommended by staff; and the Annual Report for Fiscal Year 2012-2013 Commission Work Plan. (Airport)

Documents Filed: Memorandum from William F. Sherry, Director of Aviation, dated July 23, 2013 to the Rules and Open Government Committee forwarding the recommendations.

F. Boards, Commissions and Committees (Cont.)

Action: The Committee approved the Airport Commission Workplan for FY 2013-14 and FY 2012-2013 Annual Report.

Public Comments: Keith Graham spoke in opposition to the Airport Commission Workplan.

3. Annual Reports

G. Rules Committee Reviews, Recommendations and Approvals

1. Workload Assessment for Council Requests and Referrals.

2. Shakespeare in the Park:

Approve Shakespeare in the Park as a City Council sponsored Special Event, and expending funds and accepting donations from various individuals, businesses, or community groups to support the event, placing the item on the August 13, 2013 Agenda for action. (Oliverio)

Documents Filed: Memorandum from Councilmember Peirluigi Oliverio dated August 1, 2013 to the Mayor and City Council forwarding the recommendations.

Public Comment: Richard Zappelli spoke in support of Shakespeare in the Park.

Action: The Committee approved Item G.2 and forwarded it to the City Council for formal action on August 13, 2013.

3. SEMANA Jalisco "Jalisco Magico" Events:

Approve Semana Jalisco 2013 "Jalisco Magico" events as a City Council sponsored Special Event, and expending funds and accepting donations from various individuals, businesses, or community groups to support the event, placing the item on the August 13, 2013 Agenda for action. (Campos)

Documents Filed: Memorandum from Councilmember Xavier Campos dated August 1, 2013 to the Mayor and City Council forwarding the recommendations.

Action: The Committee approved Item G.3 and forwarded it to the City Council for formal action on August 13, 2013.

4. Immigration Fraud Awareness:

Approve the District 5 Immigration Fraud Awareness Event as a City Council sponsored Special Event, and expending funds and accepting donations from various individuals, businesses, or community groups to support the event, placing the item on the August 13, 2013 Agenda for action. (Campos)

Documents Filed: Memorandum from Councilmember Xavier Campos dated August 1, 2013 to the Mayor and City Council forwarding the recommendations.

Action: The Committee approved Item G.4 and forwarded it to the City Council for formal action on August 13, 2013.

G. Rules Committee Reviews, Recommendations and Approvals (Cont.)

5. Approval of District 3 HP Grant to College of Adaptive Arts, forwarding a recommendation to the City Council to approve a grant of \$250.00 to the College of Adaptive Arts, an IRS-recognized 501 (c)3 public charity to be paid from the budgeted District 3 HP Fund, which is funded by the Arena Community Fund City-Wide appropriation. (Liccardo)

Documents Filed: Memorandum from Councilmember Sam Liccardo dated July 30, 2013 to the Mayor and City Council forwarding the recommendations.

Action: Item G.5 was dropped.

6. Public Calendars: Accept the report on posting of public calendars by City Officials on the City's web site. (City Manager)

Documents Filed: Memorandum from Director of Communications David Vossbrink dated July 30, 2013 to the Mayor and City Council forwarding the recommendations.

Director of Communications David Vossbrink responded to questions from the Committee.

Public Comments: David Wall stated he believes posting the calendars is a waste of time.

Action: The Committee accepted the report as submitted.

7. 2013 League of California Cities Voting Delegate and Alternate Voting Delegate at the Annual Business Meeting:
Approve the proposed designation of Councilmember Rose Herrera as the voting delegate, and Councilmember Pete Constant, as the alternate voting delegate at the September 20, Annual Business Meeting for the League of California Cities (LOCC), and placing the item on the August 13, 2013 Agenda for action. (City Manager)

Documents Filed: Memorandum from Director, Intergovernmental Relations Betsy Shotwell dated July 31, 2013 to the Rules and Open Government forwarding the recommendations.

Action: The Committee approved Item G.7 and forwarded it to the City Council for formal action on August 13, 2013.

8. "The Chess Clock" And "Open Data" Initiative: Improving City Hall's Accountability and Efficiency: Evaluate and return to the Community and Economic Development Committee (CED) with a recommendation to:
 - a. Issue a Request for Proposals (RFP) for consulting services to fully implement "Chess Clock" software to make our development services process more transparent and accountable, and
 - b. Enable the "Chess Clock" data to be released, with appropriate privacy protections, on an "open data" platform, to which the public and business community would have access, and

G. Rules Committee Reviews, Recommendations and Approvals (Cont.)

- c. Explore, in consultation with community partners, such as Code for America, Hackers & Founders – San Jose, SVG Partners, and others, whether a City-hosted “hack-a-thon” could incentivize the creation of software applications that could provide customers with the “real-time” status of their permits and planning applications, or otherwise improve the relevant City processes. (Liccardo/Khamis)

Documents Filed: Memorandum from Councilmember’s Sam Liccardo and Johnny Khamis dated July 9, 2013 to the Rules and Open Government forwarding the recommendations.

Director of Planning, Building, and Code Enforcement Joe Horwedel and Councilmember Sam Liccardo were available to answer questions from the Committee.

Public Comments: Gerry De Young representative of the San José/Silicon Valley Chamber of Commerce spoke in support of Item G.8 and David Wall spoke in opposition of Item G.8.

Action: The Committee approved Item G.8, and referred it to staff to evaluate and return to the Community and Economic Development Committee (CED).

9. Rules and Open Government referrals to the Elections Commission:
The Elections Commission recommends no change to Title 12 related to referrals regarding: (1) campaign contribution limits and voluntary expenditure limits; (2) electioneering communication disclosures; and (3) elections and recounts. (City Clerk)
[Deferred from Rules on 6/5/13]

Documents Filed: Memorandum from Toni Taber Acting City Clerk dated May 31, 2013 to the Rules and Open Government forwarding the recommendations.

Discussion: City Attorney Arlene Silva answered questions from the Committee regarding voluntary expenditure limits.

Action: The Committee approved Item G.9 and forwarded it to the City Council for formal action on August 20, 2013.

10. Ethics Commission Title 12 revisions and revisions to Administrative procedures:
Provide feedback and direction to Title 12 and to certain Administrative procedures.
(City Clerk)

Documents Filed: Memorandum from Toni Taber Acting City Clerk dated August 2, 2013 to the Rules and Open Government forwarding the recommendations.

Action: The Committee approved Item G.10 and forwarded it to the City Council for formal action on August 20, 2013.

G. Rules Committee Reviews, Recommendations and Approvals (Cont.)

11. Second Tier for Fire Union:

Request City Manager to freeze hiring of new firefighters until the Firefighter Union accepts second tier pension plan for new employees. (Oliverio)

Documents Filed: Memorandum from Councilmember Pierluigi Oliverio dated June 19, 2013 to the Rules and Open Government forwarding the recommendations.

Discussion: The Committee had a brief discussion, City Manager Debra Figone noted that she can implement a hiring freeze without City Council approval, and will provide an Informational Memorandum to the Committee.

Public Comments: David Wall spoke in opposition to a Second Tier Retirement for the Fire Department employees.

Action: The Committee referred Item G.11 to staff to return with an Informational Memorandum at a later date.

12. Adult Entertainment Regulations:

Direct the City Manager and City Staff to explore and bring to Council any of the following regulations relating to adult-themed “bikini bars”, “cabaret clubs” or “gentlemen’s clubs,” that appear enforceable within the bounds of the First Amendment of the U.S. Constitution and Proposition 218, that can be tailored to address “secondary effects” of the operations of such clubs, including but not limited to: (See Memorandum for full text). (Liccardo)

Documents Filed: Memorandum from Councilmember Sam Liccardo dated July 30, 2013 to the Rules and Open Government forwarding the recommendations.

Discussion: The Committee had a brief discussion, Councilmember Sam Liccardo and Director of Planning, Building and Code Enforcement Joe Horwedel answered questions from the Committee.

Public Comments:

Sandra Escobar representing AJ Bar provided some history on the bar. Andy Russo owner of AJ Bar and Bikini Bar stated these proposed regulation would harm his business. Martha O’Connell spoke in support of Item G.12, and David Wall commented on several other similar establishments in the City of San José.

Action: The Committee referred Item G.12 to the Ordinance Prioritization Session.

13. Use of First Class Mail to Deliver Notices Required by the Mobile home Rent Ordinance:

It is recommended that the Rules and Open Government Committee accept this report regarding the use of first class mail by the Housing Department’s Rental Rights and Referrals Program (“RRRP”) to deliver notices required pursuant to the City’s Mobile home Rent Ordinance, Chapter 17.22 of the San José Municipal Code. (Housing)

G. Rules Committee Reviews, Recommendations and Approvals (Cont.)

Documents Filed: Memorandum from Leslye Corsiglia Director of Housing dated July 9, 2013 to the Rules and Open Government forwarding the recommendations.

Public Comments: David Wall spoke in support of Item G.13.

Action: The Committee accepted the report, with direction to staff to ensure mailing remains as recommended by policy.

14. Mayor's 2013 Biennial Ethics Review and Recommendations:

That the Rules and Open Government Committee agendaize the following for the August 13, 2013 City Council Meeting: (Mayor)

- a. Direct the City Attorney to work with the City Clerk and City Manager to draft an Ordinance that codifies Open Government policies and practices previously adopted in pilot form to ensure ethical and open government. These policies include the Reed Reforms, Sunshine Reforms, and Procurement Reform. (See memorandum for full text).

Documents Filed: Memorandum from Mayor Chuck Reed dated August 1, 2013 to the Rules and Open Government forwarding the recommendations.

Action: The Committee approved Item G.14 and forwarded it to the City Council for formal action on August 20, 2013.

ITEMS G.15, G.16, AND G.17 WERE HEARD CONCURRENTLY.

15. Accept the Audit of Consultant Agreements and agendaize for full council discussion on August 20, 2013. (Public Safety, Finance and Strategic Support Committee)

Documents Filed: Consulting Agreements: Better Enforcement of Procurement Rules, Monitoring, and Transparency is Needed dated June 2013.

16. Accept the Audit of Regional Wastewater Facility Master Agreements and agendaize for full council discussion on August 27, 2013. (Public Safety, Finance and Strategic Support Committee)

Documents Filed: Regional Wastewater Facility Maser Agreements: New Procedures and Better Contract Management Needed.

17. Consultant Agreements:

- a. Direct the City Manager to initiate a thorough investigation of consultant agreements and provide a timeline for the implementation of changes. (Chu)

G. Rules Committee Reviews, Recommendations and Approvals (Cont.)

- b. Direct the City Manager to consider the following as the administration works on updating current policies and procedures:
 - City Manager's Office to oversee all consultant agreements and oversight
 - Place limits on contract length
 - Enforcing consequences for failure to follow the procurement process
- c. Report findings to the City Council.

Documents Filed: Memorandum from Councilmember Kansen Chu dated August 1, 2013 to the Rules and Open Government forwarding the recommendations.

Discussion: Discussion followed, the Committee took Items G.15, G.16, and G.17 together and heard comments from the public on all three items. Councilmember Kansen Chu provided further explanation for Item G.17.

Public Comments: David Wall spoke on three separate contracts with the City of San José.

Action: The Committee accepted and approved Items G.15, G.16, and G.17 and forwarded it to the City Council for formal action on September 10, 2013.

18. CPUC Decision Regarding Ridesharing:
Agendize City Council discussion and potential action on the California Public Utilities Commission (CPUC) recommendation regarding ridesharing for the August 13th Council Meeting. (Constant)

Documents Filed: Memorandum from Councilmember Pete Constant dated August 2, 2013 to the Rules and Open Government forwarding the recommendations.

Discussion: Councilmember Pete Constant requested that the item be referred to staff.

Action: The Committee referred Item G.18 to the City Manager's staff.

H. Review of additions to Council Committee Agendas/Workplans

1. Community and Economic Development Committee
2. Neighborhood Services and Education Committee
3. Transportation and Environment Committee
 - a. Approve the Transportation and Environment Committee Workplan for the period August through December 2013 and setting its meeting schedule on the first Monday of each month (except as noted for special meetings) at 1:30 p.m. in Rooms W118-119. (Mayor/Liccardo)

Documents Filed: Memorandum from Mayor Chuck Reed and Chair Sam Liccardo dated August 26, 2013 to the Rules and Open Government forwarding the recommendations.

H. Review of additions to Council Committee Agendas/Workplans (Cont.)

Public Comment: David Wall spoke on unfair sewer rate billing.

Ed Shikada, Assistant City Manager, made two amendments to Item H.3.a Transportation & Environment Committee Workplan, the amendments are as follows:

1. Delete South Bay Water Recycling Update on Strategic Planning Effort listed in September.
2. Move Strategic Energy Action Plan Update listed in October to November.

Action: The Committee approved Item H.3.a., with amendments.

4. Public Safety, Finance and Strategic Support Committee
 - a. Approve the Public Safety, Finance and Strategic Support Committee Workplan for the period August through December 2013 and setting its meeting schedule on the third Thursday of each month at 1:30 p.m. in the City Council Chambers, or as noticed.
(Mayor/Constant)

Documents Filed: Memorandum from Mayor Chuck Reed and Chair Pete Constant dated August 26, 2013 to the Rules and Open Government forwarding the recommendations.

Ed Shikada, Assistant City Manager, added the Reverse 911 calls referral from the Rules and Open Government to September.

Action: The Committee approved Item H.4.a with the amendment.

I. Open Government

1. Appeals of Public Records Act Request

J. Open Forum

David Wall spoke on issues regarding the Applegate Johnson Agreement with the City of San José.

K. Adjournment.

The meeting adjourned at 3:47 p.m.



Mayor Chuck Reed
Rules and Open Government Committee