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**RULES AND OPEN GOVERNMENT COMMITTEE**

Meeting Report  
April 2, 2014

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

**ABSENT:** None.

**STAFF:** City Manager Ed Shikada, City Attorney Richard Doyle, Assistant City Clerk Tom Graves, Mayor's Agenda Services Manager Ahmad Chapman, Agenda Services Manager Gloria Schmanek and Executive Analyst II Ernest Azevedo, and Deputy City Clerk Kathy Carrillo.

**A. City Council (City Clerk)**

1. Review March 8, 2014 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)

Action: Upon motion by Councilmember Constant, seconded by Vice-Mayor Nguyen and carried unanimously, the following item was approved:

- a. Add new items to Final Agenda: A ten-day sunshine waiver for release of staff memorandum and legal documents was approved for Item 3.4 (Approval of an Ordinance Related to Sworn Employees who do not Qualify for Disability Retirement.) (4-0).
2. Review March 15, 2014 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)

Action: Upon motion by Councilmember Constant seconded by Vice-Mayor Nguyen and carried unanimously, the following items were approved:

- a. Add new items to Draft Agenda: A twenty-eight day sunshine waiver was approved for item 4.1 (Lease Agreement for United States Federal Government for Regional Patent and Trademark Office.);
- b. Assign "Time Certain" to Agenda Items (if needed): Item 4.1 to be heard directly after the Ceremonial items. (4-0).

**B. Review of Upcoming Study Session Agenda(s)**

Mayor Chuck Reed noted to staff the need to discuss the Urban Village Study Session workplan at the April 9, 2014 Rules Committee meeting.

**C. Legislative Update**

1. State – None.
2. Federal - None.

**D. Meeting Schedules**

**E. The Public Record**

None.

**F. Boards, Commissions and Committees**

1. Appointments

None.

2. Work Plans

None.

3. Annual Reports

None.

**G. Rules Committee Reviews, Recommendations and Approvals**

1. Workload Assessment for Council Requests and Referrals.

2. Districts 6 Annual Willow Glen History Night Part Two (Oliverio)

Approval of District 6 Annual Willow Glen History Night Part Two on April 7, 2014, sponsored as a City Council Special Event and approve expenditure of funds and accepting donations from various individuals, businesses, or community groups to support the event and placing the item on the April 8, 2014 Council Agenda for action and approve a ten-day sunshine waiver.

Documents Filed: Memorandum from Councilmember Pierluigi Oliverio to the Mayor and City Council dated March 26, 2014, forwarding the recommendations.

Action: Upon motion by Councilmember Oliverio, seconded by Councilmember Constant and carried unanimously, Item G.2 was approved, placing the item on the April 8, 2014 Council Agenda for action, and approving a ten-day sunshine waiver. (4-0).

3. Districts 5 Family Science Night (Campos)

Approval of District 5 Family Science Night event on April 10, 2014, sponsored as a City Council Special Event and approve expenditure of funds and accepting donations from various individuals, businesses, or community groups to support the event and placing the item on the April 8, 2014 Council Agenda for action and approve a ten-day sunshine waiver.

Documents Filed: Memorandum from Councilmember Xavier Campos to the Mayor and City Council dated March 26, 2014, forwarding the recommendations.

Action: Upon motion by Councilmember Oliverio, seconded by Councilmember Constant and carried unanimously, Item G.3 was approved, placing the item on the April 8, 2014 Council Agenda for action, and approving a ten-day sunshine waiver. (4-0).

4. San Jose E-Cigarette Regulation (Herrera)

Direct staff to draft an amendment to city ordinance title 9 section 44 that would regulate non-prescription electronic smoke and vaporizing products in the same way as traditional tobacco products within the City of San José.

Documents Filed: Memorandum from Councilmember Rose Herrera to the Rules and Open Government Committee dated March 27, 2014, forwarding the recommendations.

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

City Attorney Richard Doyle responded to the Committee's questions and noted that the item be referred to the Priority Setting Session.

Councilmember Rose Herrera spoke on her memorandum and responded to the Committee's questions.

Public Comments: Hewitt Joyner and Martha O'Connell spoke in support of item G.4.

Action: Councilmember Constant, moved to refer Item G.4 to the Priority Setting Session with a second by Councilmember Oliverio. Motion failed with a 2-2 vote. (2-2, noes: Mayor/Nguyen).

Staff was directed to return in two weeks to the Rules and Open Government Committee with the City Attorney prepared to answer whether or not e-cigarettes are currently illegal under the existing ordinance and include looking at existing FDA opinions.

5. Amendments to the Airport Ground Transportation Program (Campos)

Bring to the full Council for approval the following changes to be incorporated as part of the new Airport Ground Transportation program.

- 1) Recommend as part of the initial phase-in of the new Airport On-Demand Taxicab system a 3-year moratorium on any new cab companies from servicing the Airport; after the third year staff should determine through a "needs and necessities" process whether passenger demand supports any new taxi companies' increases.
- 2) For the first five years of the new Airport Ground Transportation program, to require any new taxi servicing the airport to have been DOT GPS approved either on or before March 4, 2014.
- 3) Require new taxi companies to have a minimum 3 year experience operating taxis in San Jose.
- 4) Continue to allow individual drivers to apply for Taxi Driver permits in the City of San Jose.

Documents Filed: Memorandum from Councilmember Xavier Campos to the City Council dated March 26, 2014, forwarding the recommendations.

Councilmember Xavier Campos offered further explanation regarding his memorandum and was available to answer the Committee's questions. Director of Aviation Kimberly Becker Aguirre provided further explanation in regards to the impact to the airport and was available to answer the Committee's questions and provide further explanation.

Actions: Vice-Mayor Nguyen, moved to refer Item G.5 to the City Council Agenda with a second by Mayor Reed. Motion failed with a 2-2 vote. (2-2, Noes: Constant/Oliverio).

Upon motion by Vice-Mayor Nguyen, seconded by Mayor Reed and carried unanimously, to refer Item G.5 to the Transportation and Environment Committee Workplan, Item G.5 was approved. (4-0).

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

6. Disability Retirement & Measure B (Public Employee Pension Plan Amendments) (Rocha)  
That the Rules Committee agendaize the below action for Council consideration under item 3.4 on the April 8<sup>th</sup> Council Meeting, as an option for the Council to consider in addition to the proposed recommendation.
- 1) Direct staff to return in 30 days with a proposal to amend the Charter's disability retirement provisions for the purpose of resolving employee retention issues that arise from the current disability retirement rules. Staff's proposal should be comparable with CalPERS, and should allow for the Council to potentially place a measure on the ballot in November 2014.
  - 2) Direct staff to return to Council on the same timeframe as in item 1 with draft language for potential amendments to the City Charter that achieve the goals listed below. It's important to note that we'd only be asking for preliminary analysis-the Council would of course retain discretion as to whether to pursue meet and confer and potentially place charter amendments on the ballot in November 2014.
    - a. Eliminate section 1514-A, which requires the Council to cut employee compensation if section 1506-A (b) is struck down.
    - b. Revise section 1508-A to allow retirement at age 62 for Federated employees and 57 for public safety employees and to allow an accrual rate of 2.5% for public safety employees and 2% for Federated employees, consistent with the CalPERS second tier.
    - c. Confirm that if benefit parameters were increased by the voters as recommended above, the Council would be able to increase Tier 2 benefits without returning to the voters.
    - d. Amend section 1508-A (h) to provide that employees do have a vested right to Tier 2.
    - e. Amend the charter to provide that employees who have left City service in Tier 1 may return to city service in Tier 1 instead of going into Tier 2.
    - f. Develop a truly voluntary election program that could survive legal scrutiny and potentially gain the support of our bargaining units.
  - 3) Take action to agendaize an open session Council decision as to whether to pursue an appeal of the Measure B (Public Employee Pension Plan Amendments) ruling.

Documents Filed: Memorandum from Councilmember Donald Rocha to the Rules and Open Government dated March 26, 2014, forwarding the recommendations.

Discussion: There was a brief discussion on the Brown Act; the City Attorney Richard Doyle clarified the Brown Act rules.

Councilmember Donald Rocha spoke on his memorandum and was available to answer the Committee's questions.

Action: Upon motion by Councilmember Constant, seconded by Vice-Mayor Nguyen and carried unanimously, to refer Item G.6 to the City Council Agenda in Closed Session, date to be determined by staff, Item G.6 was approved. (4-0).

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

7. Disability Retirement and Right of Return for former City Employees (Herrera)  
Request the Rules Committee to agendize the following actions and consider them under item 3.4 on the April 8<sup>th</sup> City Council Meeting.
- 1) Direct staff to return in 30 days with a proposed amendment(s) to the charter that would include an option of a Right of Return for former San Jose Police officers to return to Tier 1 for a defined period of 90 or 120 days and present the language of said amendment in time for council to decide whether to place it on the ballot in November 2014.
  - 2) Direct staff to return in 30 days with a standardized definition of disability comparable to the one used by CalPERS and present the language of said amendment in time for council to decide whether to place it on the ballot in November 2014.
  - 3) State our intent as a council to make no further changes or amendments to the city charter that would diminish or reduce voter-approved Measure B.
  - 4) State our intent as a council to only examine areas that would not alter the spirit of the measure the voters passed but only take into consideration changing sections that need clarification or modification.

Documents Filed: Memorandum from Councilmember Rose Herrera to the Mayor and City Council dated March 27, 2014, forwarding the recommendations.

Councilmember Rose Herrera spoke on her memorandum and was available to answer the Committee's questions.

Public Comments: Richard McCoy and Martha O'Connell spoke in support of Item G.7.

Action: Upon motion by Councilmember Constant, seconded by Vice-Mayor Nguyen and carried unanimously, to refer Item G.7 to the City Council Agenda in Closed Session, date to be determined by staff, Item G.7 was approved. (4-0).

8. Lending the Police a Hand: Crowd Sourcing Video Evidence (Liccardo)  
Accept the staff report to the Rules and Open Government Committee and refer to Council through the Public Safety & Finance Committee, to evaluate whether, and how:
- a. The City can create, with minimal cost, a neutral database enabling San Jose residents, business owners, and other property owners to voluntarily register the location and type of their video surveillance equipment for future use (upon request) for Police Department investigations; and
  - b. The City can engage with private video surveillance companies to offer "bulk discounts" for those property owners who seek both (a) to install their own systems, and (b) register those systems with the City.

Documents Filed: Memorandum from Councilmember Sam Liccardo to the Rules and Open Government Committee dated March 27, 2014, forwarding the recommendations.

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

The Committee combined Item G.8 and Item G.9 together to be heard as one item.

Councilmember Sam Liccardo thanked his colleagues for their support of his memorandum and was available to answer the Committee's questions.

9. Registration of Privately-Owned Surveillance Cameras. (City Manager)

Accept the Administration's report regarding creation of a cost neutral and workload passive database which would allow San José residents to voluntarily register the location and type of their video surveillance equipment for future potential use of captured footage by the Police Department in its investigations.

Documents Filed: Memorandum from Assistant to the City Manager Angelique Gaeta to the Rules and Open Government Committee dated March 26, 2014, forwarding the recommendations.

Action: Upon motion by Councilmember Constant, seconded by Councilmember Vice-Mayor Nguyen and carried unanimously, to move both Items G.8 and G.9 forward, accepting the staff reports and referring both items to the Public Safety, Finance and Strategic Support Committee for the May 2014 meeting. (4-0).

10. Firefighter Breathing Air Replenishment Systems. (Fire/City Attorney)

Accept staff's report confirming San José Firefighters Local 230's position on the use of Firefighter Breathing Air Replenishment Systems (FBARS) in high-rise buildings; and, regarding whether requiring the installation of a breathing air replenishment system in high-rise buildings limits the public to the use of a proprietary system.

Documents Filed: (1) Memorandum from Interim Fire Chief Ruben Torres and City Attorney Richard Doyle to the Rules and Open Government Committee dated March 27, 2014, forwarding the recommendations. (2) Document submitted by Richard DeLaRosa to the Rules and Open Government Committee dated April 2, 2014, regarding Assertions and Rebuttals

Interim Fire Marshal Ruben Torres gave a brief explanation on FBARS and stated his recommendation. Councilmember Pete Constant stated there has been some misconception on the cost of the FBARS systems; they are considerably less than was previously quoted,

Public Comments: Richard DeLaRosa spoke in support of Item G.10.

Action: Councilmember Constant, moved to forward Item G.10 to the City Council Agenda for reincorporation of the Fire Code, seconded by Councilmember Vice-Mayor Nguyen. Motion failed with a 2-2 vote. (2-2, noes: Mayor Reed/Oliverio).

11. Fireworks Policy Review. (Fire/Police)

- 1) Accept staff's report recommending the continued ban on fireworks in the City, with the exception of controlled and permitted displays open to the public; and, recommending the continued collaboration with the community to provide public education on the use of illegal fireworks through Press Information Offices, Neighborhood District meetings and newsletters.

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

- 2) Direct staff to evaluate the outcome of the following 4th of July events being organized for 2014 and report their findings to the Rules and Open Government Committee so that, depending on the outcome of these events, the Committee could request the City Council to direct the Administration to explore partnering with private organizations to co-sponsor future firework displays in the City:
  - a. The Rotary's Discovery Meadow event;
  - b. San José Giant's Muni Stadium event; and
  - c. Almaden Lake Fun Festival.

Documents Filed: (1) Memorandum from Interim Fire Chief Ruben Torres and Chief of Police Larry Esquivel to the Rules and Open Government Committee dated March 26, 2014, forwarding the recommendations. (2) Document submitted by Dennis Revell to the Rules and Open Government Committee dated April 1, 2014, regarding American Promotional Events, (dba TNT Fireworks).

Staff presented a power point presentation on the history of safe and sane fireworks in the City of San José and held a questions and answer session after the presentation.

Public Comments: Dennis Revell, Grant Beach and Victor Morris spoke in support of lifting the ban on safe and sane fireworks.

Martha O'Connell spoke in opposition of lifting the ban on safe and sane fireworks.

Action: Upon motion by Councilmember Constant, seconded by Councilmember Oliverio and carried unanimously, to accept the staff's recommendation for both reports, Item G.11 was approved. (4-0).

12. Proposed Revisions to Title 12 of the San Jose Municipal Code and the Regulations and Procedures of the San Jose Ethics Commission (City Attorney/City Clerk)

Place the following item on the April 15, 2014, City Council agenda to consider:

- 1) Approval of an ordinance of the City of San José amending Chapter 12.04 of Title 12 of the San José Municipal Code relating to the San José Ethics Commission and amending Section 12.16.040 of Chapter 12.16 of Title 12 to make a technical correction to the date to file disclosure reports for fundraising solicitations by elected City officials on a quarterly basis.
- 2) Adoption of a resolution revising the regulations and procedures of the San José Ethics Commission, and repealing Resolution No. 75640, which sets forth the current regulations and procedures for the San José Ethics Commission's investigations and hearings.

Documents Filed: Memorandum from City Attorney Richard Doyle and City Clerk Toni Taber to the Rules and Open Government Committee dated March 28, 2014, forwarding the recommendations.

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

Action: Upon motion by Councilmember Constant, seconded by Vice-Mayor Nguyen and carried unanimously, to accept the recommendation, placing the item on the April 15, 2014 City Council Agenda, Item G.12 was approved. (4-0).

**H. Review of additions to Council Committee Agendas/Workplans**

1. Community and Economic Development Committee  
None.
2. Neighborhood Services and Education Committee  
None.
3. Transportation and Environment Committee  
None.
4. Public Safety, Finance and Strategic Support Committee
5. Rules and Open Government Committee  
None.

**I. Open Government**

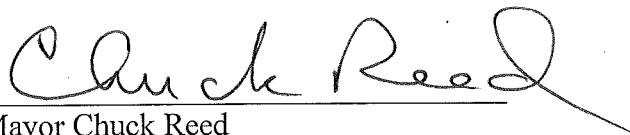
1. Appeals of Public Records Act Request  
None.

**J. Open Forum**

Martha O'Connell voiced her concerns regarding no affordable housing in urban villages.

**K. Adjournment.**

The meeting adjourned at 3:52 p.m.



Mayor Chuck Reed  
Rules and Open Government Committee