



**MINUTES OF THE
RULES AND OPEN GOVERNMENT COMMITTEE**

SAN JOSE, CALIFORNIA

WEDNESDAY, OCTOBER 29, 2014

The Rules and Open Government Committee of the City of San José convened in Regular Session at 2:03 p.m. in the Committee Rooms 118-120, Council Wing, City Hall.

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

ABSENT: All present.

STAFF: City Manager Ed Shikada, City Attorney Richard Doyle, Mayor's Agenda Assistant Ahmad Chapman, Agenda Services Manager Gloria Schmanek, City Clerk Toni J. Taber, Assistant City Clerk Tom Graves, and Deputy City Clerk Suzanne Guzzetta.

CITY COUNCIL (CITY CLERK)

- (1) Review November 4, 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)

Public Comment: David Wall expressed objections to Item 4.2.

Action: Upon motion by Councilmember Constant, seconded by Vice Mayor Nguyen and carried unanimously, the Committee approved the agenda including the following sunshine waivers, additions, and changes: sunshine waiver for Item 3.3 and Item 5.1, add section (b) to Item 2.7, and Item 2.7 to be heard before consent. (4-0.)

- (2) Review November 11, 2014 Draft Agenda**
None – Meeting Cancelled

REVIEW OF UPCOMING STUDY SESSION AGENDA(S)

- (1) Review of November 7 Special Meeting Amended Agenda. (City Manager/City Clerk)**

Documents Filed: Draft Amended Agenda for the November 7 Special Meeting.

REVIEW OF UPCOMING STUDY SESSION AGENDA(S)

(1) Review of November 7 Special Meeting Amended Agenda. (City Manager/City Clerk)

Public Comment: Elisa Hwang-Mendez, Riko Mendez, Irma Marfil, and Thomas Marfil asked the Committee to add discussion of El Tarasco Bar to the November 7th agenda. David Wall commented on maintaining police officers.

City Attorney Rick Doyle provided an update on the status of El Tarasco bar and the City's response and answered questions from the Committee.

Action: Upon motion by Councilmember Constant, seconded by Vice Mayor Nguyen and carried unanimously, the agenda was approved. (4-0.)

LEGISLATIVE UPDATE

- (1) State – None.
- (2) Federal – None.

MEETING SCHEDULE

None.

THE PUBLIC RECORD

Documents Filed: Memorandum from City Clerk Toni J. Taber transmitting the Public Record for the Week of October 17 – 23, 2014.

Councilmember Oliverio offered comments on Item (2) regarding airport noise.

Public Comment:

David Wall opined on Items (1), (2), and (3).

Martha O'Connell pulled Item (1) and provided additional information related to her letter.

Action: Upon motion by Councilmember Constant, seconded by Councilmember Oliverio and carried unanimously, the public record was noted and filed. (4-0.)

BOARDS, COMMISSIONS AND COMMITTEES

- (1) Appointments
 - a. Work2Future Board Nomination. (Mayor)
Approve the appointment of Terry Newman as a representative on the Work2Future Board of Directors.

Documents Filed: Memorandum from Mayor Reed to the Rules and Open Government Committee, dated

Action: Upon motion by Vice Mayor Nguyen, seconded by Councilmember oliverio and carried unanimously, the appointment was approved. (4-0.)

- b. Civil Service Commission Appointments. (City Clerk)
Reappoint Michael Wilcoxon to the member-at-large position and Margaret Akdeniz to the Attorney-at-Law position on the Civil Service Commission to terms expiring November 30, 2018 and place on the November 18, 2014 City Council Agenda for approval.

Documents Filed: Memorandum from City Clerk Toni J. Taber to the Rules and Open Government Committee, dated October 24, 2014, entitled, "Civil Service Commission Appointments."

Action: No action taken.

- (2) Work Plans – None.
- (3) Annual Reports – None.

RULES COMMITTEE REVIEWS, RECOMMENDATIONS AND APPROVALS

- (1) Workload Assessment for Council Requests and Referrals. – None.
- (2) **2014 National League of Cities Voting Delegate at the Annual Business Meeting. (City Manager)**

Approve the proposed designation of Councilmember Pete Constant as the voting delegate at the November 22, 2014 Annual Business Meeting for the National League of Cities (NLC). A one-week turnaround to Council on November 4, 2014 is requested in order to inform the NLC of the City's representative.

Documents Filed: Memorandum from Director of Intergovernmental Relations Betsy Shotwell to the Rules and Open Government Committee, dated October 23, 2014, entitled, "2014 National League of Cities Voting Delegate at the Annual Business Meeting."

Action: Upon motion by Vice Mayor Nguyen, seconded by Councilmember Oliverio and carried unanimously, the recommendation was approved and placed on the November 4, 2014 City Council agenda for final action. (4-0.)

RULES COMMITTEE REVIEWS, RECOMMENDATIONS AND APPROVALS

(3) Police Recruits. (Mayor)

- a. Place the following matters on the City Council agenda for November 4, 2014:
 1. Appointment of an independent investigator to investigate the recruiting, hiring and training process for the last three police academies to determine:
 - If city employees have engaged in improper activities to suppress the number of new officers joining the San Jose Police Department and to induce new officers to leave the department while in training;
 - If improper activities took place on city-paid time, used city facilities or communication systems;
 - If allegations about statements made to the current academy class by the president of the Police Officers' Association, as alleged by Elyse Rivas, in the San Jose Mercury News, October 19, 2014, p.A19, are true;
 - If the alleged statements, which were made to the academy class during an official city training program, violated the California laws prohibiting the use of city resources for campaign activity; and
 - If any other laws, ethical codes, or city policies have been violated by city employees in the recruiting, hiring and training process.
 2. Appointment of a City Council Ad Hoc Committee to manage the investigation until the results are brought back to the full Council for review and action.
- b. Direct the City Attorney to put all city employees on notice of an investigation hold on documents to prevent the deletion or destruction of any records potentially relevant to the investigation and to be prepared to recommend an investigator to the Council on November 4, 2014.
- c. Discuss and make recommendations to the City Council regarding the scope, methodology and procedures for the investigation and for the Ad Hoc Council Committee process and membership.

Documents Filed: 1) Memorandum from Mayor Chuck Reed to the Rules and Open Government Committee, dated October 21, 2014, entitled, "Police Recruits"; 2) Memorandum from City Attorney Richard Doyle, dated October 27, 2014, entitled, "Legal Issues relating to Investigations"; and 3) Memorandum from City Attorney Richard Doyle, dated October 29, 2014, entitled, "Appearance of Bias Conflicts Related to Investigation of Police Recruitment."

Mayor Reed offered background and additional comments related to his memorandum. He noted revisions to the recommendation clarifying what should be investigated. The recommendation was revised to read:

- 1) Appoint an independent investigator to investigate the recruiting, hiring and training process for the last three police academies to determine if actions have been taken during the process to reduce the number of new officers joining the San José Police Department or to induce new officers to leave the department while in training;
- 2) Appoint an ad hoc committee to monitor the investigation until the results are brought back to the City Council for review and action.

RULES COMMITTEE REVIEWS, RECOMMENDATIONS AND APPROVALS

- (3) Councilmember Constant requested a slight modification to the recommendation to change part 1 from “while in training” to “while in the academy, field training program, or probationary period.”

Committee discussion ensued and City Attorney Richard Doyle answered questions from the Committee.

Public Comment:

David Wall expressed objections to the recommendation.

Martha O’Connell spoke in support of an investigation.

Mayor Reed offered additional clarification relating to his memorandum.

Motion: Councilmember Constant moved to forward the recommendation to the November 4, 2014 City Council Agenda including the following revisions:

- 1) Appoint an independent investigator to investigate the recruiting, hiring and training process for the last three police academies to determine if actions have been taken during the process to reduce the number of new officers joining the San José Police Department or to induce new officers to leave the department while in the academy, field training program, or probationary period;
- 2) Appoint an ad hoc committee to monitor the investigation until the results are brought back to the City Council for review and action.

Vice Mayor Nguyen seconded the motion.

Councilmember Oliverio requested the motion be amended to be heard on the November 7, 2014 special meeting agenda, and Item (1) on the November 7, 2014 special meeting agenda be deferred to November 18, 2014. Councilmember Constant accepted the amendment.

Action: Upon a call for the motion, it carried unanimously. (4-0.)

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
 - a. Approve adding an item entitled "Mayor’s Gang Prevention Task Force’s Strategic Work Plan 2015-2017" to the workplan of Public Safety, Finance and Strategic Support for the November 20, 2014, meeting. (Parks, Recreation and Neighborhood Services)

REVIEW OF ADDITIONS TO COUNCIL COMMITTEE AGENDAS/WORKPLANS

- (4) Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Julie Edmonds-Mares to the Rules and Open Government Committee, dated October 23, 2014, entitled, "Public Safety, Finance, and Strategic Support Workplan Addition."

Public Comment: David Wall opined on issues related to the Mayor's Gang Prevention Task Force.

Action: Upon motion by Councilmember Constant, seconded by Councilmember Oliverio and carried unanimously, the workplan addition was approved. (4-0.)

- (5) Rules and Open Government Committee – None.

OPEN GOVERNMENT

- (1) Appeals of Public Records Act Request – None.

OPEN FORUM

Documents Filed: Copy of Memorandum for Item 2.13 on the October 28, 2014 City Council Meeting.

Martha O'Connell voiced concerns regarding parking validation not being available at certain meetings and reminded the Committee about the Bicycle Ordinance on the November 18, 2014 City Council Meeting.

Jim Piazza spoke on illegal dumping.

David Wall submitted a copy of the memorandum for Item 2.3 on the October 28, 2014 meeting and opined on the action taken.

ADJOURNMENT

The meeting adjourned at 3:05 p.m.



Mayor Chuck Reed
Rules and Open Government Committee

CR:slg