



**REGULAR MEETING OF THE SAN JOSÉ
RULES AND OPEN GOVERNMENT COMMITTEE**

SAN JOSE, CALIFORNIA

WEDNESDAY, FEBRUARY 18, 2009

The Rules and Open Government Committee of the City of San Jose convened in regular session at 2:04 p.m. in Conference Room 118 and 1189, Council Wing, City Hall.

PRESENT: Mayor Reed, Council Member Constant and Pyle

ABSENT: Vice Mayor Chirco

STAFF: City Attorney Richard Doyle, City Clerk Lee Price, City Manager Debra Figone, Redevelopment Agency Assistant Director Gary Miskimon, Deputy City Manager Deanna Santana, Mayor's Council Agenda Manager Nikhil Warrior and Deputy City Clerk Nora Pimentel.

CITY COUNCIL AGENDA REVIEW

3.1 Review of February 24, 2009 Final City Council Agenda.

Action: The Committee approved the February 24, 2009 final Council Agenda, as revised.

3.2 Review of March 3, 2009 Draft Agenda.

Action: The Committee approved the March 3, 2009 draft Council Agenda, as revised.

REDEVELOPMENT AGENCY (RDA) AGENDA REVIEW

4.1 Review of February 24, 2009 Final Agenda.

Action: The Committee approved the final RDA Agenda for February 24, 2009, as revised.

4.2 Review of March 3, 2009 Draft Agenda.

There were no items for the March 3, 2009 Draft Agenda.

REVIEW OF UPCOMING STUDY SESSION AGENDA(S)

5.1 Approve Green Vision Annual Report Study Session Agenda for March 9, 2009.

Action: The Committee approved the Study Session Agenda.

LEGISLATIVE UPDATE

6.1a Sacramento Update (verbal report)

Director of Intergovernmental Relations Betsy Shotwell provided an update on the State Budget.

MEETING SCHEDULES

7.1 Approve the revised Study Session for: a) Move the Green Vision Study Session from February 17, 2009 from 1:30 p.m. to March 9, 2009 from 1:30 – 5:00 p.m.; b) Move the 2009 City Council FY 2009-2010 Budget Review from February 13, 2009 from 1:30 p.m. to February 17, 2009 from 1:30 – 5:00 p.m. (City Manager)

Documents Filed: Memorandum from Nadine Nader dated February 5, 2009 forwarding the recommendation.

Action: The Committee approved the revised Study Session schedule, as recommended.

7.2 Approve to set the Annual City of San Jose and Santa Clara County Meeting on September 30, 2009 from 9:00 a.m. -12:00 p.m. at the City of San Jose Council Chambers. (City Manager)

Documents Filed: Memorandum from Nadine Nader date February 4, 2009 forwarding the recommendation.

Action: The Committee set the meeting.

THE PUBLIC RECORD

8 Public Record

Documents Filed: Memorandum from City Clerk Lee Price, dated February 13, 2009, transmitting items for the Public Record for the period of February 6 - 12, 2009.

Action: The Committee noted and filed the Public Record.

APPOINTMENTS TO BOARDS, COMMISSIONS AND COMMITTEE

- 9.1 Appoint Brian M. Chrisman, CEO/Founder of Borgata Recycling Inc., Gilroy, California to be nominated to serve as a private sector representative on the SVWIN Board of Directors as required by law.**

Documents Filed: Memorandum from Mayor Reed dated February 6, 2009 forwarding the recommendation.

Action: The Committee approved the appointment of Brian M. Chrisman, as recommended.

RULES COMMITTEE REVIEWS, RECOMMENDATIONS AND APPROVALS

- 10.1 Consider agendizing for City Council consideration the draft resolution confirming and indicating current Council support for existing General Plan and zoning designations on the former San Jose Medical Center Site.**

(City Attorney)

Action: This item was deferred one week at the request of Councilmember Liccardo.

- 10.2 Approve the Auditor's Office Monthly Report of Activities for January 2009.**

(City Auditor)

Documents Filed: Memorandum from City Auditor Sharon W. Erickson dated February 5, 2009 forwarding the recommendation.

Action: The Committee approved the Auditor's Report.

- 10.3 (a) Direct the Administration to fund the Crossing Guard Program from the Healthy Neighborhood Venture Fund (HNVF) in the amount of \$1.9 million for each of the three fiscal years (2009-2010, 2010-2011, 2011-2012) in order to keep the City of San Jose crossing guard program. (b) Request that the Rules Committee agendize this memo for consideration at a City Council meeting during the 2009-2010 budget process. (Constant/Oliverio)**

Documents Filed: (1) Memorandum from Councilmembers Constant and Oliverio dated February 13, 2009 forwarding the recommendation. (2) Memorandum from Councilmembers Kalra and Liccardo dated February 18, 2009 recommending the following: 1) Allow the HNVF budget to disburse funds in the current fiscal year consistent with recently enacted HNVF funding policies; 2) Return to Council with a proposal to expand the use of trained volunteers to perform crossing guard duties; 3) Report to the appropriate Council Committee regarding the ways that city staff can reduce the \$900,000 in costs that the City currently incurs to administer the \$9 million HNVF program; and 4) Decline to determine expenditures for the crossing guards program, or any other program, on any other than an annual basis, to ensure that the latest information is made available to Council prior to each budgetary decision.

Action: The Committee waived the 4-day “sunshine” requirement on the joint memorandum submitted by Councilmembers Kalra and Liccardo.

The Committee agreed to discuss this item and Item 10.4 concurrently. Councilmembers Constant, Oliverio and Kalra spoke to the issues and recommendations outlined in the joint memorandums. Staff responded to questions regarding the status of the HNVF process currently underway. It was noted that the funding recommendations by the HNVF Committee would not be released until April 2, 2009. The city Manager assured the Committee that the recommendations would not be released prior to the council’s discussion of the Mayor’s March Budget Message on March 17th and 24th.

Public Comment: Clark Williams (Silicon Valley Council of Non-Profits) expressed support for the current HNVF process and asked that all correspondence to the Mayor regarding this matter to be made available to the public.

The Committee took no action on Items 10.3 and 10.4.

10.4 Direct staff to modify the Health Neighborhoods Venture Fund (HNVF) schedule and return to the committee with a schedule that allows the City Council the flexibility to use HNVF funds in addressing the FY2009-10 budget deficit. (Constant/Oliverio)

Documents Filed: Memorandum from Councilmember’s Constant and Oliverio dated February 12, 2009 forwarding the recommendation.

No action taken. See Item 10.3.

10.5 Prevailing Wages-Liquidated Damages Waiver Requests. (City Attorney)

Documents Filed: (1) Memorandum from City Attorney Richard Doyle dated February 5, 2009 regarding requests by representatives of the Fountain Alley and Sainte Claire Building projects for waivers of liquidated damages for prevailing wage violations. (2) Correspondence from Neil Struthers, CEO, Santa Clara & San Benito Counties Building & Construction Trades Council dated February 17, 2009 requesting denial of the requests.

City Attorney Rick Doyle summarized his legal opinion. Director of Equality Assurance Nina Grayson and Senior Deputy City Attorney Tom Murtha responded to questions.

Public Comments: James F. Fox (Pacific Properties, III) spoke in favor of his request for a waiver of liquidated damages assessed against Pacific Coast Fire. Jose Garcia (Santa Clara & San Benito Counties Building & Construction Trades Council) urged denial of the requests. Bernard Kotansky (Fountain Alley, LLC) objected to liquidated damages assessed against various subcontractors and added that there needs to be a better way to notify contractors of prevailing wage requirements.

City Attorney Rick Doyle noted that the Committee's options were to refer the matter to the full City council to seek a change in the prevailing wage enforcement mechanisms, or to deny the request by taking no action.

Action: The Committee took no action.

REVIEW OF ADDITIONS TO COUNCIL COMMITTEE AGENDAS

- 11.1 (a) Approve the proposed schedule for a special meeting for Thursday, March 12, 2009 from 9:00 a.m. – 12:00 p.m. (b) Approve a verbal report of the March 12, 2009 CED Committee key outcomes on March 17, 2009 City Council Meeting Agenda. (City Manager)**

Documents Filed: Memorandum from Deputy City Manager Edward K, Shikada dated February 3, 2009 forwarding the recommendation.

Councilmember Constant pointed out that three councilmembers would be out of state on March 17th and suggested that the City Manager's verbal report out on key outcomes be rescheduled to March 24th.

Action: The Committee approved the special meeting as recommended and modified the verbal report-out date by the City Manager, as recommended by Councilmember Constant.

OPEN GOVERNMENT INITIATIVES

- 12.2 Review of SRTF recommendations regarding Pubic Records: Police Statistical Reports (a) Reserve additional direction on the regular production of Statistical Reports until this decision can be weighed against other public safety priorities during the City Council's review of 2009-2010 service reductions to be considered for the Police Department. (b) Direct staff to consider the production of these reports on a biennial frequency by an outside consultant with expertise in advanced statistical, demographic and population trend analyses and return to Rules for a discussion regarding the frequency of issuing these statistical reports when the Police Department has completed implementation of a Records Management System.**

Documents Filed: Memorandum from Chief Rob Davis dated February 12, 2009 forwarding the recommendation.

Director of Communications Tom Manheim, Police Chief Robert Davis and Captain Gary Kirby presented the staff's response to the Sunshine Reform Task Force recommendations regarding Police Records.

Public Comments: Task Force Members Bert Robinson, Bob Brownstein and Dan Pulcrano and Skyler Porras (American Civil Liberties Union) spoke in support of the Task Force recommendations.

Committee discussion ensued. Mayor Reed suggested that this discussion continue after Chief Davis returns from meeting with other big city chiefs of police on related issues at a conference the following week.

Action: The Committee continued this item to late March-early April to receive a verbal report from Chief Davis.

OPEN FORUM

There were none.

ADJOURNMENT

The meeting was adjourned at 4:10 p.m.



Mayor Chuck Reed
Rules and Open Government Committee