



COUNCIL AGENDA: \_\_\_\_\_  
ITEM: \_\_\_\_\_

---

## **RULES AND OPEN GOVERNMENT COMMITTEE**

Meeting Report  
January 26, 2011

**PRESENT:** Vice Mayor Nguyen and Council Members Constant, Oliverio and Herrera.

**ABSENT:** Mayor Reed

**STAFF:** City Manager Debra Figone, Assistant City Manager Ed Shikada, City Attorney Rick Doyle, City Clerk Dennis Hawkins, Redevelopment Agency Deputy Executive Director Janet Kern, Redevelopment Agency Assistant Director Gary Miskimon, Agenda Services Manager Nadine Nader, Mayor's Council Agenda Manager Sara Wright, and Staff Technician Tamara Davis.

### **A. City Council**

#### **1. Review Final Agenda for February 1, 2011**

Action: The Committee approved the final agenda, as amended.

#### **2. Review of Draft Agenda for February 8, 2011**

Action: The Committee approved the final agenda, as amended and waived the 14-day noticing requirement for Item 3.2 (Approval of the 2010-2011 Mid-year Budget Actions), and approved the addition of Item 3.x (Mayor's Budget Prioritization Survey Results).

### **B. Redevelopment Agency (RDA)**

#### **1. Review Final Agenda for February 1, 2011**

Action: The Committee approved the final agenda, as amended.

#### **2. Review Draft Agenda for February 8, 2011**

Action: The Committee approved the draft agenda, as amended and waived the 14-day noticing requirement for Item 3.2 (Approval of the Redevelopment Agency's 2010-2011 Mid-Year Budget Review Report).

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

1. Approve the Disaster Policy Seminar Meeting Agenda for February 22, 2011 from 8:00 a.m. to 12 noon at the Hayes Mansion. (City Manager)

Documents Filed: Council Study Session: Disaster Policy Seminar for February 22, 2011.

Director of Emergency Services Christopher Godley, CEM informed the Committee that the Department of Homeland Security is sponsoring and underwriting the event and strongly recommends facilitating the meeting offsite.

Public Comments: David Wall thinks the Councilmembers should do more in their districts with respect to disaster planning.

Action: The Committee approved the upcoming Disaster Policy Seminar Meeting Agenda.

**D. Legislative Update**

1. State
  2. Federal
- None.

**E. Meeting Schedules**  
None.

**F. The Public Record**

Document Filed: Memorandum from City Clerk Dennis Hawkins dated January 21, 2011 transmitting the Public Record for the week of January 14 – 20, 2011.

Public Comment: David Wall pulled his letter, Item (e) supporting a special performance appraisal for the City Manager.

Action: The Public Record was noted and filed.

**G. Boards, Commissions and Committees**

1. Appointments
  - a. Approve the appointment of Bob Dhillon to the Project Diversity Screening Committee for a term to expire on December 31, 2012.  
(Councilmember Herrera)

Document Filed: Memorandum from Councilmember Herrera dated January 18, 2011 forwarding the recommendation for appointments to the Project Diversity Screening Committee.

Action: The Committee approved Items G.1.a and forwarded the appointment to the City Council for formal action on February 1, 2011.

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

1. Workload Assessment for Council Requests and Referrals
2. Approve the memorandum from Councilmember Liccardo to the Rules and Open Government Committee dated January 20, 2011 recommending the *Let's Move!* Campaign and forward to the Council for formal action on February 1, 2011. (Councilmember Liccardo)

Documents filed: Memorandum from Councilmember Liccardo, dated January 20, 2011 to the Rules and Open Government Committee recommending the approval of the National *Let's Move!* Campaign.

Vice-Mayor Nguyen clarified that the City will not have to spend any money by approving the resolution.

Ruth Cueto representing Councilmember Liccardo's Office stated that City will not have to spend funds on the *Let's Move* campaign. She mentioned that the Santa Clara County Public Health Department will help with program strategy and that the City is being asked to focus on trails and fitness, which are activities the City is already involved with.

Councilmember Constant reiterated that the resolution focuses on things the City is already doing locally to impact the health of San José's Children.

Public Comments: David Wall suggested the City incorporate more school based agricultural programs into the campaign and look at the parks as an area of food production.

Action: The Committee approved the recommendation and forwarded to the Council for formal action on February 1, 2011.

3. Approve the memorandum from City Attorney Rick Doyle to the Rules and Open Government Committee dated January 20, 2011 responding to the January 21, 2011 Public Record Item (a) regarding Prevailing Wages – Liquidated Damages Waiver Request. (City Attorney)

Documents filed: (1) Memorandum from City Attorney Rick Doyle dated January 20, 2011 to the Rules and Open Government Committee regarding Prevailing Wages – Liquidated damages Waiver Request. (2) Informational packet from Stacey Casados, Compliance Officer, from Joint Electrical Industry Fund dated January 26, 2011 regarding R.A.N Electric violations.

City Attorney Doyle provided the Committee with background information on the Prevailing Wage Policy. The Policy has been in place since 2003. The policy does not have a waiver provision and City staff does not have the ability to negotiate or determine intentional or non-intentional violations. The policy requires liquidated damages for violations.

Councilmember Constant supports revisiting the policy to assess the reporting requirements and determine if it feasible to implement a waiver to the policy.

Nina Grayson, Division Manager, Public Works Department Equality Assurance informed the committee that a contractor who has been cited for a violation has the opportunity to have the matter reviewed. They can submit additional documentation to plead their case. If the documentation supports the reduction of the restitution amount then the liquidated damages are thereby reduce. The liquidated damages are always calculated at three times the restitution amount.

Public Comments: Stacey Casados, Compliance Officer, Joint Electrical Industry Fund of Santa Clara provided documentation alleging that R.A.N Electric is a repeat offender of prevailing wage law and apprenticeship standards for the State of California. She believes that R.A.N Electric is knowledgeable about the law and urged the Committee not to grant a waiver as requested.

Ben Field of the South Bay Labor Council does not believe the City should become judicial decision makers in cases of City fines. Liquidated damages are not based on intent, ethics or character, they are in place to ensure adherence to the law.

Bob Tragni, Business Manager, IBEW Local 332 informed the Committee that the State also has triple damages for violations. He supports leaving the policy in place as is.

Neil Struthers, Building Trades Council, supports the Prevailing Wage Policy. He believes the policy disincentivizes cheating.

David Wall supports eliminating the Office of Equality Assurance and transferring the responsibilities the City Attorney's Office.

Action: The Committee rejected the claim; accepted and approved the memorandum; and rejected the re-opening of the policy for review.

Councilmember Constant opposed the motion.

4. Approve the memorandum from City Clerk Dennis Hawkins to the Rules and Open Government Committee dated January 18, 2011 recommending the Approval of District 7 Vice-Mayor Oath of Office as a City Sponsored Special Event, to Expend City Funds and Accept Donations of Materials and Services for the Event. (City Clerk)

Documents filed: Memorandum from City Clerk Dennis Hawkins dated January 18, 2011 to the Rules and Open Government Committee recommending the Approval of District 7 Vice-Mayor Oath of Office as a City Sponsored Special Event, to Expend City Funds and Accept Donations of Materials and Services for the Event.

Action: The Committee approved the memorandum.

**RULES and OPEN GOVERNMENT COMMITTEE  
MEETING REPORT**

**January 26, 2011**

**Page 5**

**I. 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
  4. Public Safety, Finance and Strategic Support Committee
  5. Rules and Open Government Committee
- None.

**J. Open Government**

1. Appeals of Public Records Act Requests
- None.

**K. Open Forum**

Public Comments: David Wall expressed his concerns about the City taking significant material steps to build a baseball stadium.

**L. Adjournment**

The meeting was adjourned at 2:52 p.m.



---

Mayor Chuck Reed  
Rules and Open Government Committee