



RULES AND OPEN GOVERNMENT COMMITTEE

Meeting Report
February 9, 2011

PRESENT: Mayor Reed, Vice Mayor Nguyen and Council Members Constant and Oliverio

ABSENT: NA

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 15, 2011

Action: The Committee approved the final agenda, as amended and with 10-day Sunshine waivers for Item 3.6 (Interview and Appointment of one (1) Public member to the Board of Administration of the Federated City Employees Retirement System) and 11.3 (rezoning real property located on the North side of Blossom Hill Rd.); assigned a time certain – not to be heard before 3 p.m., for Item 3.6 and Item 3.7 (Report on Election and Interview for the Appointment of a Fire Retiree Representative to the Board of Administration of the Police and Fire Department Retirement Plan); and moved Item 4.1 (Envision San José 2040 General Plan Draft Environmental Impact Report and Actions on Pending General plan Amendments and Requests for Different Draft Envision 2040 General Plan Land Use/Transportation Diagram Designation in the Tamien Station Area) to the evening Council meeting.

Note: A 9:30 a.m. Call to Order in Council Chambers, Open Session for Labor Negotiations Update. Adjourn to Closed Session in Council Chamber Conference Room, W133.

2. Review of Draft Agenda for February 22, 2011

Action: None – Meeting cancelled.

B. Redevelopment Agency (RDA)

1. Review Final Agenda for February 15, 2011

Action: The Committee approved the final agenda, as amended and requested Item 2.2 (Approval of Council/Board Committee Reports) be heard in conjunction with the corresponding City items.

2. Review Draft Agenda for February 22, 2011

Action: None – meeting cancelled.

C. Review of Upcoming Study Session Agenda(s)

Heard Item H.3

H.3. Approve the memorandum from Tom Manheim to the Rules and Open Government Committee dated February 4, 2011 requesting a Sunshine Waiver of the requirement to videotape the City Council Study Session entitled Disaster Policy Seminar scheduled for February 22, 2011 at the Hayes Mansion, and approve audio recording for the meeting.
(City Manager)

Documents Filed: Memorandum from Communications Director Tom Manheim dated February 4, 2011 requesting a Sunshine Waiver of the requirement to videotape the City Council Study Session: Disaster Policy Seminar for February 22, 2011 at the Hayes Mansion from 8: a.m. to 12 noon.

Public Comment: David Wall suggested that the meeting be moved to City Hall so it can be videotaped and have more public interaction.

Action: The Committee approved the Sunshine Waiver of the requirement to videotape the City Council Study Session: Disaster Policy Seminar.

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 February 4, 2011 transmitting the Public Record for the week of January 27 – February 3, 2011.

Councilmember Constant pulled Items (a) and (b) to have it noted that the City has requested Public Records regarding the Public Safety Broadband V Stop Project.

Public Comment: David Wall pulled his letter, Item (f), to provide additional comments about Code issues.

Action: The Public Record was noted and filed with Item (f) referred to Code Enforcement for follow-up.

G. Boards, Commissions and Committees

1. Appointments
 2. Workplans
 3. Annual Reports
- None.

H. Rules Committee Reviews, Recommendations and Approvals

1. Workload Assessment for Council Requests and Referrals
2. Approve the memorandum from City Manager Debra Figone to the Rules and Open Government Committee dated February 4, 2011 regarding Seniority Rules for Layoffs. (City Manager)

Documents filed: Memorandum from City Manager Debra Figone dated February 4, 2011 to the Rules and Open Government Committee recommending for FY 2011-2012 the Administration focus on recommending a list of position-specific exemptions from bumping and create specialties within a number of classifications and do further research and analysis on including performance as a factor in selecting employees for layoff.

Assistant City Manager Ed Shikada provided a summary of the memo and reminded the Committee of the Council's former discussion, in November 2010 in preparation for the upcoming budget cycle, addressing budget priorities and civil service bumping rights as key policy issues to focus on. The City Manager's Office will bring forward recommendations of specific classifications they would propose to bargaining units to be exempt from the bumping process.

Councilmember Oliverio reminded the Committee of the City's poll in which 79% of the public is in favor of using performance as a measurement when doing layoffs.

Councilmember Constant recommends involving the Civil Service Commission before or in tandem with the process. Asking the Civil Service Commission after the negotiation process is too late.

Public Comments: David Wall commented that the City's employee performance reviews are currently in a state of disrepair and should be scrapped and start over from scratch with input from employees and bargaining units. He believes that the

City will cause unparalleled harm if it rushes into using the performance appraisals in their current state.

Nancy Ostowsky, representative of IFPTE Local 21 opposes the proposal. She pointed out that a similar proposal was rejected by the City and County of San Francisco and the current proposal heightens employment insecurity. She questioned the process of exempting certain classifications from bumping and using performance appraisals as criteria for layoffs.

Kay Denise McKenzie, President of CAMP IFPTE Local 21, suggested that the proposed changes to the layoff bumping process has significant implications on many levels and particularly suggested that discriminatory practices could occur.

Action: The Committee approved the recommendation.

3. *Heard under Item C.*
4. Approve the memorandum from Vice-Mayor Nguyen and Councilmembers Kalra and Rocha to the Rules and Open Government Committee dated February 3, 2011 recommending the Committee forward to the City Council an agenda item to draft a resolution supporting the California Air Resources Board's leadership in promoting clean and energy efficient motor vehicles, energy independence, zero emission technologies and improved quality of life in the City of San José and the State of California. (Vice-Mayor Nguyen, Councilmembers Kalra and Rocha)

Documents filed: Memorandum from Vice-Mayor Nguyen and Councilmembers Kalra and Rocha to the Rules and Open Government Committee dated February 3, 2011 regarding the California Clean Cars Campaign.

Public Comments: David Wall recommends that part of the legislation should include a rider onto business licenses; a fee determined by the administration to cover the cost for operations: enforcement, administration, and overhead.

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

5. Review and develop recommendations: (1) Memorandum from City Attorney Rick Doyle and City Clerk Dennis Hawkins to the Rules and Open Government Committee regarding Response to Referrals, and (2) Memorandum from Mayor Reed to the Rules and Open Government Committee regarding Nonprofit Advocacy. (City Attorney/City Clerk/Mayor Reed)

Documents filed: Memorandum from (1) City Attorney Richard Doyle and City Clerk Dennis Hawkins to the Rules and Open Government Committee dated February 4, 2011 responding to referrals from the Rules and Open Government Committee about Nonprofits and the City's Lobbying Ordinance and (2) Memorandum from Mayor Reed to the Rules and Open Government Committee dated February 4, 2011 regarding Nonprofit Advocacy.

Senior Deputy City Attorney Lisa Herrick summarized previous referrals from the Committee and Council to the Elections Commission and the Mayor's 2009 Biennial Ethics review panel on four subjects, including lobbyist registration of some 501 (c) 3 non-profit agencies, their officers, and employees. Following these referrals and recommendations, staff was directed to conduct research of the lobbying and registration requirements of non-profits of comparable California cities and to outreach to the 501(c) 3 organizations in the community. Ms. Herrick reported on staff's research with the eight largest cities in California. Additionally, she reported on the outreach to non-profits done in October 2010 regarding what the City means by lobbying, exemptions within San Jose's ordinance, and potential changes to the ordinance. Ms. Herrick reported on some of the questions from the non-profit agencies such as the effectiveness of ordinance in other cities, impacts to the non-profit's services and funding from foundations, and relevant court decisions on the subject.

Mayor Reed explained his recommendation as an alternative to strict registration of non-profits as lobbyists. He stated that his proposal would preserve the principle of disclosure so the public knows what's going on regarding the \$36 million annually the City spends through various funds to nonprofit organizations. Non-profits would not follow lobbyist registration requirements, but they would need to file a simple report with the City Clerk disclosing contacts with City Councilmembers as they advocate for any expenditure of \$100,000 or more. Councilmembers would need to disclose their contacts with nonprofits regarding expenditures of \$100,000 or more in City funds. Committee discussion ensued.

Public Comments: Alida Bray commented on the memo which she said fairly summarizes the concerns of non-profits, requested a definition and examples of expenditures, and staff to provide more definition regarding methods and the timeline of reporting contacts. She stated her feeling that this was a very good compromise and she was pleased with the report.

Carole Lee Hutton, president and CEO of United Way, stated that she'd like more time to understand the details of the proposal, clarification regarding the intent of the ordinance, reporting timeframe and any penalties, and what it means to the nonprofit community. She commented that the non-profits are appreciative of moving away from the "lobbyist" label.

Patricia Gardner, Silicon Valley Council of Nonprofits wants clarification about nonprofits acting as advocates for services to their clients, even though the money may not be going to their agency and how that would be interpreted and criteria for disclosure.

David Wall expressed support for the path of disclosure, however he was concerned that the ordinance would create too many loopholes and his belief that every single person who takes money from the City should register as a lobbyist. He feels that the reporting amount of \$100,000 should be reduced and that all lobbyists be

required to pay a fee that would cover the City's overhead for the administration of this new requirement.

Ben Field, South Bay Labor Council, expressed concern over the lack of clarity about the enforcement mechanism for implementing this requirement. He encouraged staff to look at this issue and clarify it, so individuals who will have to provide disclosures will better understand the process

Action: The Committee referred the item to staff for further work, to address the questions posed by the public, and return to the Committee for further review prior to any referral to Council.

I. Review of additions to Council Committee Agendas/Workplans

1. Community and Economic Development Committee
 - a. Approve the memorandum from Joseph Horwedel, Director PBCE to the Rules and Open Government Committee dated February 4, 2011 recommending (1) that the Tobacco Retail Licensing Youth Decoy Program report be moved from the Community and Economic Development workplan to the Neighborhood Services & Education Committee workplan and (2) defer the status report on Tobacco Retail Licensing Youth Decoy Program until October 2011.

Document Filed: Memorandum from Joseph Horwedel, Director of PBCE, to Rules and Open Government Committee date February 4, 2011 regarding Consolidation of Smoking Initiatives.

Public Comment: David Wall suggested creating a financial instrument associated with this program to cover the administration overhead and attorney costs.

Action: The Committee approved moving the tobacco Retail Licensing Youth Decoy Program from the CED Committee to the NSE Committee and the deferral of the Tobacco Retail Licensing Youth Committee Decoy Program status report until October 2011.

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 suggested that the Council review the comment cards and how individuals are able to address the Council. He suggested that the Transportation and Environment Committee should receive monthly reports about litter, since they make decisions at the Committee meeting and it's hard to track. They should have one report at the end of the year.

Patricia Gardner submitted a letter to the Committee and requested that the Council consider "twilight" late afternoon Public Hearings for youth and seniors so they can attend and participate in the public comment sessions. She suggested that the meeting times should be from 3:00 to 5:30 p.m. because seniors generally don't leave their homes at night.

Documents filed: Memorandum from Silicon Valley Council of Nonprofits dated February 8, 2011 to the Rules and Open Government Committee requesting Twilight Public Hearings for Youth and Seniors.

L. Adjournment

The meeting was adjourned at 3:22 p.m.



Mayor Chuck Reed
Rules and Open Government Committee