

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

SAN JOSE, CALIFORNIA

WEDNESDAY, SEPTEMBER 10, 2014

The Rules and Open Government Committee of the City of San José convened in Regular Session at 2:00 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: None.

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

CITY COUNCIL (CITY CLERK)

- (1) Review September 16, 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 offered comments on Items 2.11 and 2.12

Action: Upon motion by Councilmember Constant, seconded by Councilmember Oliverio and carried unanimously, the Committee approved the agenda including the following sunshine waivers, additions, and changes: sunshine waiver for and addition of Item 2.4(a), "Mayor and Council Excused Absence Requests," and deletion of Item 3.6. (4-0.)

- (2) Review September 23, 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)

Motion: Councilmember Constant moved, and was seconded by Vice Mayor Nguyen, to approve the agenda including the following sunshine waivers, additions, and changes: defer Item 4.1 to October 21, 2014, and Item 11.1(a) to be moved off of Consent.

CITY COUNCIL (CITY CLERK)

- (2) Public Comment: Carol Parkinson spoke in opposition to Item 11.4 and requested the Committee consider deferring the item. Councilmember Oliverio suggested that the Item be deferred to a later meeting.

David Wall offered comments on Items 3.2, 8.1, 11.4

Committee discussion ensued regarding Item 11.4. Staff responded to questions from the Committee.

Councilmember Oliverio requested to amend the motion to include the deferral of Item 11.4 to September 30, 2014. Councilmember Constant accepted the amendment.

- (2) Action: Upon a call for the question, the amended motion carried unanimously, the Committee approved the agenda including the following sunshine waivers, additions, and changes: defer Item 4.1 to October 21, 2014, Item 11.1(a) to be moved off of Consent, and Item 11.4 deferred to September 30, 2014. (4-0.)

REVIEW OF UPCOMING STUDY SESSION AGENDA(S)

LEGISLATIVE UPDATE

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

MEETING SCHEDULE

Action: Upon motion by Councilmember Oliverio, seconded by Councilmember Constant and carried unanimously, the Committee cancelled the tentatively scheduled Study Session on September 26, 2014. (4-0.)

THE PUBLIC RECORD

Documents Filed: 1) Memorandum from City Clerk Toni J. Taber transmitting the Public Record for the Week of August 29 – September 4, 2014. 2) E-mail from David Wall, dated September 10, 2014 regarding Curbside Supplemental Payments Records Request.

Public Comment: Lee Ellak spoke on Item (4) and offered comments on working with developers on Nexus Study issues.

Martha O'Connell spoke on Item (4) and offered additional information.

THE PUBLIC RECORD (CONT'D.)

David Wall spoke on Items (5) and (6) and submitted additional documentation related to Item (5).

Councilmember Constant requested the City Manager to look into Item (1) and see if additional action needs to be taken.

Action: Upon motion by Councilmember Constant, seconded by Vice Mayor Nguyen and carried unanimously, the public record was noted and filed. (3-0-1. Absent: Constant.)

Councilmembers Constant and Oliverio offered comments on the flow of information to Commissioners.

BOARDS, COMMISSIONS AND COMMITTEES

- (1) Appointments
 - a. San José Arena Authority Board Appointments. (Mayor)
 1. Appoint Bob Kraiss as an at large representative to a full term from July 1, 2014 – June 30, 2018; and
 2. Appoint Colleen Reilly as a neighborhood representative to a full term from July 1, 2014 – June 30, 2018.

Documents Filed: Memorandum from Mayor Reed, dated August 28, 2014, entitled “San José Arena Authority Board.”

Public Comment: David Wall offered comments on Conflicts of Interest related to Commissioner appointments.

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

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

RULES COMMITTEE REVIEWS, RECOMMENDATIONS AND APPROVALS

- (1) Workload Assessment for Council Requests and Referrals. – None.

Items (2) – (3) were heard together.

**RULES COMMITTEE REVIEWS, RECOMMENDATIONS AND APPROVALS
(CONT'D)**

(2) Patrol Staffing Retention Plan. (Mayor/Liccardo/Khamis)

Place the following item on the City Council agenda for September 16, 2014:

Direct the City Manager to begin negotiations with the Police Officers Association and other applicable bargaining units to:

- a. Enter into a stipulation to defer the implementation of the portion of Measure B that calls for our employees to make an additional 4% contribution of salary to the Police & Fire and Federated retirement plans or take 4% reduction in pay, for at least an additional year beyond July 1, 2015, the expiration of our existing stipulation.
- b. Create a Patrol Staffing Retention Plan to allow officers with 25 years or more of experience to remain in a paid position on the force, in patrol, while receiving a distribution of pension benefits in some form. Such a program must avoid the large liabilities created by guaranteed rates of return in many "DROP" programs, and ensure that officers who remain on the force do so at a rank of officer or sergeant, serving in a patrol responsibility.

Documents Filed: Memorandum from Mayor Chuck Reed, and Councilmembers Sam Liccardo and Johnny Khamis, dated September 4, 2014, entitled "Patrol Staffing Retention Plan."

Public Comment: David Wall opined on Police & Fire Benefits and pay.

Action: Upon motion by Councilmember Oliverio, seconded by Vice Mayor Nguyen and carried unanimously, the recommendation was approved and placed on the September 16, 2014 City Council agenda for action. (4-0.)

(3) Order to Show Cause for 801 N. 13th Street. (Liccardo)

Direct the City Manager to initiate the process to issue an Order to Show Cause, pursuant to Muni Code Section 20.150.220, for the property located at 801 N. 13th Street as to why it should not lose its Legal Non-Conforming (LNC) status as a bar.

Documents Filed: 1) Memorandum from Councilmember Sam Liccardo, dated August 29, 2014, entitled "Order to Show Cause of 801 N. 13th Street"; 2) Letter from Brian Darby dated September 9, 2014, regarding "Order to Show Cause"; 3) Letters, pictures, and video from residents near El Tarasco Bar.

City Attorney Rick Doyle answered questions from the Committee and provided background information on how the process is conducted.

Public Comment: Larry Yamasaki, Jose Posadas, Stephen Gordy, Katrina Loera, Luna Park Business Association, David Wall, David Bird, Trinity Cathedral, Hung Dang, Guadalupe Yanez, Irma Marfil, Carol Garvey, Riko Mendez, Tomas Marfil, Susan Caballero, Elisa Hwang-Mendez, Sharon Marfil, Rebeca Armendariz, Cassie Kifer, Kirsty Duncan, and Rev. Dr. Lee Barford, Trinity Cathedral, spoke in support of the recommendation and urged the City to take action.

**RULES COMMITTEE REVIEWS, RECOMMENDATIONS AND APPROVALS
(CONT'D)**

- (3) Riko Mendez submitted letters in support of the recommendation and a flash drive featuring pictures and video of the acts in question.

Deputy District Attorney Johnny Gogo spoke on behalf of the Santa Clara County District Attorney's Office in support of the recommendation and answered questions from the Committee.

City Attorney Rick Doyle, City Manager Ed Shikada, Deputy City Manager Norberto Duenas, Director of PBCE Harry Freitas offered background information and answered questions from staff.

Councilmember Liccardo was available for additional information and requested action be taken quickly.

Committee discussion ensued.

Action: Upon motion by Councilmember Constant, seconded by Vice Mayor Nguyen, and carried unanimously, the recommendations were referred to staff and directed to return to the Rules and Open Government Committee in two weeks. (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 – None.
- (5) Rules and Open Government Committee – None.

OPEN GOVERNMENT

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

OPEN FORUM

Susan Landry requested an item be added to the City Council agenda reporting on the status of Medical Marijuana zoning permits and the related process.

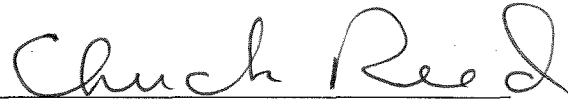
Martha O'Connell voiced concerns about a locally operated Women's Fitness Gym.

David Wall opined on various issues including conflict of interest and offered additional comments related to El Tarasco bar.

Lee Ellak commented on issues related to affordable housing and fees.

ADJOURNMENT

The meeting adjourned at 3:26 p.m.

A handwritten signature in cursive script that reads "Chuck Reed". The signature is written in black ink and is positioned above a horizontal line.

Mayor Chuck Reed

Rules and Open Government Committee

CR:slg