

## MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, JANUARY 27, 2004

The Council of the City of San José convened in regular session at 9:00 a.m. in City Council Chambers at City Hall.

Present: Council Members - Campos, Chavez, Chirco, Cortese, Dando, Gregory, LeZotte, Reed, Williams, Yeager; Gonzales.

Absent: Council Members - None.

Upon motion unanimously adopted, Council recessed at 9:02 a.m. to a Closed Session in Room 600 to confer with Legal Counsel pursuant to Government Code Section 54956.9; subsection (a) to discuss existing litigation in the cases of (1) Shah v. City of San José, et. al.; (2) Prism Engineering, Inc. v. City of San José; (3) Rollie French, Inc. v. Dennis J. Amoroso Construction, Inc. et. al.; and (B) to confer with Legal Counsel to discuss anticipated litigation pursuant to subsection (c) of Section 54956.9 of the Government Code Section 54956.9 in one matter regarding the initiation of litigation; and (C) to confer with Labor Negotiator pursuant to Government Code Section 54957.6, City Negotiator: City Manager designee Alex Gurza, and the following Employee Organizations: (1) San José Police Officers' Association; (2) International Association of Firefighters; (3) Municipal Employees Federation; (4) Confidential Employees Organization; (5) City Association of Management Personnel; (6) Association of Maintenance Supervisory Personnel; (7) Operating Engineers, Local 3; (8) International Brotherhood of Electrical Workers; (9) Association of Building and Mechanical and Electrical Inspectors; and to confer with Labor Negotiator pursuant to Government Code Section 54957.6, City Negotiator: City Manager designee Alex Gurza, and the following: Unrepresented Employees: Units 99, 18, and 4.

By unanimous consent, Council reconvened from the Closed Session and recessed at 10:05 a.m. and reconvened at 1:35 p.m. in the Council Chambers.

Present: Council Members - Campos, Chavez, Chirco, Cortese, Dando, Gregory, LeZotte, Reed, Williams, Yeager; Gonzales.

Absent: Council Members - None.

## INVOCATION

Pastor Arthur Lum, Chinese Church in Christ recited a prayer of wisdom, judgment, and peace. (District 1)

## PLEDGE OF ALLEGIANCE

Mayor Gonzales led the Pledge of Allegiance.

## ORDERS OF THE DAY

Upon motion by Vice Mayor Dando, seconded by Council Member Chavez, and carried unanimously, the Orders of the Day, and the Amended Agenda were approved. Vote: 11-0-0-0.

## CEREMONIAL ITEMS

### **1.1 Presentation of a proclamation January 27th as San José Firefighters Day in recognition of the San José Fire Departments 150th Anniversary. (Dando)**

Documents Filed: None.

Discussion/Action: Mayor Gonzales was joined at the podium by Vice Mayor Dando to proclaim January 27, 2004 as San José Firefighters Day. Mayor Gonzales invited Acting Fire Chief Dale Foster, and Fire Captain Randy Sekany, President of the Local 230 Firefighters Association, to the podium. Mayor Gonzales remarked today is the historic 150th anniversary of the San José Fire Department, which has served the community with professional service, commitment, and consistently demonstrating exemplary dedication and courage, protecting our residents and businesses. Mayor Gonzales, Vice Mayor Dando, and the Council Members recognized and commended all the men and women of the San José Fire Department for their unconditional commitment to protect the safety of life and property of the people of San José, and thanked them for their courage, service and dedication of their lives. Vice Mayor Dando read a letter from Governor Schwarzenegger commending and thanking the San José Firefighters for their service and dedication. Acting Chief Foster and Captain Sekany expressed their appreciation to the Mayor and the City Council for their support.

## CONSENT CALENDAR

Upon motion by Vice Mayor Dando, seconded by Council Member Chavez and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. Vote: 11-0-0-0.

### **2.3 Adoption of the following appropriation ordinance amendments in the Community Development Block Grant Fund to:**

- (a) Establish a transfer to the Redevelopment Agency for the Guadalupe-Washington Alley Reconstruction Project in the amount of \$237,503.**
- (b) Decrease the Guadalupe-Washington Alley Reconstruction Project by \$237,503.**

**CEQA: Not a Project. (City Manager's Office)**

### 2.3 (Cont'd.)

Documents Filed: Memorandum from Budget Director Larry Lisenbee, dated January 2, 2004, recommending adoption of said resolution.

Discussion/Action: Ordinance No. 27060, entitled: "An Ordinance of the City of San José Amending Ordinance No. 26916 to Appropriate Moneys in the Community Development Block Grant Fund for the Guadalupe-Washington Alley Reconstruction Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", was adopted. Vote: 11-0-0-0.

- 2.4 (a) **Adoption of appropriation ordinance and funding sources resolution amendments in the Services for Redevelopment Capital Projects Fund (City-side Redevelopment Fund) for the Monterey Corridor Median Improvement Project, the Tree Planting Strong Neighborhoods Project, the East Valley/680 Communities Sidewalk Project and the Hellyer Piercy Improvement District Project, with a net impact to the fund of \$3,295,000.**
- (b) **Adoption of a resolution making certain determinations regarding the related expenditures of Redevelopment Agency funds on certain public improvements in connection with the Valley/680 Communities Sidewalk Project and the Tree Planting in Strong Neighborhoods Project.**

**CEQA: Not a Project. Council Districts 1, 2, 5, 6, 7, and 8. SNI: K.O.N.A., Blackford, Winchester, Edenvale/Great Oaks, and EV/680 Communities. (City Manager's Office)**

Documents Filed: Memorandum from Budget Director Larry Lisenbee, dated January 2, 2004, recommending adoption of said appropriation ordinance and funding sources resolution amendments.

Discussion/Action: Ordinance No. 27061, entitled: "An Ordinance of the City of San José Amending Ordinance No. 26916 to Appropriate Moneys in the Services for Redevelopment Capital Projects Fund for Various Public Improvements; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption"; and Resolution No. 71933, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 71608 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2003-2004 to Adjust Revenues in the Services for Redevelopment Capital Projects Fund"; and Resolution No. 71934, entitled: "A Resolution of the Council of the City of San José Making Certain Determinations Regarding the Expenditure of Redevelopment Agency Funds for Certain Public Improvements in the East Valley/680 Communities Neighborhood", were adopted. Vote: 11-0-0-0.

- 2.5 **Approval of award of open purchase orders for supplies, materials, equipment, and services for FY 2003-2004 #11, and authorization for the Director of General Services to execute the purchase orders. CEQA: See memo for CEQA designation(s). (General Services)**

**2.5 (Cont'd.)**

Documents Filed: Memorandum from Director of General Services Jose Obregon, dated January 7, 2004, recommending award of said open purchase orders for FY 2003-2004 #11.

Discussion/Action: The award of open purchase orders for FY 2003-2004 #11 was approved and its execution authorized. Vote: 11-0-0-0.

**2.6 Report on request for quotation (RFQ) and award for the purchase and installation of Milliken modular carpet at various Terminal A locations, to B.T. Mancini Company, Inc. for a total cost of \$157,402 including tax and installation, and authorization for the Director of General Services to:**

- (a) **Execute the agreement; and**
- (b) **Approve a 5% contingency for reserve material stock.**

**CEQA: Not a Project. (General Services)**

Documents Filed: Memorandum from Director of General Services Jose Obregon, dated January 7, 2004, recommending award of said purchase, and authorization for the Director of General Services.

Discussion/Action: The award for the purchase and installation of Milliken modular carpet at various Terminal A locations, to B.T. Mancini Company, Inc., with contingency, was approved and the Director of General Services authorized to execute the agreement. Vote: 11-0-0-0.

**2.7 Approval of a continuation agreement between the City of San José and Watchguard Technologies, Inc., extending the existing sublease of 6,500 sq. ft. of space located at 1821 Zanker Road on a month-to-month basis, for a rental rate of \$6,000 per month, plus prorated utilities and janitorial costs. CEQA: Exempt, PP03-12-394. (General Services)**

Documents Filed: Memorandum from Director of General Services Jose Obregon, dated January 7, 2004, recommending approval of said agreement.

Discussion/Action: The continuation agreement between the City of San José and Watchguard Technologies, Inc., extending the existing sublease of 6,500 sq. ft. of space located at 1821 Zanker Road on a month-to-month basis, for a rental rate of \$6,000 per month, plus prorated utilities and janitorial costs was approved, and its execution authorized. Vote: 11-0-0-0.

**2.8 Adoption of a resolution authorizing the City Manager to negotiate and execute an agreement with the Berryessa Union School District, to relocate the current Berryessa Community Garden from the Flickinger School Site to the Mabury School Site. CEQA: Exempt, PP03-12-391. (General Services)**

Documents Filed: Memorandum from Director of General Services Jose Obregon, dated January 7, 2004, recommending adoption of said resolution.

**2.8 (Cont'd.)**

Discussion/Action: Resolution No. 71935, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Lease Agreement with Berryessa Union School District for Relocation of the Berryessa Community Gardens in an Amount Not To Exceed \$1.00 Per Year”, was adopted. Vote: 11-0-0-0.

**2.9 Adoption of a resolution authorizing the City Manager to execute:**

- (a) An agreement between the City of San José and Tiburon, Inc., for software maintenance and enhancements on the Police Department’s Records Management System, at a total first year cost of \$239,712; and**
- (b) Annual options to renew the maintenance services and enhancements without further City Council approval other than the appropriation of funding.**

**CEQA: Not a Project. (Information Technology)**

Documents Filed: Memorandum from IT Department Chief Information Officer Wandzia Grycz, dated January 13, 2004, recommending adoption of said resolution.

Discussion/Action: Resolution No. 71936, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Execute an Agreement with Tiburon, Inc. for the Police Department Record Management System”, was adopted. Vote: 11-0-0-0.

**2.10 Adoption of a resolution authorizing the Library Department to submit a grant application to the Institute of Museum and Library Services, not to exceed \$250,000, for a two-year staff training program to support the Innovative Library Services model, to accept the grant if awarded, and authorizing the City Manager to negotiate and execute any related documents. CEQA: Not a Project. (Library)**

Documents Filed: Memorandum from Library Director Jane Light, dated January 7, 2004, recommending adoption of said resolution.

Discussion/Action: Resolution No. 71937, entitled: “A Resolution of the Council of the City of San José Authorizing the Library Department to Execute and Submit an Application to the Institute of Museum and Library Services for a Grant for the Innovative Services Model in an Amount Not To Exceed \$250,000, to Accept the Grant if Awarded, and to Execute all Related Documents”, was adopted. Vote: 11-0-0-0.

**2.11 Approval of a Deferred Annexation Agreement for Assessor’s Parcel Numbers 601-15-023 (5008 Alum Rock Avenue) and 601-15-024 (5020 Alum Rock Avenue), and direction to forward it to Santa Clara County Development Services staff for recordation. CEQA: Negative Declaration. Council District 5. (Planning, Building and Code Enforcement)**

## 2.11 (Cont'd.)

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Stephen Haase recommending approval of said Deferred Annexation Agreement, and forward it to Santa Clara County Development Services.

Discussion/Action: The Deferred Annexation Agreement for Assessor's Parcel Numbers 601-15-023 (5008 Alum Rock Avenue) and 601-15-024 (5020 Alum Rock Avenue) was approved, and direction to forward it to Santa Clara County Development Services staff for recordation was authorized. Vote: 11-0-0-0.

- 2.12 (a) **Adoption of a resolution authorizing the City Manager to negotiate and execute a cooperative agreement with the Santa Clara Valley Transportation Authority for the construction of a sanitary sewer line in conjunction with its construction plan for improvement of the I-880/Coleman Avenue Interchange, for a total cost to the City not to exceed \$303,828. CEQA: Final VTA EIR certified on 5/22/02. Council District 3. (Public Works)**
- (b) **Adoption of a resolution authorizing the City Manager to execute the first amendment to the agreement between the City and the Santa Clara Valley Transportation Authority, upon concurrence of the Treatment Plant Advisory Committee, to increase the compensation payable by the City to a total amount not to exceed \$1,500,000, for design and construction of a recycled water pipeline at Coleman and I-880. (Environmental Services)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated January 7, 2004, recommending adoption of said resolution.

Discussion/Action: Resolution No. 71938, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with the Santa Clara Valley Transportation Authority for Construction of a Sanitary Sewer Line at the Interstate 880/Coleman Avenue Interchange, in an Amount Not To Exceed \$303,828", was adopted, and Item 2.12(b) was deferred to February 3, 2004. Vote: 11-0-0-0.

- 2.13 (a) **Report on bids and award of contract for the Traffic Signal Modification at Cottle Avenue and Curtner Avenue Project to the low bidder, Prism Engineering, Inc., in the amount of \$186,240, and approval of a contingency in the amount of \$18,600. CEQA: Exempt, PP02-07-197. Council District 6. (Public Works/Transportation)**
- (b) **Report on bids and award of contract for the Traffic Signal Modification at Julian Street and Stockton Avenue Project to the low bidder, Prism Engineering, Inc., in the amount of \$186,242, and approval of a contingency in the amount of \$18,624. CEQA: Exempt, PP01-11-193. Council Districts 3 and 6. (Public Works/ Transportation)**

## 2.13 (Cont'd.)

Documents Filed: Memoranda from Director of Public Works Katy Allen, and Director of Transportation James Helmer, dated January 7, 2004, recommending award of said contracts to the low bidder, Prism Engineering, Inc., with contingencies, for Traffic Signal Modifications at both projects.

Discussion/Action: The award of the contracts, with contingencies, to the low bidder, Prism Engineering, Inc., for Traffic Signal Modifications at Cottle Avenue and Curtner Avenue Project, and Julian Street and Stockton Avenue Project, were approved and their execution authorized. Vote: 11-0-0-0.

## 2.14 Approval of a Mid-Year budget allocation of \$350,000 for the installation of a dehumidification system at the HP Pavilion. (San José Arena Authority)

Documents Filed: None.

Discussion/Action: Item 2.14 was deferred to February 3, 2004.

### END OF CONSENT CALENAR

## STRATEGIC SUPPORT SERVICES

### 3.2 Report of the Rules Committee – January 14, 2004 Vice Mayor Dando, Chair

Documents Filed: The Rules Committee Report dated January 14, 2004.

(a) Redevelopment Agency items reported out at Redevelopment Agency meeting

(b) City Council

(1) Review January 27, 2004 Draft Agenda

The Committee recommended approval of the January 27, 2004 City Council Agenda with two additions.

(2) Add New Items to January 20, 2004 Amended Agenda

The Committee recommended five additions to the January 20, 2004 City Council Agenda.

(3) List of Reports Outstanding. Attachment: Report from the City Manager, dated January 13, 2004, transmitting reports outstanding for January 20, 2004.

The Committee noted and filed the City Manager's report listing one staff report outstanding for the January 20, 2004 City Council Agenda.

**3.2 Report of the Rules Committee – January 14, 2004 (Cont'd.)  
Vice Mayor Dando, Chair**

- (c) Legislative Update
  - (1) State  
Betsy Shotwell, Director of Intergovernmental Relations gave a brief update on the status of the Governor's proposed budget.
  - (2) Federal
    - (a) 2003 Federal Legislative Report. Attachment: Memorandum from Director Intergovernmental Relations Betsy Shotwell, dated January 9, 2004, transmitting the 2003 Federal Legislative Report.

The Committee accepted the 2003 Federal Legislative Report.

- (d) Meeting Schedules. Attachment: Memorandum from Assistant to the City Manager Deanna Santana, recommending approval of dates for the General Plan Hearings.
  - (1) Approve proposed dates for General Plan Hearings

The Committee recommended approval to hold General Plan Hearings at 7:00 p.m. in Council Chambers on the following dates in 2004: March 16, June 1, September 7, and December 7.

- (e) The Public Record. Attachment: Memorandum from City Clerk Deanna J. Santana, dated January 8, 2004, transmitting the items to the Administration and the Public Record for the period December 10, 2003 – January 6, 2004.

Regarding Item (a) on the Public Record, a letter from Pete Campbell, the Committee suggested Mr. Campbell may voice his concerns at the January 27, 2004 Council Meeting, at which time the new City Hall budget will be discussed. The Committee noted and filed the Public Record.

- (f) Appointment to Boards, Commissions and Committees - There were none.
- (g) Rules Committee Reviews, Recommendations and Approvals. Attachment: (1) Memorandum from City Attorney Richard Doyle, dated December 15, 2003, regarding temporary disability benefits for Police Officers and Firefighters. (2) Memorandum from Federated City Employees' Retirement System Secretary Edward Overton, dated November 10, 2003, regarding the Police and Firefighter Exemption Ordinance.
  - (1) Report back on Labor Code requirements for payment of workers' compensation benefits. Attachment: Memorandum from City Attorney Richard Doyle, dated December 15, 2003, recommending temporary Disability Benefits for Police Officers and Firefighters.

The Committee continued this item to next week's Rules Committee Meeting.

**3.2 Report of the Rules Committee – January 14, 2004 (Cont'd.)  
Vice Mayor Dando, Chair**

(h) Oral communications

Pete Campbell, District 1 resident, expressed concerns regarding the new City Hall location and budget.

(i) Adjournment - The meeting was adjourned at 2:50 p.m.

Discussion/Action: Upon motion by Vice Mayor Dando, seconded by Council Member Chavez, and carried unanimously, the Report of the Rules Committee Meeting, and the actions of January 14, 2004, were accepted. Vote: 11-0-0-0.

**3.3 Report of the Making Government Work Better Committee – January 14, 2004  
Council Member Campos, Chair**

Documents Filed: The Making Government Work Better Committee Report dated January 14, 2004.

- (a) Criteria for Fleet Management Division of the General Services Department's Vehicle Replacement Program. Attachment: Memorandum from Director of General Services Jose Obregon, dated January 6, 2004, recommending acceptance of the status report on the Fleet Management's Vehicle Replacement Program.

The Committee accepted the Staff Report.

- (b) Overhead Reimbursements Memorandum. Attachment: Memorandum from City Auditor Gerald Silva, dated December 15, 2003, transmitting the Review of the City's Cost Allocation Plans.

The Committee accepted the Staff Report.

- (c) Review of Accounts Receivable System Acquisition Memorandum. Attachment: Memorandum from City Auditor Gerald Silva, dated December 15, 2003, transmitting the Review of Finance Department Treasury Division's Compliance with Systems Acquisition Guidelines.

The Committee accepted the Staff Report.

- (d) General Services Metered Equipment Audit Report. Attachment: Report of An Audit of the Utilization and Replacement of the City's Metered Equipment from the Office of the City Auditor, dated January 2004.

**3.3 Report of the Making Government Work Better Committee – January 14, 2004  
Council Member Campos, Chair (Cont'd.)**

(d) General Services Metered Equipment Audit Report (Cont'd.)

The Committee accepted the Staff Report, with the direction that a status report be placed on the Committee's next work plan, and that the report include flags to identify metered equipment vs. specialized equipment. The report should also include more information on scooter utilization at the Plant (as compared to similar Plants in other Cities).

(e) Oral petitions

William Garbett spoke on the Los Esteros power plant.

(f) Adjournment - The meeting was adjourned at 4:00 p.m.

Discussion/Action: Upon motion by Council Member Campos, seconded by Council Member Reed, and carried unanimously, the Report of the Making Government Work Better Committee Meeting, and the actions of January 14, 2004, were accepted. Vote: 11-0-0-0.

**3.4 Approval to convene the Blue Ribbon Task Force to review matters related to the City's Ethics Ordinances and Lobbyist Ordinance. (Mayor)  
(Rules Committee referral 1/21/04)**

Documents Filed: (1) Memorandum from Mayor Gonzales, Vice Mayor Dando, and Council Members Chavez, Reed and Yeager, dated January 23, 2004, recommending convening the Blue Ribbon Task Force as outlined in the Mayor's August 22, 2003 Biennial Ethics Review memorandum, and additional direction to the City Attorney. (2) Memorandum from Council Member Cortese, dated January 27, 2004, recommending additional items to be considered by the Blue Ribbon Task Force that was not part of the memorandum dated January 23, 2004 from Mayor Gonzales and cosigners.

Discussion/Action: Council Member Reed moved approval of the memorandum from Mayor Gonzales, and co-signers, dated January 23, 2004. Vice Mayor Dando seconded the motion.

Council Member Cortese thanked the makers of the approved memorandum for the clear directions, and the invitation to direct the other Council Members who are not on the memorandum to direct their questions, and suggestions to the Task Force. He stated he forwarded his memorandum to the Blue Ribbon Task Force and the City Clerk today, and delivered copies to the Council Offices. He remarked that three of the points on his memorandum are questions the City Attorney should respond to, and not the Task Force.

### 3.4 (Cont'd.)

He clarified that the City Attorney be directed to respond to questions and provide clarification within 30 days to the memorandum issued by Council Member Cortese, and in addition to the direction given to the City Attorney in the memorandum from Mayor Gonzales, and co-signers. Mayor Gonzales accepted Council Member Cortese's amendment. Council Member Lezotte noted the memorandum states to immediately convene the Task Force, however the Task Force members have not been nominated. Mayor Gonzales replied those nominations will be provided to the Council within the next couple of weeks. In reference to the status report the Task Force will provide in 90 days of its first meeting, Council Member Cortese asked if it would be a public document. Mayor Gonzales replied yes, the Task Force is an official body, to which City Attorney Richard Doyle confirmed that the Task Force is subject to the Brown Act provisions. Council Member LeZotte asked who would be asked to be on the Task Force. Mayor Gonzales replied the Task force would be made up of Council Members only. Council Member Reed, the maker of the motion, and Vice Mayor Dando, the seconder of the motion, accepted Council Member Cortese's amendment to the motion to incorporate the matters going to the City Attorney.

Council Member Williams asked what will the outcome be in terms of the roles and objectives of the Blue Ribbon Task Force. Mayor Gonzales replied the objective is basically to review the existing Lobbyist Ordinance Rules, as well as the Ethics Ordinances, and to compare them with best practices in the community in order to determine whether they could be better enhanced, adding this effort will be a process of continuous improvement. Mayor Gonzales remarked that the Task Force would be asked to identify what are the problems and what are the solutions to address them. In response to Council Member Campos' question of whether an attorney would staff on the Task Force, Mayor Gonzales replied that there would be an Attorney staffing the Task Force.

Mayor Gonzales called for public testimony. William Garbett spoke in opposition of the issue. Ross Signorino spoke for the issue. On a call for the question, the motion carried unanimously, and authorization to convene the Blue Ribbon Task Force to review matters related to the City's Ethics Ordinances and Lobbyist Ordinance, were approved, with the City Attorney directed to respond to questions and provide clarification within 30 days to the memorandum issued by Council Member Cortese, and in addition to the direction given to the City Attorney in the memorandum from Mayor Gonzales, Vice Mayor Dando, and Council Members Chavez, Reed and Yeager, dated January 23, 2004, and the memorandum from Council Member Cortese, dated January 27, 2004, clarification should include (1) Applicable enforcement timelines, statutes of limitations and authority for initiating prosecution, including review of any current specific incidences where the City is currently on notice of *prima facie* violations; (2) Present the benefits of vesting the City Attorney (or a third party) with *sua sponte* authority to initiate prosecutions for violations, particularly in the context of avoiding conflict or the appearance of conflict with the City Council in making prosecutorial determinations; (3) Analysis of any existing "loopholes" which allow current City Council fundraising limits to be exceeded by City elected officials/candidates such as independent expenditures, separate controlled committees, PACS, etc. Vote: 11-0-0-0.

## ECONOMIC & NEIGHBORHOOD DEVELOPMENT

- 4.3 Adoption of a resolution of the City Council to proceed with non-construction operating start up plans for the New Civic Center (NCC) and delegating authority to the City Manager to enter into contracts for public works, the purchase of technology, furniture, equipment, and relocation services for the NCC in accordance with the provisions of the San José Municipal Code and the City's procurement policies and procedures in an amount not to exceed \$45,250,000 to facilitate the effective and efficient operation of the NCC. CEQA: New Civic Center Project: Resolution No. 68905; New Civic Center Parking Garage: Resolution No. 71743. (City Manager's Office/Public Works/Information Technology/Finance/General Services)**

Documents Filed: None.

Discussion/Action: Item 4.3 was deferred to February 3, 2004.

- 4.4 Adoption of a resolution initiating proceedings to amend Part 7 of Chapter 20.80 of Title 20 of the San José Municipal Code to allow the concurrent sale of food and alcohol at gasoline service stations under certain circumstances, setting a public hearing on February 17, 2004 at 1:30 p.m. on a proposed ordinance, and referring the proposed amendments to the Planning Commission for report or recommendation. CEQA: Not a Project. (Planning, Building and Code Enforcement)  
(Referred from 9/16/03 – Item 4.3)**

Documents Filed: None.

Discussion/Action: Item 4.4 was deferred to February 24, 2004.

- 4.5 Adoption of a resolution clarifying and reaffirming the Evergreen Area Development Policy and directing staff to discourage all rezoning and General Plan amendments in the Evergreen Area for residential uses that require additional residential unit allocations or density increases until the completion of the Evergreen Smart Growth Strategy scheduled for completion in June of 2005. CEQA: Resolution No. 63179, PP04-01-013. Council District 8. (Planning, Building and Code Enforcement)  
(Referred from 12/16/03 – Item 12.9)**

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Stephen Haase, Director of Public Works Katy Allen, and Director of Transportation James Helmer, dated January 15, 2004, recommending adoption of said resolution. (2) Proof of Publication of Notice of Public Hearing, executed on January 13, 2004, submitted by the City Clerk.

#### 4.5 (Cont'd.)

Discussion/Action: Upon motion by Council Member Cortese, seconded by Council Member Chavez, and carried unanimously, Resolution No. 71939, entitled: "A Resolution of the Council of the City of San José Clarifying and Reaffirming the Evergreen Area Development Policy and Directing Staff to Discourage Certain Residential Development Applications Until Completion of the Evergreen Smart Growth Strategy", was adopted. Vote: 11-0-0-0.

#### 4.6 Approval of various actions related to Getting Families Back to Work.

- (a) **Adoption of a resolution amending the Schedule of Fees and Charges to establish fees for the recently approved Historic Preservation Permit Amendment and Historic Preservation Permit Adjustment, and to amend the existing fee for Historic Property Contracts. CEQA: Exempt, PP03-11-362. (Planning, Building and Code Enforcement)**
- (b) **Adoption of a resolution initiating proceedings to amend Title 20 of the San José Municipal Code by adding a new Part 2 to Chapter 20.110 to authorize the Director of Planning, Building and Code Enforcement to cancel or partially cancel Williamson Act contracts relating to prime agricultural land under certain circumstances, setting a public hearing on February 17, 2004 at 1:30 p.m. on a proposed ordinance to so amend Title 20, and referring the proposed amendments to Title 20 to the Planning Commission for report or recommendation. (Planning, Building and Code Enforcement)**
- (c) **Adoption of a resolution initiating proceedings to amend Sections 20.100.130 and 20.100.140 of Chapter 20.100 of Title 20 of the San José Municipal Code to further clarify and streamline the concurrent processing of Planned Development Permits and Planned Development Zonings, setting a public hearing on February 17, 2004 at 1:30 p.m. on a proposed ordinance to so amend Title 20, and referring the proposed amendments to Title 20 to the Planning Commission for report or recommendation. (Planning, Building and Code Enforcement)**

Documents Filed: (1) Memorandum from City Manager Del Borgsdorf, dated January 26, 2004, regarding status of Getting Families Back to Work Directives. (2) Memoranda from Director of Planning, Building and Code Enforcement Stephen Haase recommending adoption of said resolutions.

Discussion/Action: Upon motion by Vice Mayor Dando, seconded by Council Member Chavez, and carried unanimously, Resolution No. 71940, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 71603 to Establish Fees for Historic Preservation Permit Amendments and Adjustments and to Establish a Maximum for the Historic Property Contracts Fee"; and Resolution No. 71941, entitled: "A Resolution of the Council of the City of San José Initiating Proceedings on Its Own Motion to Amend Title 20 of the San José Municipal Code by Adding a New Part 2 to Chapter 20.110 and a New Section 20.200.1405 to Chapter 20.200 to Authorize the Director of Planning, Building and Code Enforcement to Cancel or Partially Cancel

#### 4.6 (Cont'd.)

Williamson Act Contracts Relating to Prime Agricultural Land Under Certain Circumstances, Setting a Public Hearing Thereon, and Referring Said Proposed Amendments to the Planning Commission for Report or Recommendation”; and Resolution No. 71942, entitled: “A Resolution of the Council of the City of San José Initiating Proceedings on Its Own Motion to Amend Title 20 of the San José Municipal Code by Amending Sections 20.100.130 and 20.100.140 of Chapter 20.100 to Further Clarify and Streamline the Concurrent Processing of Certain Development Permits and Approvals, Setting a Public Hearing Thereon, and Referring the Proposed Amendments to the Planning Commission for Report or Recommendation”, were adopted, with Staff directed to outline the Community Outreach process clearly. Vote: 11-0-0-0.

### RECREATION & CULTURAL SERVICES

#### 5.2 Approval of actions related to local assistance grant funds.

- (a) **Adoption of a resolution authorizing the City Manager to negotiate, execute and submit an application and all necessary documents for local assistance grant funds up to \$4,051,154 from the Roberti-Z’Berg-Harris Urban Open Space and Recreation Grant Program under the 2002 Resources Bond Act (Proposition 40) as administered by the State of California - The Resources Agency, Department of Parks and Recreation. CEQA: Not a Project. Council Districts 3, 4, 6, 7, 9, and Citywide. SNI: Five Wounds/Brookwood Terrace, University, Thirteenth Street, Greater Gardner, Washington/Guadalupe, Burbank/Del Monte, Spartan/Keyes, Tully/Senter. (Parks, Recreation and Neighborhood Services)**
- (b) **Adoption of a resolution authorizing the City Manager to negotiate, execute, and submit all necessary documents for local assistance funds up to \$4,037,000 from the Per Capita Grant Program under the 2002 Resources Bond Act as administered by the State of California - The Resources Agency, Department of Parks and Recreation. CEQA: Not a Project. Council Districts 1, 2, 3, 5, 7, 8, and 10. SN: Five Wounds/Brookwood Terrace, Mayfair, Tully/Senter. (Parks, Recreation and Neighborhood Services)**

Documents Filed: Memoranda from Director of Parks, Recreation and Neighborhood Services Sara Hensley, dated January 7, 2004, recommending adoption of said resolutions.

Discussion/Action: In reference to the memorandum from Director of Parks, Recreation and Neighborhood Services Sara Hensley, dated January 7, 2004, Item 5.2(b), on the chart on Page 3, Council Member Chavez asked what is the amount of the matching funds, in particular, for the dog park in District 10. Deputy Director of Parks, Recreation and Neighborhood Services Scott Reese replied the sources for those funds are not specific other than that they are coming out of the Construction and Conveyance Taxes (C&C) for District 10.

## 5.2 (Cont'd.)

Vice Mayor Dando requested Staff to clarify where and what the other amounts are as well, and if there are matching funds. Deputy Director Reese replied that in reference to the dog park in District 10 that the \$275,000 is a preliminary number, and Staff's estimate for this project right now is about \$330,000, and at the time of bid, it could be that additional funding would not be necessary. He stated Staff is at a very early stage of scoping out the project at this point.

Vice Mayor Dando remarked in this time of short budgets, Staff should be interested in what the other Districts have in terms of matching funds, and if so, what is the source, and how much. She stated with Proposition 40, the City must try to make that go as far as possible, and that would be a good column for Staff to add in the future or when this comes back to Council. Deputy Director Reese replied it would be very difficult to site all the sources of all the matching funds for these projects, and in many cases where Staff has projects that are being completed there could be multiple sources of funding in some cases. He stated however if Council would like that information provided, Staff could certainly do provide it. Vice Mayor Dando asked if most of the matching funds are provide by District Funds. Deputy Director Reese replied they are coming from multiple sources such as other grants, Council funds, or construction and conveyance funds within the various Districts. Vice Mayor Dando stated she would speak to Staff offline specifically about this park, because she was under the impression that all Districts were putting in matching funds.

Council Member Chavez remarked it would be helpful for Staff to more clearly define how these projects were chosen, and to be as straight forward as possible when bringing the projects forward. Council Member Campos asked if Staff knows what the funding source is for each particular project. Deputy Director Reese replied Staff has very definitive analysis of all of the projects, including the proposed funding sources. Council Member Campos asked if Staff would be able to put together an analysis of one particular project, and know what the funding sources are. Deputy Director replied yes there are actually a series of filters applied to each project.

Mayor Gonzales called for public testimony. Bertha Ward spoke for the issue. Upon motion by Council Member Yeager, seconded by Council Member Gregory, and carried unanimously, Resolution No. 71943, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate, Execute and Submit an Application for Local Assistance Grant Funds up to \$4,051,154 to the Roberti-Z'Berg-Harris Urban Open Space and Recreation Grant Program Under 2002 Resources Bond Act as Administered by the State of California - The Resources Agency, Department of Parks and Recreation"; and Resolution No. 71944, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate, Execute and Submit an Application for Local Assistance Grant Funds up to \$4,037,000 to the Per Capita Grant Program Under 2002 Resources Bond Act as Administered by the State of California - The Resources Agency, Department of Parks and Recreation", were adopted, with Staff directed to correct the error to state PAL Stadium encompasses "Council Districts 5, 7 and 8". Vote: 11-0-0-0.

**5.3 Report on bids and award of contract for the Sixth and Bestor Park Development Project to the low bidder, Robert A. Bothman, Inc., for the base bid and Add Alternate Nos. 1, 2, and 3 in the amount of \$607,333, and approval of a contingency in the amount of \$90,000. CEQA: Addendum to the Negative Declaration, PP02-10-300. Council District 3. SNI: Spartan/Keyes. (Public Works/Parks, Recreation and Neighborhood Services)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, and Director of Parks, Recreation and Neighborhood Services Sara Hensley, dated January 7, 2004, recommending award of the said contract, with related contingency, to the low bidder, Robert A. Bothman, Inc., for the Sixth and Bestor Park Development Project.

Discussion/Action: Council Member Williams stated usually City projects have a contingency of 10%, and asked why this project has 15% contingency. Director of Public Works Katy Allen replied Staff asked for the 15% contingency because Staff was unsure as to what the utilities and other underground facilities might be on the vacant lot, and it was to address and provide sufficient funding for the project to move forward. Upon motion by Council Member Chavez, seconded by Council Member Reed, and carried unanimously, the award of the contract with related contingency, to the low bidder, Robert A. Bothman, Inc., for the Sixth and Bestor Park Development Project was approved, and its execution authorized. Vote: 11-0-0-0.

**5.4 Status of the Animal Care Center Project.**

**(a) Adoption of the following appropriation ordinance and funding sources resolution amendments in the General Fund, as follows:**

- (1) Increase the Animal Shelter Facility appropriation by \$524,000.**
- (2) Decrease the Boynton Avenue Sidewalk Installation appropriation by \$137,000.**
- (3) Decrease the Security Improvements appropriation by \$230,000.**
- (4) Decrease the Fire Apparatus Bond Payments appropriation by \$25,000.**
- (5) Decrease the Ice Centre Expansion appropriation by \$32,000.**
- (6) Increase the Estimate for Revenue from Local Agencies by \$100,000.**

**(b) Increase the contingency amount for the Animal Care Center Project by \$524,000.**

**CEQA: Negative Declaration, H01-01-003. (Public Works/Parks, Recreation and Neighborhood Services/City Manager's Office)**

**[Deferred from 1/13/04 – Item 2.3(b) and 1/20/04 – Item 5.2]**

Documents Filed: (1) Memorandum from Director of Public Works Katy Allen, dated December 16, 2003, recommending appropriate actions be taken per information in the status report. (2) Supplemental memorandum from Director of Public Works Katy Allen, Director of Parks, Recreation and Neighborhood Services Sara Hensley, and Budget Director Larry Lisenbee, dated January 22, 2004, recommending adoption of said appropriation ordinance and funding sources resolution amendments.

#### 5.4 (Cont'd.)

Discussion/Action: Mayor Gonzales called for public testimony. William Garbett spoke in opposition of the issue. Council Member Chavez stated she would not be supporting this issue. Upon motion by Council Member Cortese, seconded by Council Member Gregory, and carried, Ordinance No. 27062, entitled: "An Ordinance of the City of San José Amending Ordinance No. 26916 to Appropriate Moneys in the General Fund for the Animal Care Center Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption; and Resolution No. 71945, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 71608 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2003-2004 to Adjust Revenues in the General Fund", were adopted. Vote: 10-1-0-0. Noes: Chavez.

### TRANSPORTATION SERVICES

#### 6.2 **Report on bids and take appropriate action based on the evaluation of bids for the 3<sup>rd</sup> Street Garage Seismic Upgrade Project, and approval of a ten percent contingency. CEQA: Negative Declaration, PP03-10-329. Council District 3. (Public Works/Transportation)**

Documents Filed: None.

Discussion/Action: Item 6.2 was deferred to February 3, 2004.

### AVIATION SERVICES

#### 8.1 **Adoption of a resolution finding that the Airport traffic and transit improvement conditions set forth in Part 4 of Chapter 25 of the San José Municipal Code have been met and that the City may therefore commence construction of a new Central Terminal facility and expand the number of air carrier gates at the Airport beyond the existing 31 gates, as provided in the Airport Master Plan. CEQA: Resolution Nos. 67380 and 71451, PP04-01-002. (Airport/Transportation)**

Documents Filed: None.

Discussion/Action: Item 8.1 was deferred to March 16, 2004.

- 8.2 Approval of actions for the Airport's North Concourse Building Projects.**
- (a) Report on bids and award of contract for the Norman Y. Mineta San José International Airport North Concourse Building - Communication Cables Relocation (Package 0C) Project to low bidder, Volt Telecom Group, in the amount of \$440,619, and approval of a contingency in the amount of \$44,062. CEQA: Resolution Nos. 67380 and 71451, PP 03-12-388. (Public Works/Airport)  
[Deferred from 1/13/04 – Item 8.1(a)]**
  - (b) Report on bids and award of contract for the Norman Y. Mineta San José International Airport North Concourse Building, Gate A1-C Relocation (Package 0B) Project to the low bidder, Apex Construction, in the amount of \$729,289, and approval of a contingency in the amount of \$110,000. CEQA: Resolution Nos. 67380 and 71451, PP 03-12-393. (Public Works/Airport)  
[Deferred from 1/13/04 – Item 8.1(b)]**

Documents Filed: None.

Discussion/Action: Item 8.2 was deferred to March 16, 2004.

## **PUBLIC SAFETY SERVICES**

- 9.1 Report on bids and award the purchase of two breathing air support apparatus to the lowest responsive bidder Golden State Fire Apparatus, at a total cost of \$580,889.50 including tax, and authorization for the Director of General Services to:**
- (a) Execute the purchase order for the purchase of two air support apparatus (oxygen tank vehicles); and**
  - (b) Execute change orders in an amount to exceed a contingency of 5% for unforeseen engineering requirements that may arise.**
- CEQA: Not a Project. (General Services)**

Documents Filed: Memorandum from Director of General Services Jose Obregon, dated January 7, 2004, recommending award of said contract to the lowest responsive bidder, Golden State Fire Apparatus and authorization for the Director of General Services as stated above.

Discussion/Action: Upon motion by Council Member Chavez, seconded by Vice Mayor Dando, and carried unanimously, the award of the contract, with related contingency if needed, to the lowest responsive bidder, Golden State Fire Apparatus was approved, and the Director of General Services was authorized to execute the purchase order, and change orders. Vote: 11-0-0-0.

**JOINT COUNCIL/REDEVELOPMENT AGENCY**

The Redevelopment Agency Board convened at 2:15 p.m. to consider Item 10.1 in a Joint Session.

**10.1 Approval of a Public Records Act policy.**

- (a) **Adoption of a resolution by the City Council approving a City Council policy related to Public Record Act requests.**
- (b) **Adoption of a resolution by the Redevelopment Agency Board approving a policy related to Public Record Act requests.**

**(City Attorney’s Office)  
(Rules Committee referral 1/14/04)**

Documents Filed: Memorandum from City Attorney Richard Doyle, dated January 21, 2004, recommending adoption of said resolutions by City Council, and Redevelopment Agency Board.

Discussion/Action: Mayor Gonzales called for public testimony. William Garbett spoke in opposition to the issue. Upon motion by Council Member Williams, seconded by Council Member Cortese, and carried unanimously, Resolution No. 71946, entitled: “A Resolution of the Council of the City of San José Adopting a Policy Related to Public Record Act Requests”; and Redevelopment Agency Board Resolution were adopted. Vote: 11-0-0-0.

The Redevelopment Agency Board Portion of the Meeting was adjourned at 2:19 p.m.

**NOTICE OF CITY ENGINEER’S PENDING DECISION ON FINAL MAPS**

In accordance with Sec. 19.16.140d of the San Jose Municipal Code, this is notice of the City Engineer's pending decision on the following Final Maps:

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/Units</u>	<u>Type</u>	<u>Proposed Decision</u>
9534	East side of Flickinger approximately 600’ southerly of Hostetter	4	Pulte Homes Corp	88 lots/84 units	SFD	Approve

In accordance with Sec. 19.16.140d of the San Jose Municipal Code, this is notice of the City Engineer's receipt of the following Final Maps for review:

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/Units</u>	<u>Type</u>
9550	S/s of Trade Zone Blvd. opposite Autumnvale Ave.	4	DKB Homes LLC	18 units	SFD

### **OPEN FORUM**

- (1) Ross Signorino spoke in reference to the President's State of the Union Address regarding the labor force.

### **ADJOURNMENT**

The Council of the City of San José was adjourned in memory of Reverend V. F. Shoemake, founder of the First United Pentecostal Church of San José.

The Council of the City of San José was adjourned at 2:22 p.m.

**RON GONZALES, MAYOR**

**ATTEST:**

**DEANNA J. SANTANA, ACTING CITY CLERK**

smd/01/27/04min