

## MINUTES OF THE CITY COUNCIL

**SAN JOSE, CALIFORNIA**

**TUESDAY, FEBRUARY 10, 2004**

The Council of the City of San Jose convened in Regular Session at 9:33 a.m. in Council Chambers at City Hall.

Present: Council Members: Campos, Chavez, Cortese, Dando, Gregory, LeZotte, Reed, Williams, Yeager.

Absent: Council Members: Chirco; Gonzales (excused).

Upon motion unanimously adopted, the City Council recessed to Closed Session at 9:35 a.m. in Room 600 to (A) confer with Legal Counsel regarding existing litigation pursuant to Government Code Section 54956.9 Subsection (a) to consider cases of City of San José v. County of Santa Clara County Airport Land Use Commission, et al, Horta, LLC v. City of San José, People of the State of California, et al. v. Duong Family Investment, LLC, California Waste Solutions, Inc., et al, Cripe, et al. v. City of San José, et al.; (B) to confer with Legal Counsel regarding anticipated litigation (a) of a matter where there is significant exposure to litigation pursuant to subsection (b) of Section 54956.9 of the Government Code and (C) Conference with Labor Negotiator Pursuant to Government Code Section 54957.6: City Manager designee: Alex Gurza, Employee Organizations: (1) San José Police Officers' Association, (2) International Association of Firefighters.

By unanimous consent, Council reconvened from Closed Session and recessed at 10:42 a.m. and reconvened at 1:32 p.m. in Council Chambers, City Hall.

Present: Council Members: Campos, Chavez, Cortese, Dando, Gregory, LeZotte, Reed, Williams, Yeager.

Absent: Council Members: Chirco; Gonzales (excused)..

### **INVOCATION (DISTRICT 2)**

Valley Christian Junior High School, 8<sup>th</sup> grade student, Emma Lyle delivered the Invocation.

### **PLEDGE OF ALLEGIANCE**

Vice Mayor Dando led the Pledge of Allegiance.

### **ORDERS OF THE DAY**

Upon motion by Council Member Chavez, seconded by Council Member Cortese, and unanimously carried, the Order of the Day and the Amended Agenda were approved. Vote: 9-0-2-0. Absent: Chirco, Gonzales.

## CONSENT CALENDAR

Upon motion by Council Member Williams, seconded by Council Member Cortese and unanimously carried, the Consent Calendar was approved and the below listed actions taken as indicated. Vote: 9-0-2-0. Absent: Chirco; Gonzales (excused).

### 2.1 Approval of City Council Minutes for:

- (a) **Regular meeting of October 28, 2003**
- (b) **Joint Council/Redevelopment Agency meeting of October 28, 2003**
- (c) **Regular meeting of November 4, 2003**
- (d) **Regular Meeting of November 18, 2003, and Special Study Session**
- (e) **Joint Council/Redevelopment Agency meeting of November 18, 2003**
- (f) **Regular meeting of November 25, 2003**
- (g) **Joint Council/Redevelopment Agency meeting of November 25, 2003**
- (h) **Joint Council/Redevelopment Agency/Financing Authority of November 25, 2003**
- (i) **Regular meeting of December 2, 2003**
- (j) **Joint Council/Redevelopment Agency meeting of December 2, 2003**
- (k) **Regular meeting of December 9, 2003**
- (l) **Joint Council/Redevelopment Agency meeting of December 9, 2003**

Documents Filed: The Regular meeting minutes of October 28, November 4, November 18, November 25, December 2, and December 9, 2003, Joint Council/Redevelopment Agency meeting minutes of October 28, November 18, November 25, December 2, and December 9, 2003, and Joint Council/Redevelopment Agency/Financing Authority meeting minutes of November 25, 2003.

Discussion/Action: The minutes were approved. Vote: 9-0-2-0. Absent: Chirco; Gonzales.

### 2.3 Approval of a third amendment to the office lease with RNM First Street Center, LP ("RNM") for Airport Administrative Offices, located at 1732 N. First Street, to provide for reimbursement by RNM to the City for the cost of painting and carpeting a portion of the leased premises in an amount not to exceed \$76, 283. CEQA: Resolution Nos. 67380 and 71451, PP 04-01-008. (Airport)

Documents Filed: Memorandum from Aviation Director Ralph G. Tonseth, dated January 28, 2004, recommending approval of said third amendment.

Discussion/Action: The said third amendment to the office lease with RNM First Street Center, LP ("RNM") was approved. Vote: 9-0-2-0. Absent: Chirco; Gonzales.

- 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 Eden Avenue Traffic Calming Improvements Project with a net impact to the fund of \$74,750.**
- (b) **Adoption of a resolution making certain determinations regarding the related expenditures of Redevelopment Agency funds on certain public improvements in connection with the Eden Avenue Traffic Calming Improvements Project.**
- CEQA: Not a Project. Council District 1. SNI: Winchester. (City Manager's Office)**

Documents Filed: Memorandum from Budget Director, Larry D. Lisenbee, dated January 21, 2004, recommending adoption of said appropriation ordinance, funding sources resolution and resolution.

Discussion/Action: Ordinance No. 27068, entitled: "An Ordinance of the City of San José Amending Ordinance No. 26916 to Appropriate Moneys in the Services for Redevelopment Capital Projects Fund fro the Eden Avenue Traffic Calming Improvements Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", Resolution No. 71953, 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. 71954, 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 Winchester Neighborhood in the Strong Neighborhoods Initiative Redevelopment Project Area", were adopted. Vote: 9-0-2-0. Absent: Chirco; Gonzales.

- 2.5 **Adoption of a resolution authorizing the City Manager to submit an application to the California Integrated Waste Management Board for re-designation of the City of San José as a Recycling Market Development Zone. CEQA: Negative Declaration, PP 03-12-373. (Environmental Services)**

Documents Filed: Memorandum from Director of Environmental Services, Carl Mosher, dated January 30, 2004, recommending adoption of said resolution.

Discussion/Action: Resolution No. 71955, entitled: "A Resolution of the Council of the City of San José Supporting the Redesignation of the San José Recycling Market Development Zone and Authorizing the City Manager to Submit an Application to the California Integrated Waste Management Board", was adopted. Vote: 9-0-2-0. Absent: Chirco; Gonzales.

- 2.6 **Report on bids and award of contract for the Carrabelle Park Play Area Improvements Project to the low bidder, Lone Star Landscape, Inc., in the amount of \$144,700, and approval of a contingency in the amount of \$8,000. CEQA: Exempt, PP03-12-380. Council District 10. (Public Works/Parks, Recreation and Neighborhood Services)**

**2.6 (Cont'd.)**

Documents Filed: Memorandum from Director of Public Works Katy Allen and Director of Parks, Recreation & Neighborhood Services Sara Hensley, dated January 21, 2004, recommending said report on bids and award of said contract.

Discussion/Action: The said report on bids and award of said contract to the low bidder, Lone Star Landscape, Inc. was approved with related contingency. Vote: 9-0-2-0. Absent: Chirco; Gonzales.

**2.7 Acceptance of the Fourth Quarter 2003 San José Arena Authority Ticket Distribution Program Report. CEQA: Not a Project. (San José Arena Authority)**

Documents Filed: Memorandum from the San José Arena Authority Ticket Administrator, dated January 21, 2004, recommending acceptance of said report.

Discussion/Action: The Fourth Quarter 2003 San José Arena Authority Ticket Distribution Program Report was accepted. Vote: 9-0-2-0. Absent: Chirco; Gonzales.

**2.8 Approval to initiate General Plan text and Land Use diagram amendments regarding recycling facilities and direct staff to draft such language for Council consideration at the June 1, 2004 General Plan hearing. (Reed)**

Documents Filed: (1) Memorandum from Council Member Reed, dated February 5, 2004, recommending approval of said General Plan text and Land Use diagram amendments with said staff direction. (2) Memorandum from Council Member Reed, dated January 27, 2004, requesting to add said item to the February 10, 2004 City Council agenda.

Discussion/Action: The said General Plan text and Land Use diagram amendments with said staff direction were approved. Vote: 9-0-2-0. Absent: Chirco; Gonzales.

**STRATEGIC SUPPORT SERVICES**

**3.2 Report of the Rules Committee – Meeting of January 28, 2004**  
Vice Mayor Dando, Chair

Documents Filed: The Report of the Rules Committee of January 28, 2004.

- (a) Redevelopment Agency items reported out at Redevelopment Agency meeting
- (b) City Council
  - (1) Review February 10, 2004 Draft Agenda

The Committee recommended approval of the February 10, 2004 City Council agenda with one addition.

### 3.2 Report of the Rules Committee – Meeting of January 28, 2004 (Cont'd.)

(b) City Council

- (2) Add New Items to February 3, 2004 Amended Agenda
- Mayor and Council Member Requests
  - City Manager Requests
  - City Attorney Requests
  - City Clerk Requests

The Committee recommended two additions to the February 3, 2004 City Council agenda.

- (3) List of Reports Outstanding. Attachment: Report from the City Manager's Office, dated January 27, 2004, listing two staff reports outstanding for the February 3, 2004 Council agenda.

The Committee noted and filed the City Manager's report listing two staff reports outstanding for the February 3, 2004 Council agenda.

(c) Legislative Update

- (1) State

Vice Mayor Dando requested a status report, in two weeks, on AB 488 and any other bills related to Megan's Law.

- (2) Federal – There was no report.

(d) Meeting Schedules – There were none.

- (e) The Public Record. Attachment: Memorandum from Interim City Clerk Deanna J. Santana, dated January 22, 2004, summarizing items received for the Public Record for January 7-20, 2004.

The Committee forwarded Item (a), a letter from the Parks and Recreation Commission, to the Planning Department and to District 2 Council Member Forrest Williams, with direction to send a reply to the Commission. The Committee noted and filed the Public Record.

- (f) Appointment to Boards, Commissions and Committees – There were none.

### **3.2 Report of the Rules Committee – Meeting of January 28, 2004 (Cont'd.)**

- (g) Rules Committee Reviews, Recommendations and Approvals
  - (1) Report back on Labor Code requirements for payment of workers' compensation benefits

The Committee referred this item to the February 3, 2004 Council agenda with additional language to request amendment of the Council-approved Legislative Action Plan to add the matter of payment of workers' compensation benefits.

Council action was taken on February 3, 2004 – Item 3.4

- (h) Oral communications – None were presented.
- (i) Adjournment  
The meeting adjourned at 2:15 P.M.

Discussion/Action: Upon motion by Council Member Williams, seconded by Council Member Cortese, and unanimously carried, the Rules Committee report and actions of January 28, 2004 were accepted. Vote: 9-0-2-0. Absent: Chirco; Gonzales.

#### **Meeting of February 4, 2004 (Partial)**

Documents Filed: The Partial Report of the Rules Committee of February 4, 2004.

- (c) Legislative Update
  - (3) Approve a support position for Regional Measure 2, The Regional Traffic Relief Plan, on the March 2, 2004 State Primary ballot. Attachment: Memorandum from Director of Intergovernmental Relations Betsy Shotwell, dated January 28, 2004, recommending a support position for Regional Measure 2, the Regional Traffic Relief Plan.

The Committee recommended a support position for Regional Measure 2, The Regional Traffic Relief Plan, on the March 2, 2004 State Primary Ballot.

SEE ITEM 3.5 FOR COUNCIL ACTION TAKEN

Discussion/Action: Upon motion by Council Member Cortese, seconded by Council Member Williams, and unanimously carried, the Partial Rules Committee report and actions of February 4, 2004 were accepted. Vote: 9-0-2-0. Absent: Chirco; Gonzales.

- 3.4 (a) **Approval of the 2003-2004 Mid-Year Budget Review.**  
(b) **Adoption of related appropriation ordinance and funding sources resolution amendments for the 2003-2004 Mid-Year Budget Review.**  
(c) **Addition of one net position as detailed in the 2003-2004 Mid-Year Budget Review.**

**CEQA: Not a Project. (City Manager's Office)  
(Rules Committee referral 2/4/04)**

Documents Filed: None.

Discussion/Action: This item was deferred to February 17, 2004.

- 3.5 **Approve a support position for Regional Measure 2, The Regional Traffic Relief Plan, on the March 2, 2004 State Primary ballot.**  
**[Rules Committee referral 2/4/04 – Item 3.2(c)(3)]**

Documents Filed: Memorandum from Senior Executive Analyst Nadine Nader dated February 10, 2004, transmitting a support position for the Regional Measure 2.

Discussion/Action: Upon motion by Council Member Chavez, seconded by Council Member Cortese, and unanimously carried, the said support position for Regional Measure 2 was approved. Vote: 9-0-2-0. Absent: Chirco; Gonzales.

## **ECONOMIC & NEIGHBORHOOD DEVELOPMENT**

- 4.2 **Report of the Driving a Strong Economy Committee – January 26, 2004**  
Council Member Williams, Chair

Documents Filed: The Report of the Driving a Strong Economy Committee of January 26, 2004.

- (a) Discussion on the goals and targets of the Development Fee Program. Attachment: Memorandum from Director of Planning, Building & Code Enforcement Stephen Haase, Director of Public Works Katy Allen, and Acting Fire Chief Dale Foster, dated January 12, 2004, transmitting the Development Services Performance Update.

The Committee unanimously accepted the staff report.

- (b) State and Federal regulations impacting San José Business. Attachment: Memorandum from Director of Economic Development, Paul Krutko, dated January 9, 2004, transmitting background information pertaining to the State & Federal Regulations impacting San José business.

The Committee accepted staff's report and recommended staff to do further analysis of the priority issues the City and private sector should collaborate on and refer this to the Rules Committee for further evaluation and action.

- (c) Oral petitions

Phyllis Ward, Affordable Housing Network, spoke on Secondary Units.

#### **4.2 Report of the Driving a Strong Economy Committee – January 26, 2004 (Cont'd.)**

(d) Adjournment

The meeting was adjourned at 3:07 P.M.

Discussion/Action: Upon motion by Council Member Williams, seconded by Council Member Cortese, and unanimously carried, the Building Strong Neighborhoods Committee report and actions of January 26, 2004 were accepted. Vote: 9-0-2-0. Absent: Chirco; Gonzales.

#### **4.3 Adoption of a resolution:**

- (a) **Approving a strategy to provide for the ongoing funding of the City's affordable housing programs, including rental housing development, first-time homebuyer programs, and housing rehabilitation activities.**
- (b) **Approving project threshold criteria and a weighting system for scoring proposed developments upon which to base future funding-commitment recommendations for affordable housing development projects.**

**CEQA: Not a Project. (Housing)**

Documents Filed: None.

Discussion/Action: This item was deferred to February 24, 2004.

### **RECREATION & CULTURAL SERVICES**

#### **5.2 Report on bids and award of contract for the Plaza de Cesar Chavez Electrical Upgrades Rebid Project to the low bidder, Edward W. Scott Electric Co., Inc., for the base bid in the amount of \$1,421,500, and approval of a contingency in the amount of \$175,000. CEQA: Exempt, PP03-06-202. Council District 3. (Public Works/Parks, Recreation and Neighborhood Services)**

Documents Filed: (1) Memorandum from Director of Public Works Katy Allen and Director of Parks, Recreation & Neighborhood Services Sara Hensley, dated January 28, 2004, providing additional information after bids were opened. (2) Memorandum from Director of Public Works Katy Allen and Director of Parks, Recreation & Neighborhood Services Sara Hensley, dated January 21, 2004, recommending said report on bids and to take appropriate action based on the evaluation of bids for the Plaza Cesar Chavez Electrical Upgrades Rebid Project, and approval of a 12 percent contingency.

Discussion/Action: Upon motion by Council Member Chavez, seconded by Council Member Cortese, and unanimously carried, the said report on bids and said award of contract to the low bidder, Edward W. Scott Electric Co., Inc. were approved with related contingency. Vote: 9-0-2-0. Absent: Chirco; Gonzales.

- 5.3 (a) Adoption of a resolution authorizing the City Manager to negotiate and execute a lease with Garrett Rajkovich for space located at 6475 Camden Avenue, to provide interim program space for the Almaden Community Center, for a period not to exceed 18 months, with a total rental amount not to exceed \$99,576, and an additional \$35,724 will be required for tenant improvements, communication, and moving costs.
- (b) Adoption of the following appropriation ordinance amendments in the General Fund: (Cont'd.)
- (1) Establish a City-wide appropriation to the Parks, Recreation and Neighborhood Services Department for the Almaden Community Center Lease for \$135,300;
  - (2) Decrease the Hoffman/Via Monte Neighborhood Center Project by \$135,300.

**CEQA: Exempt, PP03-12-392. Council District 10. SNI: Hoffman/Via Monte. (Parks, Recreation and Neighborhood Services/City Manager's Office) (Rules Committee referral 2/4/04)**

Documents Filed: None.

Discussion/Action: This item was dropped.

## **ENVIRONMENTAL & UTILITY SERVICES**

- 7.1 **Public Hearing and approval of an ordinance establishing a Rule 20A Underground Utility District on Stevens Creek Boulevard between Calvert Drive and Stern Avenue. CEQA: Exempt, PP03-12-375. Council District 1. (Public Works)**

Documents Filed: (1) Memorandum from Director of Public Works Katy Allen, dated January 21, 2004, recommending conducting said Public Hearing and approval of said ordinance. (2) Proof of publication of Notice of Public Hearing, executed on January 14, 2004, submitted by Engineer II of Department of Public Works Leo Ruiz.

Discussion/Action: Upon motion by Council Member LeZotte, seconded by Council Member Chavez, and unanimously carried, Ordinance No. 27069, entitled: "An Ordinance of the City of San José Establishing an Underground Utility District on Stevens Creek Boulevard, from Calvert Drive to Stern Avenue", was passed for publication. Vote: 9-0-2-0. Absent: Chirco; Gonzales.

## CLOSED SESSION REPORT

City Attorney Doyle disclosed the following Closed Session action(s) of February 10, 2004:

A. Authority to Enter Litigation Case as *Amicus Curiae*:

*Case Name:* Silicon Valley Taxpayers Assn., et al. v. The Santa Clara County Open Space Authority

*Adverse party or parties:* Silicon Valley Taxpayers Assn., et al.

*Substance of litigation:* Challenge to the Santa Clara County Open Space Authority's establishment of an assessment district to provide funds for open spaces and parkland in Silicon Valley.

Council Vote: Ayes: Pat Dando, Nora Campos, Cindy Chavez, David D. Cortese, Terry O. Gregory, Linda J. LeZotte, Chuck Reed, Forrest Williams and Ken Yeager.

No: None.

Abstain: None.

Not Present: Ron Gonzales and Judy Chirco.

## 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:

None.

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:

None.

## OPEN FORUM—

- 1) Grady Harp spoke on San José Family Camp issues.
- 2) Jim Gower spoke on issues pertaining to the San José Family Camp.
- 3) Harry Wellman spoke on recent activities related to the San José Family Camp.
- 4) Ralph Occhipinti spoke on budgetary issues relating to the San José Family Camp.

**ADJOURNMENT**

The Council of the City of San José adjourned at 1:54 P.M in memory of Casey Bennett, brother of Council Member Judy Chirco.

**VICE MAYOR DANDO, PRO TEMPORE**

**ATTEST:**

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

**EW/2-10-04**