



## **CITY OF SAN JOSÉ, CALIFORNIA**

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### **MINUTES OF THE CITY COUNCIL**

**SAN JOSE, CALIFORNIA**

**TUESDAY, MARCH 8, 2005**

The Council of the City of San Jose convened in Regular Session at 9:35 a.m. in Council Chambers at City Hall.

Present: Council Members: Campos, Chirco, Cortese, LeZotte, Reed, Yeager.

Absent: Council Members: Chavez, Williams; 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 In re Altamirano, In re Perez, In re Schell, Operating Engineers, Local 3 v. City of San José; (B) confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager designee Alex Gurza; 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, (10) Association of Engineers and Architects, (11) International Federation of Professional and Technical Employees, Local 21.

By unanimous consent, Council reconvened from Closed Session and recessed at 10:40 a.m. and reconvened at 1:36 p.m. in Council Chambers, City Hall.

Present: Council Members: Campos, Chirco, Cortese, Dando, LeZotte, Reed, Yeager.

Absent: Council Members: Chavez, Williams; Gonzales (excused).

### **INVOCATION (DISTRICT 3)**

Enrique Flores, Founding member of the non-profit organization, Eastside Heroes, shared some words from participants of the Eastside Heroes program.

### **PLEDGE OF ALLEGIANCE**

Mayor Pro-Tem Campos led the Pledge of Allegiance.

## ORDERS OF THE DAY

Upon motion by Council Member Reed, seconded by Council Member Pyle, and unanimously carried, the Orders of the Day and the Amended Agenda were approved. (7-0-3). Absent: Chavez, Williams; Gonzales.

## CEREMONIAL ITEMS

### **1.1 Presentation of a proclamation declaring the week of March 6-12, 2005 as Irish Week in the City of San José. (LeZotte) (Rules Committee referral 3/2/05)**

Action: Mayor Pro-Tem Campos was joined at the podium by Council Member LeZotte to present a proclamation declaring the week of March 6-12, 2005 as Irish Week in the City of San José.

## CONSENT CALENDAR

Upon motion by Council Member Pyle, seconded by Council Member Cortese and unanimously carried, the Consent Calendar was approved as indicated with the exception of, Item 2.7 (pulled by Council Member Reed). (7-0-3). Absent: Chavez, Williams; Gonzales.

### **2.3 Adoption of a resolution authorizing the City Manager to negotiate and execute a consultant contract with Cedar Enterprise Solutions, Inc. for the implementation of the eBenefits module in the City's Human Resources/Payroll Management System from the date of execution to December 31, 2005 for an amount not to exceed \$183,040. CEQA: Not a Project. (Employee Services)**

Documents Filed: Memorandum from Director of Employee Services Mark Danaj, dated February 24, 2005, recommending adoption of the resolution.

Action: Resolution No. 72562 entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Consultant Agreement with Cedar Enterprise Solutions, Inc. for Implementation of the e-Benefits Module, Effective From the Date of Execution to December 31, 2005, in an Amount Not to Exceed \$183,040", was adopted. (7-0-3). Absent: Chavez, Williams; Gonzales.

### **2.4 Approval of award of open purchase orders for supplies, materials, equipment, and services for FY 2004-2005 #11 and authorization for the Director of General Services to execute the purchase orders. CEQA: See memo for CEQA designation(s). (General Services)**

Documents Filed: Memorandum from Interim Director of General Services Jim McBride, dated February 14, 2005, recommending approval of the award.

Action: The award was approved.. (7-0-3). Absent: Chavez, Williams; Gonzales.

**2.5 Adoption of a resolution summarily vacating a portion of East William Street immediately east of South Third Street. CEQA: Resolution No. 68839 and Addendum thereto, PDC02-083. Council District 3. SNI: University. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated February 14, 2005, recommending adoption of the resolution.

Public Comments: William Garbett spoke in opposition to the resolution.

Action: Resolution No. 72563, entitled: "A Resolution of the Council of the City of San José Summarily Vacating a Portion of East Williams Street Immediately East of South Third Street", was adopted. (7-0-3). Absent: Chavez, Williams; Gonzales.

**2.6 Approval of Vice Mayor Chavez's travel to Washington D.C. on March 6-9, 2005, for the purpose of participating in the American Public Transportation Association (APTA) Legislative Conference. Funding: VTA. (Note previous request for travel was for March 6-8, 2005; this request extends the trip by one additional day.) (Chavez) (Rules Committee referral 3/2/05)**

Documents Filed: None.

Public Comments: William Garbett objected to Vice Mayor Chavez' travel.

Action: Vice Mayor Chavez' travel was approved. (7-0-3). Absent: Chavez, Williams; Gonzales.

**2.7 Approval of an agreement with artists Jim Hirschfield and Sonya Ishii to fabricate and install a public artwork for the new Alum Rock Branch Library, in an amount not to exceed \$147,694. CEQA: Negative Declaration, H020-064. Council District 5. (Cultural Affairs) (Rules Committee referral 3/2/05)**

Documents Filed: Memorandum from Deputy Director of the Office of Cultural Affairs Jerry Allen, dated March 1, 2005, recommending approval of the agreement.

Discussion: Council Member Reed pulled this item to request that staff provide to Council a graphic representation of the proposed artwork.

Action: The agreement was approved and staff directed to provide Council with photos of the proposed artwork. (7-0-3). Absent: Chavez, Williams; Gonzales.

## STRATEGIC SUPPORT SERVICES

### 3.2 Report of the Rules Committee – February 23, 2005 Vice Mayor Chavez, Chair

Documents Filed: The Rules Committee Report of February 23, 2005.

- (a) Redevelopment Agency items reported out at Redevelopment Agency meeting
- (b) City Council
  - (1) Review March 8, 2005 Council Agenda  
The Committee recommended approval of the March 8, 2005 City Council Agenda.
  - (2) Add New Items to March 1, 2005 Amended Agenda  
The Committee recommended five additions to the February 15, 2005 City Council agenda.
  - (3) List of Reports Outstanding. Attachment: Report from the City Manager's Office, dated February 2, 2005, listing twelve (12) staff reports outstanding for the March 1, 2005 Council Agenda.

The Committee noted and filed the City Manager's report.

- (c) Legislative Update
  - (1) State – There were none.
  - (2) Federal – There were none.
- (d) Meeting Schedules  
There were none.
- (e) The Public Record. Attachment: Memorandum from the City Clerk Lee Price, dated February 17, 2005, transmitting items filed for the Public Record for the period February 9-16, 2005.

The Committee noted and filed the Public Record.

- (f) Appointments to Boards, Commissions and Committees
  - (1) Deferred Compensation Advisory Committee Appointments  
This item was reported on at the March 1, 2005 City Council meeting.  
[See 3-1-05 Item 3.2]

### 3.2 (Cont'd.)

- (g) Rules Committee Reviews, Recommendations and Approvals
  - (1) Approval of Travel by Council Member Campos to Washington, D.C., March 10 –14, 2005, to attend the National League of Cities 2005 Annual Congressional City Conference. Attachment: Memorandum from Council Member Campos, dated February 16, 2005, requesting approval to travel to Washington, D.C., utilizing the Council Travel Fund.

The Committee recommended approval of the travel and use of the Mayor/Council Travel Fund.

- (h) Oral Communications — None.
- (i) Adjournment  
The meeting adjourned at 2:17 p.m.

Action: Upon motion by Council Member Yeager, seconded by Council Member Reed, and unanimously carried, the Rules Committee report and actions of February 23, 2005 were accepted. (7-0-3). Absent: Chavez, Williams; Gonzales.

#### **Rules/Agency Rules Committee (Partial) – March 2, 2005** **Vice Mayor Chavez, Chair**

Documents Filed: The Rules/Agency Rules Committee Partial Report of March 2, 2005.

- (c) Legislative Update
  - (2) Federal
    - (a) Amtrak and the Proposed FY 2006 Federal Budget. Attachment: Memorandum from Director of Intergovernmental Relations Betsy Shotwell, dated February 24, 2005, recommending adoption of the resolution requesting the California Congressional delegation work to enact adequate funding for Amtrak in the proposed FY2006 Federal Budget.

The Committee recommended approval of a resolution requesting the California Congressional delegation work to enact adequate funding for Amtrak in the proposed FY 2006 Federal Budget.

SEE ITEM 3.5 FOR COUNCIL ACTION TAKEN

### 3.2 (Cont'd.)

(c) Legislative Update

(2) Federal

(b) Opposition to Elimination of the Community Development Block Grant Program in the Proposed FY 2006 Federal Budget.

Attachment: Memorandum from Director of Intergovernmental Relations Betsy Shotwell, dated March 1, 2005, requesting acceptance of a recommendation to send to the California Congressional delegation and the administration, a letter in opposition to the elimination of the Community Development Block Grant Program as proposed in the FY 2006 Federal Budget.

The Committee recommended approval to send to the California Congressional delegation and the administration, a letter in opposition to the elimination of the Community Development Block Grant Program as proposed in the FY 2006 Federal Budget.

Action: Upon motion by Council Member Yeager, seconded by Council Member Reed, and unanimously carried, the Rules Committee Partial report and actions of March 2, 2005 were accepted. (7-0-3). Absent: Chavez, Williams; Gonzales.

### 3.4 **Approval of a new three-year California Integrated Information Network Agreement (CALNET), a cooperative State of California Agreement with SBC for telecommunications services. (General Services/Information Technology/Finance) (Rules Committee referral 3/2/05)**

Documents Filed: Memorandum from Interim Director of General Services Jim McBride, Director of Transportation James R. Helmer, and Finance Director Scott P. Johnson, dated March 1, 2005, recommending approval of the agreement.

Action: Upon motion by Council Member Cortese, seconded by Council Member Pyle, and unanimously carried, the agreements were approved. (7-0-3). Absent: Chavez, Williams; Gonzales.

### 3.5 **Adoption of a resolution requesting that the California Congressional delegation work to enact adequate funding for Amtrak in the proposed FY 2006 Federal Budget. (City Clerk/City Manager) [Rules Committee referral 3/2/05 – Item 3.2(c)(2)(a)]**

Documents Filed: Memorandum from City Clerk Lee Price, dated March 4, 2005, recommending adoption of the resolution.

Action: Upon motion by Council Member Cortese, seconded by Council Member Pyle, and unanimously carried, Resolution No. 72564, entitled: “A Resolution of the Council of the City of San José to Request That The California Congressional Delegation Work to Enact Adequate Funding for Amtrak for the Operation of the National Passenger Rail Network”, was adopted. (7-0-3). Absent: Chavez, Williams; Gonzales.

## ECONOMIC & NEIGHBORHOOD DEVELOPMENT

### 4.1 Report of the Building Strong Neighborhoods Committee – February 24, 2005 Council Member Chirco, Chair

Documents Filed: Building Strong Neighborhoods Committee report of February 23, 2005.

- (a) Neighborhood Development Center (NDC) Work Plan. Attachment: Memorandum from Director of Parks, Recreation and Neighborhood Services Sara L. Hensley, dated February 4, 2005, providing an overview of the Neighborhood Development Center Work Plan.

The Committee accepted the report and directed updated information is provided to the committee:

- 1) Neighborhood Associations
  - 2) Act and Leadership Community Outreach Guidelines
  - 3) Status report on progress of the collaboration with San José City College, Evergreen Valley College and the City.
- (b) Strong Neighborhood Initiative (SNI) Update and Discussion. Attachment: Informational memorandum from Deputy City Manager Jim Holgersson, dated February 17, 2005, providing an update of the New Strong Neighborhoods Team.

The Committee accepted the updated report.

- (c) Oral Petitions – None.
- (d) Adjournment  
The meeting adjourned at 2:59 p.m.

Action: Upon motion by Council Member Chirco, seconded by Council Member Reed, and unanimously carried, the Building Strong Neighborhoods Committee Report and Actions of February 24, 2005 were accepted. (7-0-3). Absent: Chavez, Williams; Gonzales.

## RECREATION & CULTURAL SERVICES

### 5.2 Approval of the Master Plan for the Coyote Creek Trail Project, from Phelan Avenue (Kelley Park) to Idlewood Drive (Stonegate Park/Los Lagos Golf Course). CEQA: Mitigated Negative Declaration, PP04-02-057. Council District 7. SNI: Tully/Senter. (Parks, Recreation and Neighborhood Services)

Documents Filed: (1) Memorandum from Director of Parks, Recreation and Neighborhood Services Sara L. Hensley, dated February 14, 2005, recommending approval of the Master Plan. (2) Hardcopy of the Coyote Creek Trail Master Plan, dated February 2005.

## 5.2 (Cont'd.)

Action: Upon motion by Council Member Reed, seconded by Council Member Yeager, and unanimously carried, the Master Plan was approved. (7-0-3). Absent: Chavez, Williams; Gonzales.

## 5.3 **Adoption of a resolution amending the Parks, Recreation and Neighborhood Services master fee resolution to establish the San José Family Camp Fees and Charges effective for the 2005 camp season, and superseding Resolution No. 72166. CEQA: Not a Project. (Parks, Recreation and Neighborhood Services) (Rules Committee referral 3/2/05)**

Documents Filed: (1) Memorandum from Director of Parks, Recreation and Neighborhood Services Sara L. Hensley, dated February 28, 2005, recommending adoption of the resolution. (2) E-mail letter from Jeri Arstingstall, dated March 6, 2005, requesting Council not approve the proposed increases.

Discussion: Director of Parks, Recreation and Neighborhood Services Sara L. Hensley responded to questions from the Council about program improvements and cost recovery. Council Member Pyle requested staff to return to Council with an informational memorandum pertaining to seasonal progress of the Family Camps.

Public Comments: George Schoenherr expressed concerns regarding the accuracy of the audit and objected to the proposed increases.

Ross Signorino asked if the City carried liability insurance on the Family Camp. City Manager Borgsdorf responded in the affirmative.

Action: Upon motion by Council Member Cortese, seconded by Council Member Pyle, and unanimously carried, Resolution No. 72565, entitled "A Resolution of the Council of the City of San José Setting the Schedule of Fees for the Use of Parks and Recreational Facilities and Repealing Resolution No. 72166", was adopted with direction to Staff to return to Council with an informational memorandum pertaining to seasonal progress of the Family Camps. (7-0-3). Absent: Chavez, Williams; Gonzales.

## **JOINT COUNCIL/REDEVELOPMENT AGENCY**

The Redevelopment Agency Board convened at 2:12 P.M. to consider Item 10.1 in a Joint Session.

## 10.1 **Adoption of resolutions by the City Council and Redevelopment Agency amending the Conflict of Interest Codes for the City of San José and the San José Redevelopment Agency. CEQA: Not a Project. (City Clerk/Redevelopment Agency)**

**10.1 (Cont'd.)**

Documents Filed: (1) Memorandum from City Clerk Lee Price, dated March 4, 2005, recommending adoption of the resolution. (2) Memorandum from Executive Director of Redevelopment Agency Harry S. Mavrogenes, dated February 25, 2005, recommending adoption of the resolution.

Public Comments: William Garbett spoke in opposition to the proposed resolutions.

Action: Upon motion by Council Member Pyle, seconded by Council Member Yeager, and unanimously carried, Resolution No. 72566, entitled: "A Resolution of the Council of the City of San José Amending the Conflict of Interest Code for the City of San José", and Agency Resolution No. 5590 were adopted. (7-0-3). Absent: Chavez, Williams: Gonzales.

The Redevelopment Agency Board portion of the meeting adjourned at 2:15 P.M.

**CLOSED SESSION REPORT**

A. Authority to File an Appeal in Litigation:

*Case Name: Operating Engineers, Local 3 v. City of San José*

*Adverse party or parties: Operating Engineers, Local 3*

*Substance of litigation: Appeal of an arbitrator's ruling interpreting the MOA's provisions regarding the City's ability to discipline for first time positive drug tests.*

Council Vote: Ayes: Campos, Chirco, Cortese, LeZotte, Pyle, Reed and Yeager.  
No: None.  
Abstain: None.  
Not Present: Gonzales, Chavez, and Williams.

**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>
9513	US 101 (E/S) N/of Hellyer	8	William Lyon Homes	27 lots	Recreational Preserve	Approve

**NOTICE OF CITY ENGINEER'S PENDING DECISION ON FINAL MAPS (CONT'D.)**

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>
9644	S/S of E. Williams Ave., 400' w/o McLaughlin Ave.	3	KB Home South Bay	105 units	Single-Family
9692	S/S of Tully Road, 600' s/w Senter Road	7	ROEM	64 lots	Multi-Family

**OPEN FORUM—**

(1) Daniel McCall served the City Attorney with a Notice of Motion to return property illegally seized. He also expressed views about treatment of certain mental health conditions.

**ADJOURNMENT**

The meeting of the Council of the City of San José was adjourned at 2:18 P.M. in memory of Michael Chu, Owner of Millennium Business Group.

**RON GONZALES, MAYOR**

**ATTEST:**

**LEE PRICE, C.M.C, CITY CLERK**  
EW/3-8-05 Min.