



CITY OF SAN JOSÉ, CALIFORNIA

MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, NOVEMBER 8, 2005

The Council of the City of San José convened in regular session at 9:00 a.m. in the Mayor's Conference Room T1841, at City Hall.

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

Absent: Council Members - None. (Excused)

Upon motion unanimously adopted, Council recessed at 9:03 a.m. to a Closed Session in Room T1841, (A) Public employee performance evaluation pursuant to Government Code Section 54957, Title: Redevelopment Agency Executive Director. (B) to confer with Legal Counsel pursuant to Government Code Section 54956.9 subsection (a) with respect to existing litigation to consider the case of: (1) Bui, et al. v. City, et al. (C) to confer with Real Property Designated Representatives pursuant to Government Code Section 54956.8: Property: New City Hall Retail Space, Designated Representatives: Paul Krutko, Jr. for the City of San José and Imwalley Stegner, Under Negotiation: Price and terms of payment. (D) 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.

By unanimous consent, Council reconvened from the Closed Session and recessed at 11:02 a.m. and reconvened at 1:31 p.m. in the Council Chambers.

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

Absent: Council Members - None.

INVOCATION

Divya Musinipally, Speech and Debate Team, Leland High School, read a excerpt from her award-winning inspirational speech. (District 10)

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PLEDGE OF ALLEGIANCE

Mayor Gonzales led the Pledge of Allegiance.

ORDERS OF THE DAY

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

CEREMONIAL ITEMS

1.1 Presentation of a commendation to Westfield Shoppingtown on the occasion of their 7th Annual “Westfield Works Wonders” events at Westfield Shoppingtown Valley Fair and Oakridge. (Yeager/Pyle)

Action: Mayor Gonzales and Council Members Yeager and Pyle recognized the efforts of Westfield Shoppingtown in their continued support to the community of San José.

**1.2 Presentation of a commendation to Pivot Interiors for its important contributions to the San José economy. (Mayor/Reed)
(Rules Committee referral 11/2/05)**

Action: Mayor Gonzales and Council Member Reed recognized and commended Pivot Interiors for 30 years of success and contributions to the City of San José.

**1.3 Presentation of a commendation to the Digital Clubhouse for service to the community and participation in the National Parade Weekend in New York City, a celebration commemorating the 60th anniversary of the end of WWII. (Reed)
(Rules Committee referral 11/2/05)**

Documents Filed: Memorandum from Council Member Reed, dated October 31, 2005, requesting placement of this item on the afternoon of November 8, 2005.

Action: Mayor Gonzales and Council Member Reed recognized and commended the Digital Clubhouse for its leadership to preserve the stories of unsung heroes.

1.4 Presentation of a commendation to Reed Hastings in recognition of his personal contribution towards public education in San José. (Campos)

Action: Mayor Gonzales and Council Member Campos recognized and commended Mr. Reed Hastings, President and CEO of Netflix, for his personal contributions and commitment towards public education in the community of San José.

1.5 Presentation of a commendation to Kipp Heartwood Academy for providing a strong education environment that encourages results and provides an exemplary school model for San José. (Campos)

Action: Mayor Gonzales and Council Member Campos recognized and commended the Kipp Heartwood Academy for its strong educational environment that encourages dramatic results and provides an exemplary school model for the community of San José.

CONSENT CALENDAR

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

2.3 Adoption of a resolution supporting a Federal Department of Peace and Non-Violence. (Cortese)

Action: Renumbered to 3.4.

2.4 Adoption of a resolution superseding Resolution No. 72738 to amend the adopted 2005-2006 Parks and Recreational Facilities Fee Resolution to provide for a lower resident rate fee structure for senior, youth, and disabled populations using the Fitness Center at Camden Community Center, retroactive to July 1, 2005. CEQA: Not a Project. Council District 9. (Parks, Recreation and Neighborhood Services)

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Sara Hensley, dated October 19, 2005, recommending adoption of a resolution.

Action: Upon motion by Council Member Pyle, seconded by Vice Mayor Chavez and carried unanimously, Resolution No. 72957, 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. 72738, No. 72565 and No. 72624, to be Effective on the Dates as Indicated Below", was adopted. (11-0.)

2.5 Approval of the first amendment to the agreement with RRM Design Group, Inc. to expand the planning, design and construction administration scope of services for Fire Stations Nos. 34 and 35, increasing compensation by \$366,366 for a total agreement amount of \$1,032,015 and extending the term from May 31, 2007 to May 31, 2008. CEQA: FS No. 34: Mitigated Negative Declaration, PP05-104; FS No. 35: Exempt, PP02-02-028. Council District: FS No. 34: 3 and 4; FS No. 35: 2. (Public Works/Fire)

Documents Filed: Memorandum from Director of Public Works Katy Allen and Fire Chief Jeffrey Clet, dated October 27, 2005, recommending approval of the first amendment to the agreement.

Action: The first amendment to the agreement with RRM Design Group, Inc. was approved. (11-0.)

- 2.6 Approval of two structural engineering master agreements with:**
- (a) Crosby Group for a variety of structural engineering consulting services for various City Projects from the date of execution to October 31, 2007, for a total agreement amount not to exceed \$250,000.**
 - (b) Biggs Cardosa Associates, Inc. for a variety of structural engineering consulting services for various City Projects from the date of execution to October 31, 2007, for a total agreement amount not to exceed \$250,000.**
- CEQA: Not a Project. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated October 25, 2005, recommending approval of the two agreements.

Action: The agreements were approved. (11-0.)

- 2.7 Approval of the appointment of Council Member Nancy Pyle to the Valley Transportation Authority's (VTA) South County Highway Policy Advisory Board. (Mayor)**
(Rules Committee referral 11/2/05)

Documents Filed: None.

Action: The appointment of Council Member Pyle to the VTA South County Highway Policy Advisory Board was approved. (11-0.)

- 2.8 Approval of the following fund transfers and direction to staff to return on November 15, 2005 with the budget actions to implement the following:**
- (a) Funds transfer of \$100,000 from Appropriation #706 – Reserve: PAL Stadium Synthetic Playing Field (City of San José Adopted Capital Budget and Adopted Capital Improvement Program 2005-2006: page V-665) and \$28,000 from District 8 Parks Construction & Conveyance Fund Ending Fund Balance (City of San José's Adopted Capital Budget and Adopted Capital Improvement Program 2005-2006: page V-656), to Appropriation #5944 – Trail: Silver Creek/Dobern Bridge (City of San José's Adopted Capital Budget and Adopted Capital Improvement Program 2005-2006: page V-609).**
 - (b) Funds transfer of \$128,000 from Appropriation #4013 – Trail: Silver Creek/Dobern Bridge in the General Fund (City of San José's Adopted Capital Budget and Adopted Capital Improvement Program 2005-2006: Page V-609) to a General Fund appropriation to the Parks, Recreation & Neighborhoods Services Department to be used solely towards maintenance at Police Activities League Stadium in FY05-06.**
- (Cortese/Campos)**
(Rules Committee referral 11/2/05)

Documents Filed: Memorandum from Council Members Campos and Cortese, dated November 7, 2005, recommending approval of the fund transfers.

Action: The fund transfers were approved. (11-0.)

**2.9 Approval of an ordinance amending Section 3.36.550 of Chapter 3.36 of Title 3 of the San José Municipal Code to authorize the Board of Administration for the Police and Fire Department Retirement Plan to make real estate investments through a title holding corporation described in Internal Revenue Code Section 501(c)(2). CEQA: Not a Project. (Board of Administration for the Police & Fire Dept. Retirement Plan)
(Rules Committee referral 11/2/05)**

Documents Filed: Memorandum from Federated City Employees' Retirement System Secretary Edward Overton, dated October 31, 2005, recommending approval of an ordinance.

Public Comment: William Garbett spoke in opposition to the Staff recommendation.

Action: Upon motion by Vice Mayor Chavez, seconded by Council Member Campos and carried unanimously, Ordinance No. 27595, entitled: "An Ordinance of the City of San José Amending Section 3.36.550 of Chapter 3.36 of Title 3 of the San José Municipal Code to Authorize 501(c)(2) Title Holding Corporations as a Vehicle in Which the Board of Administration for the Police and Fire Department Retirement Plan May Invest In and Take Title to Real Estate Investments", was passed for publication. (11-0.)

STRATEGIC SUPPORT SERVICES

3.2 Report of the Rules Committee – October 26, 2005

Vice Mayor Chavez, Chair

- (a) Redevelopment Agency items reported out at Redevelopment Agency meeting
- (b) City Council
 - (1) Review November 8, 2005 Draft City Council Agenda
 - (2) Add New Items to November 1, 2005 City Council Agenda
 - (3) List of Reports Outstanding
- (c) Legislative Update
 - (1) State
 - (2) Federal
- (d) Meeting Schedules
- (e) The Public Record
- (f) Appointments to Boards, Commissions and Committees
 - (1) Youth Commission
 - (a) Reappoint 3 Commissioners
- (g) Rules Committee Reviews, Recommendations and Approvals
 - (1) Workload Assessment for Referral from the Small Business Development Commission Regarding Payment and Performance Bond Program for Small Business Contractors Workload Assessment
- (h) Oral Communications
- (i) Adjournment

Action: Deferred to November 15, 2005.

3.4 Adoption of a resolution supporting a Federal Department of Peace and Non-Violence. (Cortese)

Documents Filed: Memorandum from Council Member Cortese, dated October 28, 2005, recommending adoption of a resolution.

Public Comment: Speaking in support were: Lois Fielder, Women's International League for Peace and Freedom, Margaret Cabral, Mike Abkin, South Bay Department of Peace Campaign, Victoria Colhgan, Bob Weeks, Donna Poulos, Vince Scarich, Reverend Ellen Grace O'Brien, J. Manuel Herrera, Rosylin Dean, Lucille Moyer, Mark Trout and Ross Signorino.

Action: This item was renumbered from 2.3. Upon motion by Council Member Cortese, seconded by Council Member Campos and carried unanimously, Resolution No. 72958, entitled: "A Resolution of the Council of the City of San José Supporting a Federal Department of Peace and Violence", was adopted. (11-0.)

COMMUNITY & ECONOMIC DEVELOPMENT

4.2 Report of the Driving a Strong Economy Committee – October 24, 2005 Council Member Williams, Chair

Documents Filed: The Driving a Strong Economy Committee Report dated October 24, 2005.

- (a) Secondary Units Pilot Program Implementation Steps and Community Outreach. Attachment: Memorandum from Director of Housing Leslye Krutko and Director of Planning, Building and Code Enforcement Stephen Haase, dated October 7, 2005, transmitting the report.

The Committee accepted the Staff report.
See Item 4.3 for Council Action taken.

- (b) Grand Prix Report. Attachment: Memorandum from Director of Economic Development Paul Krutko, dated October 11, 2005, transmitting the report.

The Committee accepted the Staff report, with Staff directed to build in a strong marketing effort for next year to publicize the availability of ample parking and the ease to access downtown for non Grand Prix attendees.

- (c) Disadvantaged Business Enterprise Participation Goals. Attachment: Memorandum from Director of Economic Development Paul Krutko, dated October 7, 2005, transmitting the report.

The Committee accepted the Staff report, with the Small Business Commission recommendations referred to the Rules Committee to determine if Staff work load assessment for implementation of recommendations is appropriate.

**4.2 Report of the Driving a Strong Economy Committee – October 24, 2005 (Cont'd.)
Council Member Williams, Chair**

- (d) Discuss Homeless Plan Implementation and Possible Partnerships. Attachment: Memorandum from Director of Housing Leslye Krutko, dated October 7, 2005, transmitting the report.

The Committee accepted the Staff report with Staff directed to perform outreach to regional organizations for additional support.

- (e) Economic Development Strategy. Attachment: Memorandum from Director of Economic Development Paul Krutko, dated October 11, 2005, transmitting the report.

The Committee accepted the Staff report.

- (f) Status of Industrial Lands. Attachment: Memorandum from Director of Planning, Building and Code Enforcement Stephen Haase, dated October 13, 2005, transmitting the report.

The Committee accepted the Staff report with recommendations of the report to be agendaized for the 11/8/05 City Council Meeting for approval.
See Item 4.4 for Council Action taken.

- (g) Oral Petitions - None were presented.

- (h) Adjournment - The meeting was adjourned at 4:10 p.m.

Action: Upon motion by Council Member Williams, seconded by Council Member Campos and carried unanimously, the Driving a Strong Economy Committee Report and the actions of October 24, 2005 was accepted. (11-0.)

**4.3 Approval of an ordinance providing a limited exception to Ordinance No. 21663 that precludes second units, and adopting a temporary second unit pilot program which authorizes the issuance of a maximum of 100 permits during a one-year evaluation period from January 1, 2006 through December 31, 2006, and which establishes specified requirements pertaining to minimum lot size, maximum unit size and number of bedrooms, parking, development standards, design standards, and applicable fees. CEQA: Exempt, File No. PP05-196. (Housing/Planning, Building and Code Enforcement)
[Driving a Strong Economy Committee referral 10/24/05 – Item 4.2(a)]**

Action: Deferred to 11/15/05, to be heard in the evening.

- 4.4 (a) Acceptance of the status report on the City’s industrial lands.
(b) Adoption of the proposed modifications to the Framework, as a guideline, to evaluate proposed conversions of employment lands to other uses.
(c) Approval of an ordinance of the City of San José amending provisions of Chapter 20.50 and Chapter 20.90 of Title 20 of the San José Municipal Code, the zoning ordinance, to streamline the required permit process for certain uses in industrial districts, to allow for increased amounts of commercial support uses in industrial districts, and to modify provisions of the parking chapter of the zoning ordinance relating to uses in industrial districts.
CEQA: Exempt, PP05-191.

CEQA: Not a Project. (Planning Building and Code Enforcement)
[Driving a Strong Economy Committee referral 10/24/05 – Item 4.2(f)]

Action: Deferred to 11/15/05, to be heard in the evening.

- 4.5 (a) Conduct a special election regarding Community Facilities District No. 12 (Basking Ridge) special tax.
(b) Adoption of a resolution declaring the results of the special election; and if approved, direct the recording of the notice of the special tax lien for Community Facilities District No. 12.
(c) Adoption of an ordinance imposing the levy of special taxes for Community Facilities District No. 12.

CEQA: Resolution No. 71360, PP05-36. Council District 2. (Public Works)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated October 19, 2005, recommending conduction of a special election, and adoption of a resolution and ordinance.

Mayor Gonzales requested tabulation of the ballots. City Clerk Lee Price read the results of the election into the record.

Action: Upon motion by Council Member Williams, seconded by Council Member Pyle and carried unanimously, Resolution No. 72959, entitled: “A Resolution of the Council of the City of San José Declaring Results of Special Election and Directing Recording of Notice of Special Tax Lien”, and Ordinance No. 27596, entitled: “An Ordinance of the City of San José Levying Special Taxes Within Community Facilities District No. 12 (Basking Ridge)”, were adopted. (11-0.)

TRANSPORTATION & AVIATION SERVICES

- 6.2 Adoption of a resolution authorizing the City Manager to negotiate and execute the first amendment to the agreement with Ricondo & Associates, Inc., for airport financial feasibility consultant services to implement Phase II of consultant services as part of the multi-phase project, increasing the maximum compensation by \$600,000 from \$300,000 to a not to exceed amount of \$900,000, with no change to the term. CEQA: Resolutions No. 67380 and 71451, PP 05-186. (Airport)

6.2 (Cont'd.)

Documents Filed: Memorandum from Director of Aviation William Sherry, dated November 2, 2005, recommending adoption of a resolution.

Action: Upon motion by Vice Mayor Chavez, seconded by Council Member Reed and carried unanimously, Resolution No. 72960, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a First Amendment to the Agreement with Ricondo & Associates for Airport Financial Feasibility Consultant Services Increasing the Compensation by \$600,000", was adopted, with Staff directed to circulate an information memorandum to Council outlining the list of activities and a product timeline, as well as a matrix comparing the Airport to other like airports. (10-0-1. Absent: Yeager.)

PUBLIC SAFETY SERVICES

8.1 Evaluation and approval of the updated flood plan in light of lessons learned from the disasters caused by hurricanes Katrina and Rita. (Emergency Services) [Reed and Rules Committee referral 10/12/05]

Action: Deferred to December 6, 2005.

8.2 Approval of actions related to San José's emergency response and preparedness strategy including direction the City Manager to return to Council with appropriation actions to allocate \$500,000 for the Risk/Threat Assessment. (Mayor/Vice Mayor/City Manager)

Documents Filed: Memorandum from Mayor Gonzales, Vice Mayor Chavez and City Manager Del Borgsdorf, dated November 4, 2005, recommending approval of actions to San José's emergency response and preparedness strategy.

Action: Upon motion by Vice Mayor Chavez, seconded by Council Member Reed and carried unanimously, the memorandum was approved with actions as follows: (1) Direct the Vice Mayor to continue discussions with Santa Clara County partners to coordinate local emergency response efforts. (2) Direct the Mayor to continue discussions with San Francisco Mayor Newsom and Oakland Mayor Brown related to the Bay Area Regional Disaster Response Plan. (3) Direct the City Manager to complete a risk/threat assessment of the City's Emergency Operations and Response Plan and our City's abilities to respond to a major disaster of unprecedented scale. (4) Further direct the City Manager to: (a) Allocate \$500,000 for the risk/threat assessment and for immediate needs identified through the assessment, including infrastructure. (b) Return to the City Council, following the appointment of the new Director of the Office of Emergency

8.2 (Cont'd.)

Services and in response to the findings of the risk assessment, with recommendations to organize the Office and the City to improve our institutional and community preparedness. (c) Revise the City's Emergency Operations Plan immediately, in coordination with the Mayor's Office, to reflect the actual roles of the Mayor and City Council during an emergency. (d) Identify and examine State and Federal level emergency preparedness policies as they relate to San José and incorporate that into the City's Emergency Operations Plan. (10-0-1. Absent: Yeager.)

JOINT COUNCIL/REDEVELOPMENT AGENCY

The Redevelopment Agency Board convened at 2:49 p.m. to consider Items 9.1 and 9.2 in a Joint Session.

- 9.1
- (a) **Report on bids and award of contract for the Capitol Park Neighborhood Center Re-Bid Project to the low bidder, Ram Building Company, in the amount of \$572,680 and approval of a contingency in the amount of \$57,268.**
 - (b) **Adoption of a resolution by the Agency Board approving the following adjustments to the 2005-2006 Adopted Capital Budget and the 2005-2006 Appropriation Resolution**
 - (1) **Adding \$150,000 from the SNI Reserve to the Capitol Park Neighborhood Center Re-Bid Project in the Capitol Park Neighborhood Center Project line appropriation.**
 - (2) **Adding \$210,000 from the East Valley/680 Strong Neighborhood to the Capitol Park Neighborhood Center Re-Bid Project in the Capitol Park Neighborhood Center line appropriation.**
 - (c) **Adoption of the following appropriation ordinance and funding sources resolution amendments in the Services for Redevelopment Capitol Projects Fund (City-Side Redevelopment Fund):**
 - (1) **Establish an appropriation to the Department of Public Works for the Capitol Park Neighborhood Center Re-Bid Project in the amount of \$360,000.**
 - (2) **Increase the estimate for Earned Revenue by \$360,000**
 - (d) **Adoption of a resolution making certain determinations regarding the related expenditure of Redevelopment Agency Funds on certain public improvements, as more specifically described in the memorandum from the Redevelopment Agency, dated October 21, 2005.**
 - (e) **Adoption of the following appropriation ordinance amendments in the District 5 Construction and Conveyance Tax Fund:**
 - (1) **Increase the appropriation to the Department of Public Works for the Capitol Park Neighborhood Center Re-Bid Project in the amount of \$46,000.**
 - (2) **Decrease the School Improvement Grant project by \$46,000.**

CEQA: Exempt, PP03-08-267. Council District 5. SNI: East Valley/680 Communities. (City Manager's Office/Redevelopment Agency)

9.1 (Cont'd.)

Documents Filed: Memorandum from City Manager Del Borgsdorf and Redevelopment Agency Director Harry S. Mavrogenes, dated November 1, 2005, recommending approval of the contract, adoption of a resolution by the Agency Board, appropriation ordinance and funding sources resolution amendments, resolution and appropriation ordinance amendments.

Action: Upon motion by Council Member Campos, seconded by Council Member Williams, and carried unanimously, the contract was approved, Redevelopment Agency Resolution No. 5650, entitled: "A Resolution of the Board of Directors of the Redevelopment Agency of the City of San José Approving Adjustments to the Fiscal Year 2005-2006 Adopted Capital Budget and the Fiscal Year 2005-2006 Annual Appropriations Resolution"; Ordinance No. 27597, entitled: "A Resolution of the Council of the City of San José Ordinance No. 27474 to Appropriate Monies in the Services for Redevelopment Capital Projects Fund for the Capital Park Neighborhood Center Re-bid Project; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption"; Resolution No. 72961, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 72762 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2005-2006 to Adjust Revenues in the Services for Redevelopment Capital Projects Fund"; Resolution No. 72962, entitled: "A Resolution of the Council of the City of San José Making Certain Determinations Regarding the Related Expenditure of Redevelopment Agency Funds on Certain Public Improvements in the East Valley/680 Communities Neighborhood of the Strong Neighborhoods Initiative Project Area", and Ordinance No. 27598, entitled: "An Ordinance of the City of San José Amending Ordinance No. 27474 to Appropriate Monies in the Construction Tax and Property Conveyance Tax Fund for Parks Purposes in Council District No. 5 for the Capital Park Neighborhood Center Re-Bid Project; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption" were adopted. (10-0-1. Absent: Yeager.)

9.2 Approval of actions related to Getting Families Back to Work III. (Mayor/Vice Mayor) (Rules Committee referral 11/2/05)

Action: Deferred to November 15, 2005.

The Redevelopment Agency Board portion of the meeting was adjourned at 2:50 p.m.

OPEN FORUM

- (1) David Wall congratulated Mayor Gonzales on Treatment Plant Advisory Committee (TPAC) negotiations.
- (2) Mark Trout voiced his own personal religious views.
- (3) Robert Apgar, Jr. voiced personal observations.
- (4) Ross Signorino commented on youth violence and urged the City to stay alert.

ADJOURNMENT

The Council of the City of San José adjourned at 2:57 p.m.

RON GONZALES, MAYOR

ATTEST:

LEE PRICE, CMC, CITY CLERK

smd/11-8-05MIN

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