

MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, JANUARY 31, 2006

The Council of the City of San Jose convened in Regular Session at 9:32 a.m. in the Mayor's Conference Room, T1841, City Hall.

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

Absent: Council Members: Nguyen, LeZotte (Excused).

Upon motion unanimously adopted, the City Council recessed to Closed Session at 9:35 a.m. in Room T1841 to (A) discuss Public Employment/Public Employee Appointment pursuant to Government Code Section 54957 for Title: Interim City Manager; and (B) confer with Legal Counsel regarding anticipated litigation pursuant to Government Code Section 54956.9 Subsection (c) 2 matters to be discussed.

By unanimous consent, Council reconvened from Closed Session and recessed at 10:45 a.m. and reconvened at 1:33 p.m. in Council Chambers, City Hall.

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

Absent: Council Members: LeZotte, Nguyen (Excused).

INVOCATION (DISTRICT 1)

Anderson Village Elementary School Choir performed a song titled, "My America".

PLEDGE OF ALLEGIANCE

Mayor Gonzales led the Pledge of Allegiance.

ORDERS OF THE DAY

Action: Upon motion by Council Member Yeager seconded by Council Member Pyle, and unanimously carried, the Order of the Day and the Amended Agenda were approved, with Item 4.3 to be deferred to February 14, 2006, by request of Council Member Cortese. (9-0-2). Absent: LeZotte, Nguyen

New Employee Introductions:

Mayor Gonzales introduced Les White as the Interim City Manager; Assistant City Manager Mark Linder introduced Randy Murphy as the Interim Chief Information Officer.

CEREMONIAL ITEMS

- 1.1 Presentation of a proclamation to the American Heart Association recognizing Friday, February 3, 2006 as “Go Red for Women” Day in San José. (Campos)
(Rules Committee referral 1/18/06)**

Action: Mayor Gonzales and Council Member Campos presented a proclamation to the American Heart Association recognizing Friday, February 3, 2006 as “Go Red for Women” Day in San José.

- 1.2 Presentation of a commendation to the New Tang Dynasty TV for its Chinese New Year Gala, celebrating the Chinese heritage and fostering cross cultural understanding between the East and West. (Williams)
(Rules Committee referral 1/18/06)**

Action: Mayor Gonzales and Council Member Williams presented a commendation to the New Tang Dynasty TV for its Chinese New Year Gala celebrating the Chinese heritage and fostering cross cultural understanding between the East and West.

- 1.3 Presentation of a proclamation declaring January 2006 as “Volunteer Blood Donor Month” in San José. (Mayor)
(Rules Committee referral 1/18/06)**

Action: Mayor Gonzales presented a proclamation to Red Cross Donation Director Helmhold declaring January 2006 as “Volunteer Blood Donor Month”, in San José.

- 1.4 Presentation of a commendation to the Diocese of San José in recognition of “Catholic Schools Week”. (Chavez/Yeager)
(Rules Committee referral 1/25/06)**

Action: This item was dropped.

- 1.5 Presentation of a proclamation to the Jewish Community Relations Council declaring “January 31 Holocaust Remembrance Day”. (Williams)
(Rules Committee referral 1/25/06)**

1.5 (Cont'd)

Action: Mayor Gonzales and Council Member Williams presented a proclamation to Jack Tremell of the Jewish Community Relations Council declaring January 31st as ‘Holocaust Remembrance Day’.

CONSENT CALENDAR

Action: Upon motion by Council Member Chavez, seconded by Council Member Campos, and unanimously carried, the Consent Calendar was approved. (9-0-2). Absent: LeZotte, Nguyen.

2.3 **Adoption of a resolution authorizing the City Manager to negotiate and execute an agreement with Laura Haddad and Tom Drugan to fabricate and install a public artwork at Fire Station No.35, in an amount not to exceed \$115,390. CEQA: Not a Project. (Economic Development)**

Documents Filed: Memorandum from Director of Office of Economic Development Paul Krutko, dated January 9, 2006, recommending approval of the Public Art agreement.

Action: [Resolution No. 73050](#), entitled: “A resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with Laura Haddad and Tom Drugan to Fabricate and Install an Artwork at Fire Station No. 35 in an Amount not to Exceed \$115,390”, was adopted. (9-0-2). Absent: LeZotte, Nguyen.

2.4 **Approval of actions for the Fire Station No. 12 Project.**

(a) **Approval of an agreement with Don Dommer Associates, Architects, for consultant services including design services for the new Fire Station No. 12 Project, from the date of execution to January 31, 2008, in a total amount not to exceed \$296,259.**

(b) **Adoption of a resolution approving the Fire Station No. 12 Project and incorporating environmental mitigation measures as set forth in the Mitigation Monitoring and Reporting Program for the project.**

CEQA: Mitigated Negative Declaration, PP#05-071. Council District 10. (Public Works/Fire)

Documents Filed: None.

Action: This item was deferred to February 7, 2006.

2.5 **Approval of Council Appointee salary recommendations. (Mayor/Chavez) (Rules Committee referral 1/25/06)**

Documents Filed: None.

Action: This item was dropped.

**2.6 Acceptance of the Office of the City Auditor's Report of Activities and Findings for the Period November 16, 2005 through December 15, 2005. (City Auditor)
(Rules Committee referral 1/25/06)**

Documents Filed: Letter from City Auditor Gerald Silva, dated January 5, 2005, submitting a written report of the Office of the City Auditor's activities for the period of November 16 through December 15, 2005.

Action: The Report of Activities and Findings for the Period November 16, 2005 through December 15, 2005 was accepted. (9-0-2). Absent: LeZotte, Nguyen.

STRATEGIC SUPPORT SERVICES

**3.2 Report of the Rules Committee – January 18, 2006
Vice Mayor Chavez, Chair**

Documents Filed: Rules Committee report of January 18, 2006.

- (a) Redevelopment Agency items reported out at Redevelopment Agency meeting
- (b) City Council
 - (1) Review January 31, 2006 Draft Council Agenda. Attachment: Draft Agenda.

The Committee recommended approval of the January 31, 2006 City Council Agenda with three additions.
 - (2) Add New Items to January 24, 2006 Agenda. Attachment: Proposed additions to the Draft Agenda.

The Committee recommended five additions to the January 24, 2006 City Council Agenda.
 - (3) List of Reports Outstanding

The Committee noted and filed the City Manager's Report.
- (c) Legislative Update
 - (1) State – There was no report.
 - (2) Federal – There was no report.
 - (3) State and Federal
 - (a) 2006 Legislative Priorities. Attachment: Memorandum from Assistant City Manager Mark Linder, dated January 9, 2006, recommending acceptance of the 2006 Legislative Priorities.

3.2 Report of the Rules Committee – January 18, 2006 (Cont'd)
Vice Mayor Chavez, Chair

- (c) Legislative Update
 - (3) State and Federal
 - (a) (Cont'd)

Action: Director of Intergovernmental Relations Betsy Shotwell presented an oral report. The Committee accepted the report and requested that the Administration provide reports to the Rules Committee following League of California Cities policy committee meeting when discussions include issues of interest to the City.

- (d) Meeting Schedules

- (1) General Plan Schedule: January – July 2006. Attachment: Memorandum from Agenda Services Manager Nadine Nader, dated January 10, 2006, recommending approval of the proposed General Plan Hearing dates.

The Committee recommended scheduling the following dates for General Plan Hearings:

Date: April 18, 2006
Time: 7:00 p.m.
Location: Council Chambers

Date: June 6, 2006
Time: 7:00 p.m.
Location: Council Chambers

Date: June 20, 2006
Time: 7:00 p.m.
Location: Council Chambers

- (2) Rules Meeting Location Change for Regular Meeting on February 8, 2006. Attachment: Memorandum from City Clerk Lee Price, dated January 18, 2006, recommending change of the meeting location.

The Committee recommended changing the location for the regular meeting of the Rules Committee on February 8, 2006, to the Council Chambers.

- (e) The Public Record. Attachment: Memorandum from City Clerk Lee Price, dated January 12, 2006, transmitting item filed for the Public Record for the period January 4 through January 10, 2006.

3.2 Report of the Rules Committee – January 18, 2006 (Cont'd)
Vice Mayor Chavez, Chair

(e) The Public Record (Cont'd)

Socorro Reyes, former Member of the Human Rights Commission, expressed concerns regarding tasers and the possible dangers to the general public's health and safety. Darlene Wallach spoke in opposition to the use of tasers upon the general public and expressed concerns about the lack of information about the effects of tasers on human beings. Chair Chavez requested Police Chief Robert L. Davis to forward his report on taser use to the Human Rights Commission. The Committee noted and filed the Public Record.

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

(g) Rules Committee Reviews, Recommendations and Approvals

- (1) Approve Council Committee Work Plan
 - (a) All Children Achieve

The Committee deferred this item to the January 25, 2006 Rules Committee Meeting.

- (2) Discussion of Number of Presentation/Commendation Items Placed on Each City Council Agenda. Attachment: Memorandum from City Clerk Lee Price, dated January 13, 2006, recommending approval of a method for the number of presentation/commendation items placed on each City Council agenda.

The Committee recommended including the full City Council Agenda, for the following week, in the Rules Committee packets for review when considering the number of requests to add items to the agenda.

(h) Open Forum

- (1) Bill Chew requested the Committee look into making City Hall Meeting Rooms available for candidate forums.
- (2) Darlene Wallach expressed opposition to the Council-approved subsidy for the San José Grand Prix.

(i) Adjournment - The meeting adjourned at 2:31 p.m.

Action: The Rules Committee report and actions of January 18, 2006 were accepted. (9-0-2). Absent: LeZotte, Nguyen.

3.3 Report of the Making Government Work Better Committee – January 19, 2006 Council Member Reed, Chair

Documents Filed: (1) Memorandum from Councilmember Linda LeZotte, dated January 19, 2006, regarding a late arrival to the meeting. (2) Making Government Work Better Committee report of January 19, 2006.

- (a) Annual Report on Fire Department Vacancy and Absence Rates and Their Impact on Overtime. Attachment: Memorandum from Fire Chief Jeffrey Clet and Budget Director Larry Lisenbee, dated January 10, 2006, recommending acceptance of the annual report on Fire Department Vacancy and Absence Rates and their Impact on Overtime.

The Committee accepted the report.

- (b) Call Center Customer Service Standards and Vision. Attachment: Memorandum from Customer Service Manager Dottie Disher, dated January 5, 2006, recommending acceptance of the update on the Service Standards and the Call Center Vision.

The Committee accepted the report to include Member LeZotte's comments and Chair Reed's recommendations.

- (c) Workers' Compensation Program Claims Liability Audit. Attachment: Hardcopy of an Executive Summary of An Audit of the Worker's Compensation Program Claims Liability, dated December 2005, from the Office of the City Auditor.

The Committee accepted the report.

- (d) Oral Petitions
 - (1) Bill Chew talked about aerobic exercise.
 - (2) John expressed concern about his bike being stolen.
- (e) Adjournment - The meeting was adjourned at 2:20 p.m.

Action: The Making Government Work Better Committee report and actions were accepted. (9-0-2). Absent: LeZotte, Nguyen.

3.4 Acceptance of the Annual Financial Reports on the various Bond Programs.

- (a) **Acceptance of the report on the Neighborhood Security Bond Program for fiscal year 2004-2005.**
- (b) **Acceptance of the report on the Safe Neighborhood Parks and Recreation Bond Program for fiscal year 2004.2005.**
- (c) **Acceptance of the annual status report on the Branch Library Bond Program for fiscal year 2004-2005.**

CEQA: Not a Project. (Citizen Oversight Committees)

3.4 (Cont'd)

Documents Filed: (1) Memorandum from Citizen Oversight Committee for the Public Safety Bond Program, dated November 18, 2005, recommending acceptance of the report on the Neighborhood Security Bond Program. (2) Memorandum from Citizen Oversight Committee for the Safe Neighborhood Parks and Recreation Bond Program, dated January 9, 2006, recommending acceptance of the report on the Safe Neighborhood Parks and Recreation Bond Program. (3) Memorandum from Citizen Oversight Committee for the Library Bond Projects, dated January 9, 2006, recommending acceptance of the status report on the Branch Library Bond Program.

Public Comment: Ross Signorino asked for clarification about the use of bond funds. Mayor Gonzales responded.

Action: Upon motion by Council Member Cortese, seconded by Council Member Pyle, and unanimously carried, the reports were accepted, with direction to staff to provide clarification to Council regarding money left within the City budget for land acquisition and library costs and to provide this information within an information memo. (9-0-2).
Absent: LeZotte, Nguyen.

COMMUNITY & ECONOMIC DEVELOPMENT

4.3 **Adoption of a resolution authorizing the City Manager to negotiate, enter into, and execute an Economic Development Agreement between the City and American Airlines and American Aviation Supply LLC, which will provide for an economic incentive payment to American Airlines equal to a 65 percent of the sales taxes generated by its single source purchasing and resale company to be located in the City of San Jose over and above a base taxable sales for previous years. (Office of Economic Development)** **(Deferred from 1/10/06 – Item 4.5)**

Documents Filed: (1) Memorandum from Councilmember Dave Cortese, dated January 31, 2006, recommending a two-week deferral of item 4.3. (2) Memorandum from City Auditor Gerald Silva, dated January 30, 2006, responding to Council member Reed's questions on Jet Fuel Sales Tax. (3) Memorandum from Director of the Office of Economic Development Paul Krutko, dated January 23, 2006, recommending adoption of the resolution. (4) Letter from Roxane Miller Legislative Representative from Sacramento Office addressed to Governor Arnold Schwarzenegger, dated September 19, 2005, stating support for the AB 451 bill. (5) Fax transmittal from Thomas F. Casey III, County Counsel of the County of San Mateo, dated January 31, 2006, urging the council to reject the resolution. (6) E-mail conversation between City Auditor Gerald Silva and Dave McPherson from the County of San Mateo, dated January 30, 2006, regarding Jet Fuel Sales Taxes.

4.3 (Cont'd)

Public Comment:

- (1) William Garbett spoke in opposition to the Staff recommendation.
- (2) Mitchell Solomon, Chief Tax Officer of American Airlines, spoke in support.
- (3) Jeffrey Bernstein, Attorney for American Airlines, stated he was available for questions.
- (4) George Fokos expressed concerns regarding signage advertisements for American Airlines.
- (5) Edna Elkin spoke in opposition.

Action: Upon motion by Council Member Cortese, seconded by Council Member Chirco, and unanimously carried, Council denied the Staff recommendation, and as amended by Council Member Chavez, directed staff to: (1) Continue working with American Airlines and to develop with them alternate options and to make this issue a top priority for staff; and (2) Return in two weeks with a status report of what other surrounding city actions have taken place in regards to agreements with American Airlines and American Aviation Supply, LLC. (9-0-2). Absent: LeZotte, Nguyen.

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:

Tract	Location	Council District	Developer	Lots/ <u>Units</u>	Type	Proposed <u>Decision</u>
9579	Northwest corner of North First Street and Gish Road	3	Bellagio Garden Inc.	26 Units	SFA	Approve
9753	Northeast corner of Oakland Road and Old Berryessa Road	3	Taylor Woodrow	200 Units	SFAR	Approve

NOTICE OF CITY ENGINEER'S AWARD OF CONSTRUCTION PROJECTS

On October 25, 2005, City Council approved a one year pilot program that delegated authority to the Director of Public Works to award or reject bids on construction projects where the base contract amount is below \$1,000,000. In accordance with this policy, the following is a list of projects that were awarded or rejected by the Director of Public Works in December 2005:

**NOTICE OF CITY ENGINEER'S AWARD OF CONSTRUCTION PROJECTS
(CONT'D)**

REJECTION

Project Name	Council District	Engineer's Estimate
Norman Y Mineta San José International Airport USO/PARC Facilities Power Supply	Citywide	\$272,000

OPEN FORUM

- (1) Mark Trout expressed personal viewpoints.
- (2) Robert Apgar shared personal commentary.
- (3) Ross Signorino delivered information regarding the City of San José in the Media.

CLOSED SESSION REPORT

City Attorney Doyle reported the following actions taken in Closed Session:

Public Employee Appointment Pursuant to Government Code Section 54957:

1. Title: Interim City Manager

Name: Les White

Council Vote: Ayes: Campos, Chavez, Chirco, Cortese, Gonzales, Pyle, Reed, Yeager, Williams

Noes: None.

Absent: Nguyen, LeZotte

The Council of the City of San José recessed at 3:42 p.m.

JOINT REDEVELOPMENT AGENCY/CITY COUNCIL MEETING

The Council of the City of San José reconvened at 3:43 p.m. to hear Item 8.1 in Joint Session with the Redevelopment Agency Board in City Council Chambers at City Hall.

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

Absent: Council Members: LeZotte, Nguyen (Excused)

8.1 Approval of an Exclusive Negotiations Agreement for a 240-day period with Olson Urban Housing, LLC, and First Community Housing, for a planned mixed-use residential development of City-owned properties located at the Japantown Corporation Yard and parking lot site, generally bounded by 6th and 7th Streets and Jackson and Taylor Streets. CEQA: Exempt, File No. PP 06-005 [JAPANTOWN]

Documents Filed: Memorandum from Agency Board Executive Director Mavrogenes and City Manager Borgsdorf, dated January 31, 2006, recommending Council and the Agency Board approve an Exclusive Negotiations Agreement with Olson Urban Housing, LLC, and First Community Housing.

Public Comments:

Speaking in support of the proposed agreement:

Wes Yukoyama, Director of Japanese Community Senior Service, Roy Hitabayashi, and Helen Habashi.

Mark Trout spoke off topic.

William Garbett spoke in opposition.

Action: The agreement was approved, with direction to staff to return to Council if negotiations are not successful with the Boys and Girls Club and to ensure efforts are made in due haste to continue working with the Boys and Girls Club relating to issues of land use. (9-0-2). Absent: LeZotte, Nguyen.

The City Council portion of the meeting adjourned at 4:04 p.m., and Council convened a Study Session to hear the Fourth Progress Report on the Coyote Valley Specific Plan.

4.4 Conduct a study session and accept the Fourth Progress Report on the Coyote Valley Specific Plan regarding the Plan Refinements and Agricultural Mitigation. CEQA: Exempt, PP 03-06-211. Council District: 2. (Planning, Building, and Code Enforcement)

Documents Filed: (1) Memorandum from Joseph Horwedel Acting Director of Planning, Building and Code Enforcement, dated January 19, 2006, recommending council acceptance of the Fourth Progress Report of the Coyote Valley Specific Plan. (2) Letter from Carolyn Straub and Stephen McHenry, dated January 23, 2006, expressing their support. (3) Letter from Maria Ohlson, dated January 21, 2006, expressing her support. (4) Letter from Kiendra Johnson, dated January 21, 2006, expressing her support. (5) Letter from John G, Cordes, dated January 22, 2006, expressing his support. (6) Letter from Arvind Kumar, dated January 30, 2006, expressing his support. (7) Letter from Friends of the Coyote Valley Greenbelt, dated January 4, 2006, regarding the Proposed Agricultural Mitigation Policy to Council. (8) Letter from Kerry Williams President of Coyote Housing Group, dated January 30, 2006, regarding the Agricultural Mitigation. (9) Letter from Bobbie Fischler President of League of Women Voters San Jose- Santa Clara, dated January 30, 2006, stating support of the Agricultural Mitigation Policy.

4.4 (Cont'd)

Public Comments:

Speaking in support of the Coyote Valley Specific Plan:

Gavin Moynahan (Friends of the Coyote Valley Greenbelt), Eric Carruthers (Coyote Valley Specific Plan Task Force), Bobbie Fischler (League of Women Voters SJ/SC), Mark Trout and Ross Signorino. Brian Schmidt (Committee for Green Foothills) requested City Council remember the big picture in looking to develop Coyote Valley.

Speaking in opposition of aspects of the plan:

Michele Beasley (Greenbelt Alliance), Richard DeSmet (Coyote Valley Alliance), Vic LoBue, Dick Norm (representing the Phom family), Frank Crane (representing the Mikami family), Joe Crosby, Consuelo Crosby, and Ken Saso.

Action: Fourth Progress Report was accepted, and Council directed follow-up information be brought before Council by the next Coyote Valley Specific Plan Study Session, as follows:

- (1) Options to ensure pedestrian safety within railroad over-crossings and to look at options of either blocking the crossing points or creating a walkway over the crossings.
- (2) City Attorney to provide follow-up information on case law relating to agriculture mitigation.

ADJOURNMENT

The Council of the City of San José adjourned at 6:37 P.M.

RON GONZALES, MAYOR

ATTEST:

LEE PRICE, M.M.C, CITY CLERK

EW/1-31-06 Min.

Access the video, the agenda and related reports for this meeting by visiting the City's website at www.sanjoseca.gov/clerk/MeetingArchive.asp