



MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, MARCH 13, 2007

The Council of the City of San José convened in regular session at 9:30 a.m. in the Council Chambers at City Hall.

Present: Council Members - Campos, Constant, Cortese, Liccardo, Nguyen, Pyle, Williams; Reed.

Absent: Council Members - Campos, Chirco. (Excused)

Vacant: - Council Districts 4 and 6.

Upon motion unanimously adopted, Council recessed at 9:33 a.m. to a Closed Session in Room W133, (A) 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) West Hotel Partners, LP v. Agency, et al.; (2) Naymark, et al. v. City of San José, et al.; (3) Duran, et al. v. City of San José, et al.; (4) City of San José v. Baca; (5) Robinson v. City of San José, et al. (B) to confer with Legal Counsel pursuant to: Government Code Section 54956.9 with respect to anticipated litigation, subsection (b) with significant exposure in two (2) matters. (C) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) International Association of Firefighters, Local 230.

By unanimous consent, Council recessed from the Closed Session at 10:45 a.m. and reconvened at 1:31 p.m. in the Council Chambers

Present: Council Members - Campos, Constant, Cortese, Liccardo, Nguyen, Pyle, Williams; Reed.

Absent: Council Members - Campos, Chirco. (Excused)

Vacant: - Council Districts 4 and 6.

INVOCATION

Council Member Liccardo introduced Imam Tahir Anwar, South Bay Islamic Association, who presented the Invocation. (District 3)

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Liccardo, seconded by Council Member Williams and carried unanimously, the Orders of the Day and the Amended Agenda were approved, with Items 2.1, 3.1 and 3.4 deferred to March 20, 2007. (7-0-2. Absent: Campos, Chirco.)

CEREMONIAL ITEMS

1.1 Presentation of a commendation to Monroe Harrison for his exemplary dedication and valuable contributions to the City organization. (City Manager's Office/Mayor)

Action: Mayor Reed and City Manager Les White recognized and commended Mr. Monroe Harrison for his excellent dedication and important contributions to the City of San José.

1.2 Presentation of a commendation to Reggie Roberts for his exemplary dedication and valuable contribution to the City organization. (City Manager's Office/Mayor)

Action: Mayor Reed and City Manager Les White recognized and commended Mr. Reggie Roberts for outstanding dedication and invaluable contributions to the City organization.

1.3 Presentation of a commendation to Anschutz Entertainment Group Cycling; Medalist Sports; City of San José, San Jose Sports Authority and Convention and Visitors Bureau Employees for the successful execution of second annual Amgen Tour of California. (Economic Development)

Action: Mayor Reed and Director of Economic Development Paul Krutko recognized and commended all the participants for the successful execution of second annual Amgen Tour of California.

1.4 Presentation of a commendation to Zahir Gulzadah for outstanding services and being awarded the "Transportation Professional of the Year." (Transportation)

Action: Mayor Reed and Vice Mayor Cortese recognized and commended Zahir Gulzadah for exemplary services and for receiving the "Transportation Professional of the Year" award.

CONSENT CALENDAR

Upon motion by Council Member Pyle, seconded by Council Member Williams, and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (7-0-2. Absent: Campos, Chirco.)

2.1 Approval of minutes.

(a) Current Minutes

(b) Past Minutes

(1) Regular Minutes of September 12, 2006

(2) Regular Minutes of September 19, 2006

(3) Regular Minutes of September 26, 2006

(4) Joint City Council/Santa Clara Valley Water District Minutes of September 27, 2006

(Deferred from 3/6/07 – Item 2.1)

Action: Deferred to March 20, 2007, per Orders of the Day.

- 2.2 (a) **ORD. NO. 27980** – Amending Chapters 4.04, 4.12, and repealing Chapters 4.06 and 4.13 of Title 4 of the San José Municipal Code to increase administrative contract authority for purchase of supplies, materials, equipment to \$1,000,000 and services to \$250,000, to enact a protest procedure for purchases, and to amend, reorganize and consolidate various purchasing procedures.

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on March 6, 2007, submitted by the City Clerk.

Action: Ordinance No. 27980 was adopted. (7-0-2. Absent: Campos, Chirco.)

- (b) **ORD. NO. 27982** – Rezoning certain real property situated at the east side of Boynton Avenue, approximately 350 feet northerly of Williams Road (962 Boynton Avenue), to A(PD) Planned Development Zoning District. PDC06-087

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on March 6, 2007, submitted by the City Clerk.

Action: Ordinance No. 27982 was adopted. (7-0-2. Absent: Campos, Chirco.)

- (c) **ORD. NO. 27983** – Rezoning certain real property situated on the easterly side of Stockton Avenue, approximately 300 feet north of West Santa Clara Street to CG Commercial General Zoning District. C05-126

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on March 6, 2007, submitted by the City Clerk.

Action: Ordinance No. 27983 was adopted. (7-0-2. Absent: Campos, Chirco.)

- 2.2 (d) **ORD. NO. 27984 – Rezoning certain real property situated on the southwest corner of The Alameda and Taylor Street (1691 The Alameda) to A(PD) Planned Development Zoning District. PDC06-090**

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on March 6, 2007, submitted by the City Clerk.

Action: Ordinance No. 27984 was adopted. (7-0-2. Absent: Campos, Chirco.)

- (e) **ORD. NO. 27985 – Rezoning certain real property situated at the northwest corner of McLaughlin Avenue and Tully Road (1151 Tully Road) to CN Commercial Neighborhood Zoning District. C06-133**

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on March 6, 2007, submitted by the City Clerk.

Action: Ordinance No. 27985 was adopted. (7-0-2. Absent: Campos, Chirco.)

- (f) **ORD. NO. 27986 – Rezoning certain real property situated on the east side of Market Street approximately 223 feet north of West San Carlos Street to DC Downtown Primary Commercial Zoning District. C06-115**

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on March 6, 2007, submitted by the City Clerk.

Action: Ordinance No. 27986 was adopted. (7-0-2. Absent: Campos, Chirco.)

- (g) **ORD. NO. 27987 – Rezoning certain real property situated on the southwesterly side of Campbell Avenue 950 feet northwesterly of Newhall Street (1179 Campbell Avenue) to A(PD) Planned Development Zoning District. PDC06-071**

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on March 6, 2007, submitted by the City Clerk.

Action: Ordinance No. 27987 was adopted. (7-0-2. Absent: Campos, Chirco.)

- 2.3 **Approval of an ordinance establishing a 104-foot-long by 27-foot-wide piece of City-owned property on the southern portion of Selma Olinder Park to accommodate the development of an emergency vehicle access route and a pedestrian/ bicycle cross connection between the future Five Wounds Trail to the Coyote Creek Trail as a public way. CEQA: Negative Declaration, File No. PP07-013. Council District 3. SNI: Five Wounds/Brookwood Terrace. (Parks, Recreation and Neighborhood Services, Public Works)
(Deferred from 2/27/07 – Item 2.17)**

Action: Deferred to March 20, 2007, per Administration.

2.4 Adoption of a resolution authorizing the City Clerk to negotiate and execute an agreement with the Franklin-McKinley Education Foundation on behalf of the San José Education Foundation for a City grant in an amount not to exceed \$200,000. (City Clerk)

Documents Filed: Memorandum from City Clerk Lee Price, dated February 28, 2007, recommending adoption of a resolution.

Action: Resolution No. 73678, entitled: "A Resolution of the Council of the City of San José Authorizing the City Clerk to Negotiate and Execute an Agreement with the Franklin McKinley Education Foundation on Behalf of the San José Education Foundation for a City Grant in an Amount Not To Exceed \$200,000", was adopted. (7-0-2. Absent: Campos, Chirco.)

2.5 (a) Adoption of the following Appropriation Ordinance and Funding Sources Resolution amendments in the Services for Redevelopment Capital Projects Fund (City-side Redevelopment Fund):

- (1) Increase the estimate for Earned Revenue by \$268,000.**
- (2) Establish an appropriation to the Department of Public Works for the Winchester Boulevard Signal Modification & Countdown Head Installation project (PSM #477) in the amount of \$64,000.**
- (3) Establish an appropriation to the Department of Public Works for the Keyes Street/Greater Gardner Pedestrian Streetlight project (PSM #478) in the amount of \$100,000.**
- (4) Establish an appropriation to the Department of Public Works for the University Neighborhood Phase 2 Pedestrian Streetlight project (PSM #479) in the amount of \$104,000.**

(b) Adoption of resolutions making certain determinations regarding the related expenditure of Redevelopment Agency funds on certain public improvements in connection with:

- (1) The Winchester Boulevard Signal Modification & Countdown Head Installation project as more specifically described in the memorandum from the Redevelopment Agency, dated December 12, 2006,**
- (2) The Keyes Street/Greater Gardner Pedestrian Streetlight project as more specifically described in the memorandum from the Redevelopment Agency, dated December 12, 2006,**
- (3) The University Neighborhood Phase 2 Pedestrian Streetlight project as more specifically described in the memorandum from the Redevelopment Agency, dated December 12, 2006.**

CEQA: Not a Project. Council Districts 1, 3, 6 and 7. SNI: Winchester, Spartan Keyes, Greater Gardner, University. (City Manager's Office/Public Works)

Documents Filed: Memorandum from Budget Director Larry Lisenbee and Director of Public Works Katy Allen, dated February 21, 2007, recommending adoption of appropriation ordinance and funding sources resolution amendments, and resolutions making certain determinations.

2.5 (Cont'd.)

Action: Ordinance No. 27990, entitled: "An Ordinance of the City of San José Amending Ordinance No. 27801 to Appropriate Monies in the Services for Redevelopment Capital Projects Fund for the Winchester Boulevard Signal Modification and Countdown Head Installation Project, the Keys Street/Greater Gardner Pedestrian Streetlight Project and the University Neighborhood Phase 2 Pedestrian Streetlight Project; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption"; Resolution No. 72679, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 73265 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2006-2007 to Adjust Revenues in the Services for Redevelopment Capital Projects Fund"; Resolution No. 73680, 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 of the Strong Neighborhoods Initiative Redevelopment Project Area"; Resolution No. 73681, 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 Spartan Keyes and Greater Gardner Neighborhoods of the Strong Neighborhoods Initiative Redevelopment Project Area", and Resolution No. 73682, 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 University Neighborhood of the Strong Neighborhoods Initiative Redevelopment Project Area", were adopted. (7-0-2. Absent: Campos, Chirco.)

2.6 Request for excused absences for Council Member Constant.

- (a) Excused absence from the Rescheduled Meeting of the Community & Economic Development Committee on Monday, March 19, 2007 due to Illness/Existing Medical Appointment.
- (b) Excused absence from the Regular Meeting of the Community & Economic Development Committee Meeting on Monday, March 26, 2007 due to Authorized City Business: Educational Commitment in Moraga, CA.
- (c) Excused absence from the Regular Meeting of the Council Executive Session on Tuesday, March 27, 2007 due to Authorized City Business: Educational Commitment in Moraga, CA.
- (d) Excused absence from the Regular City Council Meeting (afternoon and evening) on Tuesday, March 27, 2007 due to Authorized City Business: Educational Commitment in Moraga, CA.
- (e) Excused absence from the Regular Meeting of the Rules and Open Government Committee on Wednesday, March 28, 2007 due to Authorized City Business: Educational Commitment in Moraga, CA.

(Constant)

(Rules Committee referral 2/28/07)

Documents Filed: Memoranda from Council Member Constant, all five dated February 27, 2007, requesting an excused absence as listed above.

Action: The five excused absences were approved. (7-0-2. Absent: Campos, Chirco.)

- 2.7 Request for an excused absence for Vice Mayor from the Regular Meeting of the Transportation & Environment Committee of February 22, 2007 due to authorized City Business: ABAG Administrative Retreat in Pleasanton. (Cortese)
(Rules Committee referral 2/28/07)**

Documents Filed: Memorandum from Vice Mayor Cortese, dated February 21, 2007, requesting an excused absence.

Action: The excused absence was approved. (7-0-2. Absent: Campos, Chirco.)

- 2.8 (a) Approval of award of open purchase orders for supplies, materials, equipment and services for FY 2006-2007 #17 and authorization for the Director of Finance to execute the purchase orders.**
(b) Approval of award of open purchase orders for supplies, materials, equipment and services for FY 2006-2007 #18 and authorization for the Director of Finance to execute the purchase orders.

CEQA: See Administration's Memorandum to Council for specific CEQA clearance determinations on each recommended action. (Finance)

Documents Filed: (1) Memoranda from Director of Finance Scott Johnson, both dated February 21, 2007, recommending approval of open purchase orders FY2006-2007 #17 and #18. (2) Letter from the Treatment Plant Advisory Committee, dated March 8, 2007, stating concurrence with the Staff recommendation.

Vice Mayor Cortese pulled Item 2.8 from the Consent Calendar and asked about the requirements for public notice regarding tree removals in City owned landscaped areas.

Action: Upon motion by Vice Mayor Cortese, seconded by Council Member Williams and carried unanimously, the open purchase orders for FY 2006-2007 #17 and #18, were approved, with Staff directed to provide an information memorandum outlining noticing procedures for the removal of trees on City owned property. (7-0-2. Absent: Campos, Chirco.)

- 2.9 Report on bids and approval of the award of the purchase of Freestanding Furniture and authorization to the Director of Finance to execute the purchase orders for the Office of Economic Development Work2Future new facility:**

- (a) Pivot Interiors, the lowest, responsive bidder for bid group B for an amount not to exceed \$137,566.58 including tax;**
(b) Workspace Solutions, the low bidder for bid groups A and C for an amount not to exceed \$39,900.50 including tax.

CEQA: Not a Project. (Finance)

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated February 21, 2007, recommending approval of the award of the purchase and authorization to purchase.

2.9 (Cont'd.)

Action: The award of the purchase of freestanding furniture and authorization to the Director of Finance to execute the purchase orders were approved. (7-0-2. Absent: Campos, Chirco.)

- 2.10 (a) **Execute an agreement with Pyramid Building Maintenance Corporation dba Pacific Maintenance Company for custodial services for the Water Pollution Control Plant for one year at a cost of \$102,243 and approval of supplemental funds of \$20,000 to pay for unscheduled work for a total amount not to exceed \$122,243.**
- (b) **Execute four one-year options to renew the agreement subject to annual Consumer Price Index adjustments and annual appropriations.**

CEQA: Not a Project. Council District 4. (Finance)

Documents Filed: (1) Memorandum from Director of Finance Scott Johnson, dated February 21, 2007; recommending adoption of a resolution. (2) Letter from the Treatment Plant Advisory Committee, dated March 8, 2007, stating concurrence with the Staff recommendation.

Action: Resolution No. 73683, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Finance to Execute an Agreement with Pyramid Building Maintenance Corporation DBA Pacific Maintenance Company for Custodial Services at the Water Pollution Control Plant", was adopted. (7-0-2. Absent: Campos, Chirco.)

- 2.11 **Approve proposed Council Committee procedures for managing Council Committees. (Mayor)**
(Rules Committee referral 2/28/07)

Documents Filed: Memorandum from Mayor Reed, dated February 21, 2007, recommending approval of the Council Committee procedures for managing Council Committees.

Action: The Procedures for Managing Council Committees were approved. (7-0-2. Absent: Campos, Chirco.)

- 2.12 **Adoption of a resolution authorizing the City Manager to:**
- (a) **Execute, upon receipt, a grant agreement with the California Integrated Waste Management Board (CIWMB) for a waste tire enforcement program, in the amount of \$230,670 for FY 2007-2008 and,**
- (b) **Apply for, and execute upon receipt, a grant agreement with the CIWMB for the subsequent four fiscal years, FY 2008-2009 through FY 2011-2012.**

CEQA: Exempt, File No. PP07-023. (Planning, Building and Code Enforcement).

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Joe Horwedel, dated February 21, 2007, recommending adoption of a resolution.

2.12 (Cont'd.)

Action: Resolution No. 73684, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute a Grant Agreement with the California Integrated Waste Management Board for a Waste Tire Enforcement Program in an Amount Not To Exceed \$263,670 for FY 2007-2008, and to Execute All Related Documents including Grant Agreements for FY 2008-2009 Through FY 2011-2012", was adopted. (7-0-2. Absent: Campos, Chirco.)

2.13 Adoption of a resolution on the reorganization of territory designated as McKee No. 133 which involves the annexation to the City of San José of 0.81 gross acre of land located on the southwest corner of McKee Road and Delia Street, and adjacent to the City of San José annexations McKee Nos. 7, 2 and 49, and detachment of the same from the appropriate special districts including County Lighting County Service, Central Fire Protection, County Sanitation District 2-3 and Area No. 01 (Library Services) County Service. CEQA: Resolution No. 65459, File No. C06-073. Council District 5. (Planning, Building and Code Enforcement) (Initiated on 2/27/07 – Item 2.19)

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joe Horwedel, dated February 21, 2007, recommending adoption of a resolution. (2) Statement and Declaration of Conflict of Interest Form, from Vice Mayor Cortese, dated March 13, 2007.

Vice Mayor Cortese announced he would abstain from taking action on Item 2.13 due to a potential conflict of financial interest in property on McKee Road, and left the dais.

Action: Upon motion by Council Member Pyle, seconded by Council Member Liccardo and carried unanimously, Resolution No. 73685, entitled: "A Resolution of the Council of the City of San José Ordering the Reorganization of Certain Uninhabited Territory Designated as McKee No. 133 Subject to Liability for General Indebtedness of the City" adopted. (6-0-2-1. Disqualified: Cortese. Absent: Campos, Chirco.)

2.14 Adoption of a resolution summarily vacating Roberts Lane between 125 feet east of Heppner Lane and Narvaez Avenue. CEQA: Exempt. Council District 9. (Public Works)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated February 21, 2007, recommending adoption of a resolution.

Action: Resolution No. 73686, entitled: "A Resolution of the Council of the City of San José Summarily Vacating Roberts Lane (Also Known As the Extension of Seabury Lane) 125 East of Heppner Lane and Narvaez Avenue", was adopted. (7-0-2. Absent: Campos, Chirco.)

- 2.15 (a) **Approval of an amendment to the agreement with Pelican Communications, Incorporated to provide for future purchase, at City's option, of TTY (teletypewriter) or TDD (telecommunication display devices) equipment and services for pay-telephones at or in capital projects recently constructed or being constructed on City-owned property provided at the site, with no change to the term of the original agreement ending in May 2010.**
- (b) **Approval of one five-year option, not to exceed ten units, at a cost of approximately \$1,800 each unit, to be funded from either the funds for the capital project or the department requesting the purchase and installation of the equipment. CEQA: Exempt. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated February 21, 2007, recommending approval of an amendment to the agreement.

Action: The amendment to the agreement with Pelican Communications was approved. (7-0-2. Absent: Campos, Chirco.)

- 2.16 **Adoption of a resolution authorizing the City Manager to negotiate and execute a lease agreement with Legacy Partners, Inc. for 50 parking spaces for a term of 65 months at the 3rd Street Garage at the rate established in the City's Master Parking Rate Resolution. CEQA: Not a Project. Council District 3. (Transportation)**

Documents Filed: Memorandum from Director of Transportation James Helmer, dated February 22, 2007, recommending adoption of a resolution.

Action: Resolution No. 73687, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Lease Agreement with Legacy Partners, Inc. for 50 parking Spaces at the 3rd Street Garage for a Term of 65 Months at the Rate Established in the City's Master Parking Rate Resolution", was adopted. (7-0-2. Absent: Campos, Chirco.)

- 2.17 **Acceptance of the Office of the City Auditor's *Report of Activities for the Period December 16, 2006 through January 15, 2007.* (City Auditor)
(Rules in-Lieu referral 2/21/07)
(Deferred from 3/6/07 – Item 2.3)**

Documents Filed: The Report of Activities for the Period December 16, 2006 through January 15, 2007 from the Office of the City Auditor.

Action: The Report of Activities for the Period December 16, 2006 through January 15, 2007, was accepted. (7-0-2. Absent: Campos, Chirco.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

- 3.1 Approval of City Council Report of the Study Session Minutes:**
- (a) **Recycle Plus Program and Procurement Process of August 11, 2006**
 - (b) **The Coyote Valley Specific Plan, Introduction to Form-Based Zoning of August 25, 2006**
- (Deferred from 3/6/07 – Item 3.1)**

Action: Deferred to March 20, 2007, per Orders of the Day.

- 3.2 Report of the Rules and Open Government Committee – February 7, 2007**
Mayor Reed, Chair

Documents Filed: The Rules and Open Government Committee Report dated February 7, 2007.

- (a) City Council
 - (1) Review New Add Items to February 13, 2007 Agenda

The Committee approved the February 13, 2007 City Council Agenda with one addition.
 - (2) Review February 20, 2007 Draft Agenda

None, Meeting was canceled.
- (b) Redevelopment Agency items reported out at Redevelopment Agency meeting
- (c) Legislative Update
 - (1) State
 - (a) Overview of the City's Legislative Process for Determination of Official City positions on State and Federal Issues. Attachment: Memorandum from Director Intergovernmental Relations Betsy Shotwell, dated February 1, 2007, recommending acceptance of the staff report.

The Committee agreed to have Staff return to the Rules and Open Government Committee on February 28, 2007 outlining the City's legislative process for determining official City positions on bills or fiscal matters and the Committee's role in the legislative process. Staff agreed to attach the 2002 Council memorandum referenced by Vice Mayor Cortese.
 - (2) Federal - There was none.

**3.2 Report of the Rules and Open Government Committee – February 7, 2007 (Cont'd.)
Mayor Reed, Chair**

(d) Meeting Schedules

- (1) Set a Hearing for Spring 2007 for General Plan Amendments and Initiating the Re-establishment of a fall Annual Review of the General Plan. Attachment: Memorandum from Director of Planning, Building and Code Enforcement Joe Horwedel, dated February 1, 2007, recommending setting a public hearing and forward the full recommendation to the Council.

The Committee asked Staff to return to the Rules and Open Government Committee on February 28, 2007 with an updated meeting schedule and deferred the discussion of Recommendation #2 for three weeks.

- (e) The Public Record. Attachment: Memorandum from City Clerk Lee Price, dated February 2, 2007, transmitting items for the Public Record for the period of January 26 – February 1, 2007.

The Committee agreed to wait for a status report from the Sunshine Reform Task Force. No action was taken.

(f) Appointments to Boards, Commissions and Committees

- (1) Appointment to the Project Diversity Screening Committee. Attachment: Memorandum from Vice Mayor Cortese, dated February 1, 2007, recommending three appointments to the Project Diversity Screening Committee.

Deferred to February 14, 2007.

(g) Rules Committee Reviews, Recommendations and Approvals

- (1) Recommend acceptance to the Redevelopment Agency's Horizon Report for the first half of 2007. Attachment: Memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes, dated February 1, 2007, recommending acceptance of the report.

The Committee approved the Staff Report.

- (2) Addition to the City Auditor's Work Plan to Review Resources for Families and Communities' Financial information (City Attorney)

The Committee agreed to defer the item to February 14, 2007.

(h) Public Records Act Requests

- (1) Review of Significant Public Records Act Requests
- (2) Receive Public Concerns

There were none.

**3.2 Report of the Rules and Open Government Committee – February 7, 2007 (Cont'd.)
Mayor Reed, Chair**

- (i) Review of Council Policy Updates per Sunshine Reforms - There were none.
- (j) Open Forum
 - (1) Bill Chew commended Mayor Reed for chairing the Rules and Open Government Committee and for taking his Mayoral role seriously.
 - (2) Brian Boxall, President of the Association of the Mentally Retarded at Agnews, expressed opposition to the State's proposal to convert the Agnews Development Center to a State Prison.
- (k) Adjournment - The meeting was adjourned at 3:30 p.m.
(Deferred from 2/27/07 – Item 3.2 and 3/6/07 – Item 3.2)

Action: Upon motion by Vice Mayor Cortese, seconded by Council Member Pyle and carried unanimously, the Rules and Open Government Committee Meeting and the actions of February 7, 2007, were accepted. (7-0-2. Absent: Campos, Chirco.)

**3.4 Appointment and swearing in of District 6 Council Member Elect to the City Council to fill the vacancy for the unexpired term ending December 31, 2008 in Council District 6. (Mayor)
(Rules Committee referral 2/28/07)**

Action: Deferred to March 20, 2007, per Orders of the Day.

**3.5 Approval to pursue a study of how work conditions and work environment in both the Police Department and the Fire Department may contribute to the number of disability retirements in the Police and Fire Department Retirement Plan. CEQA: Not a Project. (Police and Fire Retirement Board)
(Rules Committee referral 4/20/05)**

Documents Filed: (1) Memorandum from Vice Mayor Cortese and Council Member Williams, dated March 13, 2007, recommending approval of the Disability Retirement Study Results, with added direction, as indicated below in "Action". (2) Supplemental memorandum from City Manager Les White, dated March 8, 2007, providing additional information and recommendations related to the proposed supplemental study. (3) Memorandum from Federated City Employees' Retirement System Secretary Edward Overton, dated February 21, 2007, transmitting the Disability Retirement Study Results.

3.5 (Cont'd.)

Action: Upon motion by Vice Mayor Cortese, seconded by Council Member Williams and carried unanimously, the memorandum from Vice Mayor Cortese and Council Member Williams, dated March 13, 2007, and the Disability Retirement Study Results were approved, including: (1) Staff directed to incorporate any relevant findings and conclusions of the "Evaluation of Worker Injuries & Safety" study conducted by the City of San José in 2003 into the new study, so as to avoid redundancy in scope and findings. (2) City Clerk directed to make the 2003 report available to the Mayor, City Council and other interested parties. (7-0-2. Absent: Campos, Chirco.)

COMMUNITY & ECONOMIC DEVELOPMENT

**4.1 Report of the Community & Economic Development Committee—February 26, 2007
Council Member Pyle, Chair**

- (a) Economic Indicators. (Economic Development)
- (b) Review of Budget Performance Measures. (Economic Development/Housing/Planning, Building and Code Enforcement/Redevelopment Agency)
Deferred to March 26, 2007
- (c) Planning, Building and Code Enforcement Survey Results. (Planning, Building and Code Enforcement)
Request for Deferral to March 26, 2007
- (d) Economic Impact of Downtown Events. (Economic Development)
- (e) Oral Petitions
- (f) Adjournment

Action: The meeting was canceled.

- 4.2 (a) **Acceptance of the Coyote Valley Specific Plan Water Supply Evaluation as the draft master plan for supplying potable and non-potable water for the future development and build out of the Coyote Valley Specific Plan (CVSP).**
- (b) **Direction to staff to include the Water Supply Evaluation in the CVSP DEIR for appropriate environmental analysis and review. CEQA: Exempt, File No. PP07-025. Council District 2. (Planning, Building and Code Enforcement).**
(Deferred from 2/27/07 – Item 4.7)

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joe Horwedel, dated February 7, 2007, recommending acceptance of the Coyote Valley Specific Plan Water Supply Evaluation (attached) and direction to Staff. (2) Proof of Publication of Notice of Public Hearing, executed on February 18, 2007, submitted by the City Clerk. (3) Letter from Chair, Board of Directors, Tony Estremera, Santa Clara Valley Water District, dated March 13, 2007, regarding the Coyote Valley Specific Plan Water Supply Evaluation

Principal Planner of Planning, Building and Code Enforcement Darryl Boyd presented an overview of the Coyote Valley Special Plan Water Supply Evaluation and responded to Council questions.

4.2 (Cont'd.)

Public Comment: Melissa Hippard, Sierra Club, submitted a letter to the Mayor and City Council which expressed concern that the Coyote sub-basin can only handle so much water and emphasized that more information is needed before putting future generations at risk.

Action: Upon motion by Council Member Williams, seconded by Vice Mayor Cortese and carried unanimously the Coyote Valley Specific Plan Water Supply Evaluation was accepted. (7-0-2. Absent: Campos, Chirco.)

4.3 **Adoption of a resolution authorizing the City Manager to negotiate and execute an amendment to the contract with Team San José to reflect the establishment of the Theater Preservation Fund. CEQA: Not a Project. Council District 3. (City Manager's Office)**

Documents Filed: Memorandum from Deputy City Manager Dan McFadden, dated February 12, 2007, recommending adoption of a resolution.

City Attorney Richard Doyle, Deputy City Manager Dan McFadden and Chief Deputy City Manager Kay Winer responded to Council questions.

Public Comment: Speaking in support were Andrew Bales, Symphony Silicon Valley, Michael Miller, American Musical Theatre of San José and Dan Fenton, Team San José and San José Convention Visitor's Bureau.

Motion: Council Member Liccardo moved approval of authorizing the City Manager to negotiate and execute an amendment to the contract with Team San José to reflect the establishment of the Theater Preservation Fund. Council Member Constant seconded the motion. Vice Mayor Cortese objected to the amendment to the contract because of certain language in the memorandum. He emphasized that the facilities are City owned.

Action: On a call for the question, the motion carried, and Resolution No. 73688, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Amendment to the Agreement with Team San José" was adopted. (6-1-2. Noes: Cortese. Absent: Campos, Chirco.)

4.4 **Approval of the Public Art Master Plan:**

- (a) **The City Attorneys' Office to draft an ordinance for the approval of City Council modifying the basis for calculating the percent for art, with proposed amendments to Title 22 of the Municipal Code implementing the Public Art Master Plan;**
- (b) **The City Attorney to work with the Office of Cultural Affairs staff to prepare updated resolutions for the approval of City Council that set forth in more detail the procedures to be followed after implementation of the Public Art Master Plan.**

(Item continued on the next page)

- 4.4 (c) **The City Manager to present the draft City's Art in Public Places Ordinance to the Treatment Plant Advisory Committee for recommendation on applying the requirements of the Ordinance to all Treatment Plant capital projects; and to report to Council on TPAC's recommendation when the Ordinance is presented for Council approval.**
- (d) **The City Attorney to draft an ordinance requiring that developer-constructed parks comply with the same Art in Public Places requirements that apply to City projects, and direct the City Manager to review this draft ordinance with the development community prior to presentation to the City Council for approval.**

CEQA: Exempt, File No. PP05-184. (Economic Development)

Documents Filed: (1) Memorandum from Council Member Williams, dated March 12, 2007, recommending approval of the Public Art Master Plan and related directions to Staff. (2) Memorandum from Director of Economic Development Paul Krutko, dated February 21, 2007, recommending approval of the Public Art Master Plan and direction to Staff. (3) Supplemental memorandum from March 6, 2007, transmitting information about funding outcomes, maintenance strategy and stakeholder involvement.

Director of the Office of Economic Development Paul Krutko introduced Steve McKray, Arts Commission Chair, who presented an overview of the Public Art NEXT!

Public Comment: Speaking in favor of the Staff recommendation were Connie Martinez, 1stACT/Children's Discovery Museum, Ben Miyaji, Gordon Lund, Stephen French, Erin Goodwin-Guerrero, Helen Johnson, Ted Johnson and Tamara Alvarado. Ross Signorino stated that people should be allowed to attend the museum once per month free, similar to other cities.

Public Arts Director Barbara Goldstein and City Attorney Richard Doyle responded to Council questions.

Action: Upon motion by Council Member Williams, seconded by Council Member Constant and carried unanimously, the Public Art Master Plan and related directions to Staff as outlined above, were approved. (7-0-2. Absent: Campos, Chirco.)

- 4.5 **Consideration of an ordinance rezoning the real property located at/on the east side of North 4th Street, approximately 600 feet northerly of Gish Road, from LI Light Industrial Zoning District to A(PD) Planned Development Zoning District to allow up to 100 multi-family residences on a 0.75 gross acre site (1470 N. 4th Street)(Owner/Developer; First Community Housing Inc). CEQA: North San José Area Development Policy Resolution No. 72768. The Director of Planning, Building and Code Enforcement and Planning Commission recommended approval (6-1-0). PDC06-022 – District 3
(Deferred from 3/6/07 – Item 11.4)**

4.5 (Cont'd.)

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joe Horwedel, dated February 22, 2007, transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC06-022, dated February 5, 2007, recommending approval of the subject rezoning. (2) Memorandum from Planning Commission Secretary Joe Horwedel, dated March 1, 2007, transmitting the Planning Commission recommendation. (3) Proof of Publication of Notice of Public Hearing, executed on February 16, 2007, submitted by the City Clerk.

Public Comment: Mayor Reed opened the public hearing. There was no testimony from the floor.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Nguyen and carried unanimously, the public hearing was closed, the recommendation of the Planning Commission and the Planning Director was approved, and Ordinance No. 27991, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the East Side of North 4th Street, Approximately 600 Feet Northerly of Gish Road (1470 North 4th Street) to A(PD) Planned Development Zoning District", was passed for publication, with the following conditions: (1) Operator will not charge the residents for parking on site. (2) Representatives from First Community Housing will engage in good faith efforts with the Rosemary Gardens Neighborhood Association to exchange contact information and provide assistance to residents in resolving problems resulting from concerns specifically relating from the project site. (7-0-2. Absent: Campos, Chirco.)

NEIGHBORHOOD SERVICES

5.2 Adoption of a resolution:

- (a) **Amending the application for local assistance funds from the State of California 2000 and 2002 Parks Bond Acts for projects as follows:**
 - (1) **Overfelt House Renovation: Shift \$1,241,000 to the Lake Cunningham Skatepark project from the following sources:**
 - (a) **\$610,000 - Roberti-Z'berg-Harris Urban Open Space and Recreation Grant Program under the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Act of 2000 (Proposition 12)**
 - (b) **\$631,000 - Per Capita Grant Program under the 2002 Resources Bond Act (Proposition 40)**
 - (2) **Lake Cunningham Skatepark Project: Shift \$1,037,000 to the Overfelt House Renovation project from the Per Capita Grant Program under the 2000 Resources Bond Act (Proposition 12)**

(Item continued on the next page)

- 5.2 (a) (3) **Cinnabar Commons Park Development: Shift \$100,000 from the O'Connor Park Restroom project to the Cinnabar Commons Park Development project from the Roberti-Z'berg-Harris Urban Open Space and Recreation Grant Program under the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Act of 2000 (Proposition 12)**
- (b) **Authorizing the City Manager to negotiate, execute, and submit all necessary documents for obtaining and accepting local assistance funds under these grant programs.**

CEQA: Mitigated Negative Declaration, File No. PP06-043 and Exempt, File No. HP03-007. Council Districts 5, 6 and 8. SNI: Burbank, Del Monte, Gateway East. (Parks, Recreation and Neighborhood Services)

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated February 21, 2007, recommending adoption of a resolution.

Action: Upon motion by Council Member Constant, seconded by Council Member Williams and carried unanimously, Resolution No. 73689, entitled: "A Resolution of the Council of the City of San José Authorizing the Amendment of the Allocation of Amounts for Local Assistance Funds from the State of California Under the 2000 and 2002 Parks Bond Acts and Authorizing the City Manager to Negotiate, Execute and Submit all Necessary Documents for Local Assistance Funds Under These Grant Programs", was adopted. (6-0-3. Absent: Campos, Chirco, Cortese.)

- 5.3 (a) **Adoption of a resolution to reject the only response received by Asian American Recovery Services, Inc. for the JTS Northside Community Center Request for Proposal (RFP) process.**
- (b) **Approval of the recommendation to include the Northside Community Center into the Parks, Recreation and Neighborhood Services (PRNS) Re-Use Strategy, identifying the City as the lead operator, which will enable PRNS to partner with community based organizations to provide additional services to the community.**
- (c) **Adoption of a resolution authorizing the City Manager to negotiate and execute agreements with non-profit organization(s), including but not limited to, Asian American Recovery Services, Inc. for the provision of services at the Jacinto "Tony" Siquig Northside Community Center.**

CEQA: Not a Project. Council District 3. SNI: Thirteenth Street. (Parks, Recreation and Neighborhood Services)

Action: Deferred to April 3, 2007 per Administration.

TRANSPORTATION & AVIATION SERVICES

- 6.2 (a) Approval of an agreement with David Brush Consulting to provide program management services for the Norman Y. Mineta San Jose International Airport Terminal Area Improvement Program (TAIP) from the date of execution to December 31, 2010, in an amount not to exceed \$1,526,500.
- (b) Adoption of a Resolution authorizing the City Manager to execute up to two, two-year options to extend the term at no increase in total compensation
CEQA: Resolutions Nos. 67380 and 71451, File No. PP07-015. (Airport)

Documents Filed: Memorandum from Director of Aviation William Sherry, dated February 21, 2007, recommending approval of agreement and adoption of a resolution.

Public Comment: Erik Larsen (AFSCME, MEF 101) objected to the use of outside contractors in lieu of in-house employees. William Garbett concurred.

Action: Upon motion by Vice Mayor Cortese, seconded by Council Member Pyle and carried unanimously the agreement with David Brush Consulting was approved and Resolution No. 73690, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute Up to Two, Two Year Options to Extend the Term of the Agreement from December 31, 2010 with David Brush Consulting with No Increase in Compensation", was adopted. (7-0-2. Absent: Campos, Chirco.)

- 6.3 (a) Adoption of a resolution authorizing the City Manager to:
- (1) Negotiate and execute Signatory Airline-Airport Lease and Operating Agreements with all passenger and cargo airlines currently operating at the Norman Y. Mineta San José International Airport that meet the minimum requirements to be a signatory airline, for the term July 1, 2007 to June 30, 2012.
 - (2) Negotiate and execute Non-Signatory Airline-Airport Lease and Operating Agreements with any passenger or cargo airlines currently operating at the Norman Y. Mineta San José International Airport that do not meet the minimum requirements to be a signatory airline or chose not to enter into a signatory lease, for the term July 1, 2007 to June 30, 2012.
 - (3) Negotiate and execute Signatory and Non-Signatory Airline-Airport Lease and Operating Agreements with any passenger or cargo airlines that commence at the Norman Y. Mineta San José International Airport after July 1, 2007, for the term from commencement of operations to June 30, 2012.
- (b) Approval of an ordinance amending Chapter 25.08 of Title 25 of the San José Municipal Code to add a new section establishing minimum requirements for the operation and use of the Norman Y. Mineta San José International Airport by any passenger or cargo airlines that have not signed either a Signatory or Non-Signatory Airline-Airport Lease and Operating Agreement on or after July 1, 2007.

CEQA: Resolutions Nos. 67380 and 71451, File No. PP07-034. (Airport)

6.3 (Cont'd.)

Action: Upon motion by Council Member Liccardo, seconded by Vice Mayor Cortese and carried unanimously, Item 6.3 was deferred to March 27, 2007. (7-0-2. Absent: Campos, Chirco.)

ENVIRONMENTAL & UTILITY SERVICES

- 7.1 (a) **Acceptance of the 2006 Annual Status Report on cooperative efforts between the City of San José and the Santa Clara Valley Water District relating to:**
- (1) **Water Supply Partnership, including:**
 - (a) **Conservation Programs**
 - (b) **South Bay Recycling Collaborative**
 - (c) **Coyote Valley Specific Plan Coordination**
 - (2) **Watershed Protection Partnership, including:**
 - (a) **Trash Removal from Creeks**
 - (b) **Floodplain Management**
 - (1) **FEMA Map Modernization Project**
 - (2) **Guadalupe Watershed Flood Protection Projects**
 - (3) **Grants and Subventions for Flood Protection**
 - (c) **Hydromodification Management**
 - (d) **Water Resources Protection Collaborative**
 - (e) **Santa Clara Valley Habitat Conservation Plan and Natural Community Conservation Plan**
 - (f) **San José Water Policy**
 - (g) **District's Comprehensive Plan**
 - (3) **Parks, Trails and Open Space Partnership**
- (b) **Approval of the proposed direction on the conservation work plan, focusing on:**
- (1) **Continuing existing programs to involve additional customers and new development.**
 - (2) **Expanding marketing programs to promote new water conservation technologies and developing additional water conservation ordinances.**
 - (3) **Expanding collaboration with key partners and direct staff to report back with a full work plan for approval in Summer 2007**
- (c) **Direction to staff to add renegotiation of the District reimbursement to \$115/acre foot to the SBWR Collaborative II Process and bring the contract to the Council and Board for approval prior to June 2007.**
- (d) **Direction to City and District staff to schedule and prepare an agenda and materials for a joint City Council and District Board Study Session on Flood Management in the Fall of 2007.**

CEQA: Not a Project. (City Manager's Office/Santa Clara Valley Water District)

Documents Filed: Memorandum from City Manager Les White and Chief Executive Office of Santa Clara Valley Water District, Stanley M. Williams, dated February 21, 2007, transmitting and recommending acceptance of the 2006 Annual Status Report

7.1 (Cont'd.)

Director of Environmental Services John Stufflebean; Melanie Richardson, Santa Clara Valley Water District; and Deputy Director of Public Works Timm Borden responded to Council questions.

Action: Upon motion by Council Member Pyle, seconded by Council Member Williams and carried unanimously, the 2006 Annual Status Report on cooperative efforts between the City of San José and the Santa Clara Valley Water District was accepted, Staff was directed to add renegotiation of the District reimbursement to \$115/acre foot to the SBWR Collaborative II Process and bring the contract to the Council and Board for approval prior to June 2007, City and District Staff were directed to schedule and prepare an agenda and materials for a joint City Council and District Board Study Session on Flood Management in the Fall of 2007 with Staff requested to: (1) Provide Council with an information memorandum regarding the population areas in the new flood zones (available July 2007). (2) Return to Rules & Open Government Committee for Council direction with regard to funding/framework for residents to apply for assistance, i.e. grants. (6-0-3. Absent: Campos, Chirco, Liccardo.)

NOTICE OF CITY ENGINEER'S PENDING DECISION ON FINAL MAPS

In accordance with Sec. 19.16.140d of the San José 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>
9870	West side of Oakland Road, 550 feet north of Rock Avenue	4	Taylor Woodrow Homes, Inc.	1 Lot / 53 Units	SFA	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 February 2007:

NOTICE OF CITY ENGINEER'S AWARD OF CONSTRUCTION PROJECTS (Cont'd.)

AWARD:

<u>Project Name</u>	<u>Council District</u>	<u>Contractor</u>	<u>Contract Award Amount</u>	<u>Award Date</u>
Greater Gardner Street Reconstruction–Spencer Avenue/Brown Street	3	Golden Bay Construction, Inc.	\$641,878.55	2/7/07
Cesar Chavez Water Fountain Re-circulating Water Redesign and Construction	3	Pacific Water Art Inc.	\$630,000	2/27/07

OPEN FORUM

- (1) Robert Apgar voiced personal observations.
- (2) Mark Trout presented religious points of view.

ADJOURNMENT

The Council of the City of San Jose was adjourned at 4:47 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

smd/3-13-07MIN

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