

MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, MARCH 3, 2009

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, Chirco, Chu, Constant, Herrera, Kalra, Liccardo, Nguyen, Oliverio; Pyle.

Absent: Council Members - Reed. (Excused)

Upon motion unanimously adopted, Council recessed at 9:31 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: (1) Grason v. City of San José, et al.; Names of Parties Involved: Kenneth Grason, City of San José, San José Chief of Police Robert Davis, Police Officer Vida, #3404, and Does 1-10; Court: U.S. District Court, Northern District of California; Case No: C07-03687 JW; Amount of Money or Other Relief Sought: Damages according to proof.

CLOSED SESSION

By unanimous consent, Council recessed from the Closed Session at 10:00 a.m. and reconvened at 1:30 p.m. in the Council Chambers.

Present: Council Members - Campos, Chirco, Chu, Constant, Herrera, Kalra, Liccardo, Nguyen, Oliverio; Pyle.

Absent: Council Members - Reed. (Excused)

INVOCATION

The Horace Mann Choir performed "A Song of Peace". (District 3)

PLEDGE OF ALLEGIANCE

Vice Mayor Chirco, accompanied by students from Horace Mann Elementary, led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Nguyen, seconded by Council Member Pyle and carried unanimously, the Orders of the Day and Amended Agenda were approved, with Item 2.3 deferred to March 10, 2009.

Council Member Constant acknowledged today as “National Square Root Day”.
(10-0-1. Absent: Reed.)

CONSENT CALENDAR

Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (10-0-1. Absent: Reed.)

2.2 Final adoption of ordinances.

- (a) **ORD. NO. 28498 – Amending Chapter 4.70 of Title 4 of the San José Municipal Code, by adding a new Part to establish a cap on the amount of Telecommunications Users Tax paid under this Chapter by service users provided certain conditions are satisfied, which part shall expire on December 31, 2012 unless otherwise extended, shortened, or revised by the City Council.**

Documents Filed: Proof of Publication of the title of Ordinance No. 28498, executed on February 27, 2009, submitted by the City Clerk.

Action: [Ordinance No. 28498](#) was adopted. (10-0-1. Absent: Reed.)

- 2.3 (a) **Approve a request for early disbursement of \$603,435 of the existing funding commitment to San Carlos Willard Associates, L.P., or its designated affiliate, to finance the shared offsite development costs for the 100-unit San Carlos Bowl Seniors rental project located at 1523-1533 West San Carlos Street; and**
- (b) **Authorize the Director of Housing to negotiate and execute all documents to effectuate this early disbursement.**

CEQA: Exempt, PD04-103. Council District 6. SNI: Burbank/Del Monte. (Housing)

Documents Filed: List of questions for Housing Department submitted by Council Member Oliverio, dated March 3, 2009.

2.3 Cont'd.

Council Member Oliverio pulled Item 2.3 from the Consent Calendar and requested a one-week deferral for greater public input.

Director of Housing Leslye Krutko responded to questions from Council.

Public Comment: Chet Lockwood and Terri Balandra (Fiesta lanes Action Group) urged Council to defer this project until greater public input is provided.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Campos and carried unanimously, Item 2.3 was deferred to March 10, 2009. (10-0-1. Absent: Reed.)

2.4 **Adopt a resolution authorizing the Housing and Community Development Advisory Commission to act as the Housing Trust Fund Oversight Committee for all grants except those needed for emergency situations. CEQA: Not a Project. (Housing)**

Documents Filed: Memorandum from Director of Housing Leslye Krutko, dated February 6, 2009, recommending adoption of a resolution.

Action: [Resolution No. 74810](#), entitled: "A Resolution of the Council of the City of San José Authorizing the Housing and Community Development Advisory Commission to Act as the Housing Trust Fund Oversight Committee", was adopted. (10-0-1. Absent: Reed.)

- 2.5 (a) **Adopt a resolution to modify the Teacher Homebuyer Program, adopted by Council on April 4, 2000, as follows:**
- (1) **Decrease the maximum loan amount from \$40,000 to \$35,000 for households earning between 90% and 120% of Area Median Income;**
 - (2) **Decrease the maximum loan amount from \$65,000 to \$50,000 for households earning less than 90% of Area Median Income.**
- (b) **Adopt the following amendments to the 2008-2009 Appropriation Ordinance in the Low- and Moderate-Income Housing Fund (Fund 443):**
- (1) **Increase the Teacher Homebuyer Program Appropriation by \$500,000; and**
 - (2) **Decrease the Loan Management Appropriation by \$500,000.**
- (c) **Adopt a resolution to:**
- (1) **Modify the San José State University Faculty and Staff Homebuyer Program, adopted by Council on January 10, 2006, to decrease the maximum loan amount from \$60,000 to \$50,000 for low- and moderate-income households.**
 - (2) **Authorize the Director of Housing to negotiate and execute any necessary agreements, amendments, or other documents with San José State University, or its affiliate, related to the program modification.**

CEQA: Not a Project. (Housing/City Manager's Office)

Documents Filed: Memorandum from Director of Housing Leslye Krutko and Budget Director Jennifer Maguire, dated February 9, 2009, recommending adoption of resolutions and appropriation ordinance amendments.

Council Member Chu pulled Item 2.5 from the Consent Calendar for clarification on the number of loan applicants. Director of Housing Leslye Krutko responded to questions from Council.

Action: Upon motion by Council Member Chu, seconded by Council Member Oliverio and carried unanimously, [Resolution No. 74811](#), entitled: "A Resolution of the Council of the City of San José Modifying the Teacher Homebuyer Program"; [Ordinance No. 25807](#), entitled: "An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the Low and Moderate Income Housing Fund for the Teacher Homebuyer Program; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", and [Resolution No. 74812](#), entitled: "A Resolution of the Council of the City of San José Modifying the San José State University Faculty and Staff Homebuyer Program", were adopted. (10-0-1. Absent: Reed.)

- 2.6 Adopt a resolution summarily vacating a portion of a 10-foot Public Service Easement at 2581 and 2585 Samaritan Drive, recorded on October 24, 1985, within Parcel B as shown upon that certain Parcel Map in Book 551 of Maps at Pages 1 and 2 of Official Records, Office of the Recorder, County of Santa Clara. CEQA: Mitigated Negative Declaration, PDC08-014. Council District 9. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated February 9, 2009, recommending adoption of a resolution.

Action: [Resolution No. 74813](#), entitled: “A Resolution of the Council of the City of San José Summarily Vacating a Portion of a Public Service Easement at 2581 and 2585 Samaritan Drive”, was adopted. (10-0-1. Absent: Reed.)

- 2.7 Approve an increase in the construction contingency funding for the San José Convention Center Garage Project in the amount of \$31,544, increasing the total contingency from \$16,704 to \$48,248. CEQA: Exempt, PP05-187. Council District 3. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated February 9, 2009, recommending approval of an increase in the project contingency amount for the San José Convention Center Garage Project.

Action: An increase in the construction contingency funding for the San José Convention Center Garage Project in the amount of \$31,544, increasing the total contingency from \$16,704 to \$48,248, was approved. (10-0-1. Absent: Reed.)

- 2.8 Request for excused absences for Council Member Chu from the City Council Study Session on March 17, 2009 and the Regular Meeting of the Public Safety, Finance and Strategic Support Committee on March 19, 2009 due to Authorized City Business: National League of Cities Congressional City Conference in Washington, D.C. (Chu)
(Rules Committee referral 2/18/09)**

Documents Filed: Memorandum from Council Member Chu, dated February 12, 2009, requesting approval of excused absences due to authorized City business.

Action: The absences for Council Member Chu were excused. (10-0-1. Absent: Reed.)

- 2.9 (a) Approve travel by Council Member Constant to Washington, D.C. on March 14-18, 2009 to attend the National League of Cities' annual Congressional City Conference and serve on the Public Safety and Crime Prevention Policy and Advocacy Committee. Source of Funds: Mayor & Council Travel Fund.**
- (b) Request for an excused absence for Council Member Constant from the Closed Session and Regular Meeting of the City Council on March 17, 2009 due to Authorized City Business: National League of Cities Annual Congressional City Conference in Washington, D.C.**
- (Constant)**
(Rules Committee referral 2/18/09)

Documents Filed: Memorandum from Council Member Constant, dated February 17, 2009, requesting approval of travel and an excused absence due to authorized City business.

Action: Council Member Constant's travel request was approved and absences due to authorized City business were excused. (10-0-1. Absent: Reed.)

- 2.10 (a) Approve travel by Council Member Constant to Boston, MA on October 21-23, 2009 to attend San José/Silicon Valley Chamber of Commerce City-to-City Trip. Source of Funds: Mayor & Council Travel Fund.**
- (b) Request for an excused absence for Council Member Constant from the Closed Session and Regular Meeting of the Rules and Open Government Committee on October 21, 2009 due to Authorized City Business: 2009 San José/Silicon Valley Chamber of Commerce Annual City-to-City Trip in Boston, MA.**
- (Constant)**
(Rules Committee referral 2/18/09)

Documents Filed: Memorandum from Council Member Constant, dated February 17, 2009, requesting approval of travel and an excused absence due to authorized City business.

Action: Council Member Constant's travel request was approved and absences due to authorized City business were excused. (10-0-1. Absent: Reed.)

- 2.11 (a) Request for an excused absence from the Regular Meeting of the City Council on March 3, 2009 due to Authorized City Business: Travel to Washington, D.C. to advocate on behalf of the City.**
- (b) Request for an excused absence from the Regular Meeting of the Rules and Open Government Committee on March 4, 2009 due to Authorized City Business: Travel to Washington, D.C. to advocate on behalf of the City.**
- (Mayor)**
(Rules Committee referral 2/18/09)

Documents Filed: Memorandum from Mayor Reed, dated February 17, 2009, requesting approval of travel and an excused absence due to authorized City business.

Action: Mayor Reed's travel request was approved and absences due to authorized City business were excused. (10-0-1. Absent: Reed.)

- 2.12 Request for excused absences for Vice Mayor Chirco from the Closed Session and Regular City Council Meeting on February 24, 2009 and the Regular Meeting of the Rules and Open Government Committee on February 25, 2009 due to: illness. (Chirco)
(Rules Committee referral 2/25/09)**

Documents Filed: Memorandum from Vice Mayor Chirco, dated February 19, 2009, requesting approval of absences due to illness.

Action: Vice Mayor Chirco's absences were excused. (10-0-1. Absent: Reed.)

- 2.13 Approve travel by Mayor Reed to Washington, D.C. on March 1-5, 2009 to advocate on behalf of the City. Source of Funds: Mayor's Budget. (Mayor)
(Rules Committee referral 2/25/09)**

Documents Filed: Memorandum from Mayor Reed, dated February 18, 2009, requesting approval of travel and an excused absence due to authorized City business.

Action: Mayor Reed's travel request was approved and absences due to authorized City business were excused. (10-0-1. Absent: Reed.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

- 3.1 Report of the City Manager, Debra Figone (Verbal Report)
City Manager Debra Figone noted that an update on the economic forecast to be discussed in tandem with the Mayor's March 24 budget message will be published by tomorrow, and a report relating to the City's involvement with the federal economic stimulus package will be released by the end of this week.**
- 3.2 Report of the Rules and Open Government Committee – February 4, 2009
Mayor Reed, Chair**

Documents Filed: The Rules and Open Government Committee Report dated February 4, 2009.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Pyle and carried unanimously, the Report of the Rules and Open Government Committee and the actions of February 4, 2009 were accepted. (11-0.)

3.3 Report of the Public Safety, Finance and Strategic Support Committee – February 19, 2009 - Council Member Nguyen, Chair

Documents Filed: The Public Safety, Finance and Strategic Support Committee Report dated February 19, 2009.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Pyle and carried unanimously, the Report of the Public Safety, Finance and Strategic Support Committee and the actions of February 19, 2009 were accepted. (11-0.)

3.4 Approve the four-year term appointments, ending on March 1, 2013, as follows:

- (a) **Franco Vado to the Deferred Compensation Advisory Committee as the representative nominated by the San José Police Officers Association;**
- (b) **Robert Sapien as the representative nominated by the San José Firefighters, Local 230 (IAFF); and**
- (c) **Pascal Roubineau as the representative nominated by the trades unions (Association of Building, Mechanical and Electrical Inspectors (ABMEI), International Brotherhood of Electrical Workers (IBEW), International Union of Operating Engineers, Local No. 3 (OE3).**

**CEQA: Not a Project. (Human Resources)
(Rules Committee Referral 2/25/09 – Item 9.1)**

Documents Filed: Memorandum from Director of Human Resources Mark Danaj, dated February 9, 2009, recommending three, four-year term Deferred Compensation Advisory Committee appointments.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Herrera, and carried unanimously, the four-year term appointments of Franco Vado, Robert Sapien and Pascal Roubineau to the Deferred Compensation Advisory Committee were approved. (10-0-1. Absent: Reed.)

**3.5 As recommended by the Public Safety, Finance and Strategic Support Committee of February 19, 2009, ratify the Administration's decision to waive the City's right under the current agreement with Team San José, Inc. for the management of the San José Convention Center and Cultural Facilities to delete the fixed payment of \$150,000 from the management fee for year four of the agreement and authorize the City Manager the exercise this waiver for year five of the agreement.
[Public Safety, Finance and Strategic Support Committee Referral 2/19/09 – Item 3.3(c)(7)]**

Documents Filed: Memorandum from City Clerk Lee Price, dated February 27, 2009, transmitting the recommendation of the Public Safety, Finance and Strategic Support Committee.

Dan Fenton of Team San José responded to questions from Council.

- 3.5** Action: Upon motion by Council Member Nguyen, seconded by Council Member Herrera and carried unanimously, the Administration's decision to waive the City's right under the current agreement with Team San José, Inc. for the management of the San José Convention Center and Cultural Facilities to delete the fixed payment of \$150,000 from the management fee for year four of the agreement and authorize the City Manager to exercise this waiver for year five of the agreement was ratified. (10-0-1. Absent: Reed.)

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.2** **Adopt a resolution approving a funding commitment of up to \$5,200,000 of Low- and Moderate-Income Housing Funds (20% Funds) to ROEM Development Corporation (“ROEM”), or its legal affiliate, for a land acquisition loan for future development of the 84-unit San Antonio Family Apartments, an affordable multifamily rental project located at 1350 E. San Antonio Street to be made available to extremely low-income and very low-income households. CEQA: Mitigated Negative Declaration, PDC08-038. Council District 3. SNI: Five Wounds/Brookwood Terrace. (Housing)**

Documents Filed: Memorandum from Director of Housing Leslye Krutko, dated February 9, 2009, recommending adoption of a resolution.

Council Member Oliverio objected to this action, and based his no vote upon no park fees, no ongoing property tax and no building and construction taxes, as previously stated.

Director of Housing Leslye Krutko responded to questions from Council.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Nguyen, and carried, [Resolution No. 74814](#), entitled: “A Resolution of the Council of the City of San José Approving a Funding Commitment to ROEM Development Corporation for the San Antonio Family Apartments Project”, was adopted. (9-1-1. Noes: Oliverio. Absent: Reed.)

ADJOURNMENT

The Council of the City of San José adjourned at 2:07 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

rmk/10-03-09MIN