

MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, AUGUST 4, 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; Reed.

Absent: Council Members - None.

Upon motion unanimously adopted, Council recessed at 9:35 a.m. to a Closed Session in Room W133, to confer with Legal Counsel with respect to (A) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) Municipal Employees' Federation, AFSCME Local 101, AFL-CIO (MEF); Nature of negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement - City of San José and Municipal Employees' Federation, AFSCME Local 101, AFL-CIO; (2) Association of Maintenance Supervisory Personnel (AMSP); Nature of negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: City of San José and City Association of Maintenance Supervisory Personnel (AMSP) Benefit & Compensation Summary; (3) Association of Engineers & Architects (AEA); Nature of negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement - City of San José Association of Engineers & Architects (AEA); (4) International Association of Firefighters (IAFF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and IAFF, Local 230; (5) International Union of Operating Engineers, Local No. 3 (OE#3); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and OE#3.; How to obtain a copy of existing contract or MOA: web: <http://www.sanjoseca.gov/employeerelations/moa.asp>; Telephone for Employee Relations 408-535-8150.

Access the video, the agenda and related reports for this meeting by visiting the City's website at <http://www.sanjoseca.gov/clerk/agenda.asp> or <http://www.sanjoseca.gov/clerk/MeetingArchive.asp>. For information on any ordinance that is not hyperlinked to this document, please contact the Office of the City Clerk at (408) 535-1266.

CLOSED SESSION (Cont'd.)

By unanimous consent, Council recessed from the Closed Session at 11:10 a.m. and reconvened to Regular Session at 1:33 p.m. in the Council Chambers.

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

Absent: Council Members - None.

INVOCATION

The Happy Singers Chorus sang "God Bless America". (District 7)

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Pyle, seconded by Council Member Nguyen and carried unanimously, the Orders of the Day and the Amended Agenda were approved, with Items 3.2 and 3.3 deferred to August 11, 2009. (11-0.)

Motion: Council Member Campos moved to drop Item 5.3. The motion was seconded by Council Member Kalra. The motion failed. (5-6-0. Noes: Chirco, Constant, Herrera, Liccardo, Oliverio; Reed.)

CONSENT CALENDAR

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

- 2.2 (a) **ORD. NO. 28622** – Amending Title 17 of the San José Municipal Code to add a new Chapter 17.84 to establish Green Building Regulations for private development.

2.2 (Cont'd.)

- (a) Documents Filed: (1) Proof of Publication of the Title of Ordinance No. 28622, executed on June 30, 2009, submitted by the City Clerk. (2) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated July 23, 2009, providing a corrected version of the Green Building Ordinance.

Item 2.2 was pulled from the Consent Calendar by members of the public for further discussion.

Public Comments: Richard Calhoun and Linda Kincaid expressed concerns that the current GreenPoint rating does not assure acceptable indoor air quality, and suggested that standards be raised to assure protection of building occupants.

Director of Planning, Building and Code Enforcement Joseph Horwedel responded to questions regarding indoor air quality concerns.

Action: Upon motion by Council Member Constant, seconded by Council Member Herrera, and carried unanimously, [Ordinance No. 28622](#) was adopted, with Staff directed to return to the Transportation and Environment Committee with more information about indoor air quality standards; and further, to follow up with speakers before implementation of the ordinance. (11-0.)

- 2.3 (a) **Request for an excused absence for Vice Mayor Chirco from the Closed Session of the City Council Meeting on June 23, 2009 due to illness. (Chirco) (Rules in Lieu referral 7/22/09)**
- (b) **Request for an excused absences for Council Member Constant from the following meetings due to Medical: Neck Surgery:**
- (1) **Closed Session and City Council Meetings on August 18, 2009 and August 25, 2009;**
 - (2) **Rules and Open Government Committee Meetings on August 19, 2009 and August 26, 2009; and**
 - (3) **Public Safety, Finance and Strategic Support Committee Meeting on August 20, 2009; and**
 - (4) **City Council Study Session on August 28, 2009.**
- (Constant)**
(Rules in Lieu referral 7/22/09)

Documents Filed: (1) Memorandum from Vice Mayor Chirco, dated June 22, 2009, requesting an excused absence due to illness. (2) Memorandum from Council Member Constant, dated July 31, 2009, requesting excused absences for scheduled neck surgery.

Action: The absences for Vice Mayor Chirco and Council Member Constant were excused. (11-0.)

- 2.4 Adopt a resolution supporting the goals of the East Foothills Community Wildfire Protection Plan for the area east of San José developed by the Santa Clara County FireSafe Council and authorizing the Mayor and the Fire Chief to sign the mutual agreement page of the plan. CEQA: Not a Project. (Fire)
(Deferred from 6/9/09 – Item 2.7)**

Action: Dropped per Administration.

- 2.5 Adopt a resolution authorizing the City Manager to accept a settlement of an outstanding Executive Home Loan of \$250,000. CEQA: Not a Project. (City Manager’s Office/City Attorney’s Office)**

Documents Filed: Memorandum from City Attorney Richard Doyle, dated July 22, 2009, recommending the acceptance of a settlement of an executive home loan.

Item 2.5 was pulled from the Consent Calendar by Council Member Constant.

Assistant City Attorney Ed Moran responded to questions from Council regarding the terms of the proposed settlement.

Staff members from the City Manager’s Budget Office clarified issues regarding the Executive Home Loan and answered questions from Council.

Council discussion followed.

Council Members Constant expressed opposition to the settlement due to perceived inequities. Council Member Campos concurred.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Pyle and carried, [Resolution No. 75010](#), entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Accept Settlement of an Outstanding Executive Home Loan in the Amount of \$250,000”, was adopted, with Staff directed to work through the Public Safety, Finance & Strategic Support Committee to develop recommendations to modify the Executive Loan Program by: (1) Establishing a personal down payment requirement; (2) Limiting the percentage of debt the City will acquire; and (3) Requiring Council approval of final terms of the agreement. (9-2-0. Noes: Campos, Constant.)

- 2.6 (a) **Approve the proposed 2009-2012 Spending Plan for the FY 2009 Edward Byrne Memorial Justice Assistance Grant (JAG).**
- (b) **Approve changes to the JAG 2008-2011 spending plan.**
- (c) **Adopt a resolution accepting the 2009 Justice Assistance Grant in the amount of \$582,729 and authorize the City Manager to execute the Grant Agreement and all related documents including the necessary Memorandum of Understanding with participating agencies.**
- (d) **Adopt the following Appropriation Ordinance and Funding Sources Resolution Amendments in the Edward Byrne Memorial Justice Assistance Grant Trust Fund:**
- (1) **Increase the estimate for Earned Revenue in the amount of \$582,729; and**
- (2) **Establish an appropriation to the Police Department for the 2009 Justice Assistance Grant in the amount of \$582,729.**

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

Documents Filed: Joint memorandum from Chief of Police Robert L. Davis and Budget Director Jennifer Maguire, dated July 13, 2009, recommending approval of the proposed spending plan, adoption of a resolution and appropriation ordinance and funding sources resolution amendments.

Action: The Proposed 2009-2012 Spending Plan for the FY 2009 Edward Byrne Memorial Justice Assistance Grant (JAG) was approved, [Resolution No. 75011](#), entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute a Grant Agreement for Fiscal Year 2009 Justice Edward Byrne Memorial Justice Assistance Grant in an Amount Not to Exceed \$582,729, to Accept the Grant, and to Execute All Related Documents, Including the Necessary Memorandum of Understanding with Participating Agencies"; [Ordinance No. 28610](#), entitled: "An Ordinance of the City of San José Amending Ordinance No. 28593 to Appropriate Monies in the Edward Byrne Memorial Justice Assistance Grant Trust Fund for the 2009 Justice Assistance Grant; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption"; and [Resolution No. 75070](#), entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 74956 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2009-2010 to Adjust Revenues in the Edward Byrne memorial Justice Assistance Grant Trust Fund", were adopted. (11-0.)

- 2.7 **Approve a Funding Agreement with the Santa Clara Valley Transportation Authority to operate the Downtown Area Shuttle Program for the period between July 1, 2009 to June 30, 2012, in an amount not to exceed \$600,000. CEQA: Not a Project. Council District 3. (Transportation)**

Documents Filed: Memorandum from Director of Transportation James R. Helmer, dated July 13, 2009, recommending approval of a funding agreement.

2.7 (Cont'd.)

Action: The Funding Agreement with the Santa Clara Valley Transportation Authority to operate the Downtown Area Shuttle Program for the period between July 1, 2009 to June 30, 2012, in an amount not to exceed \$600,000, was approved. (11-0.)

- 2.8 (a) Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the Services for Redevelopment Capital Projects Fund (City-side Redevelopment Fund) for 2009-2010:**
- (1) Increase the Beginning Fund Balance by \$2,239,462.**
 - (2) Establish an appropriation to the Department of Transportation for the Post Street Sidewalk Repair Project (PSM 585) in the amount of \$26,194.**
 - (3) Establish an appropriation to the Department of Transportation for the 13th Street SNI Couplet Conversion and Pedestrian Improvement Project – Julian and St. James Streets (PSM 582) in the amount of \$1,742,590.**
 - (4) Establish an appropriation to the Department of Transportation for the 13th Street SNI Couplet Conversion and Pedestrian Improvement Project – Hensley Historic District SJSU to Japantown Pedestrian Corridor Project (PSM 582) in the amount of \$207,410.**
 - (5) Establish an appropriation to the Department of Transportation for the 13th Street SNI Couplet Conversion and Pedestrian Improvement Project – Jackson Street: LRT to Japantown Pedestrian Corridor Project Embossed Crosswalk at 4th and Jackson (PSM 582) in the amount of \$100,000.**
 - (6) Establish an appropriation to the Department of Public Works for the Stockton Avenue/Julian Street Parking Lot Project (PSM 586) in the amount of \$36,540.**
 - (7) Increase the appropriation to the Department of Public Works for the Non-Project Specific DPW Services project (PSM 393 Amendment #3) in the amount of \$69,000.**
 - (8) Establish an appropriation to the Department of Housing for the Underwood Multi-Family Exterior Improvement Program (PSM 588) in the amount of \$57,728.**
- (b) Adopt resolutions making certain determinations regarding the related expenditure of Redevelopment Agency funds on certain public improvements in connection with:**
- (1) The Post Street Sidewalk Repair Project as more specifically described in the memorandum from the Redevelopment Agency, dated May 20, 2009.**
 - (2) The 13th Street SNI Couplet Conversion and Pedestrian Improvement Projects as more specifically described in the memorandum from the Redevelopment Agency, dated April 21, 2009.**

2.8 (Cont'd.)

- (b) (3) **The Stockton Avenue/Julian Street Parking Lot Project as more specifically described in the memorandum from the Redevelopment Agency, dated July 10, 2009.**

CEQA: Post Street Sidewalk Repair Project: CEQA: Exempt, File no. PP09-148; 13th Street SNI Couplet Conversion and Pedestrian Improvement Project – Julian and St. James Streets: Negative Declaration and addenda thereto, File No. PP02-05-115 and PP08-126; 13th Street SNI Couplet Conversion and Pedestrian Improvement Project – Hensley Historic District SJSU to Japantown Pedestrian Corridor Project: Negative Declaration and addenda thereto, File No. PP02-05-115 and PP04-293; 13th Street SNI Couplet Conversion and Pedestrian Improvement Project – Jackson Street: LRT to Japantown Pedestrian Corridor Project Embossed Crosswalk at 4th and Jackson: Exempt, File No. PP07-054; Stockton Avenue/Julian Street Parking Lot Project: Not a Project; Non-Project Specific DPW Services: Not a Project; and Underwood Multi-Family Exterior Improvement Program: Not a Project. (Public Works/Transportation/Housing/City Manager’s Office)

Documents Filed: Joint memorandum from Director of Public Works Katy Allen, Director of Transportation James R. Helmer, Director of Housing Leslye Krutko and Budget Director Jennifer Maguire, dated July 13, 2009, recommending adoption of appropriation ordinance and funding sources resolution amendments and resolutions.

Action: [Ordinance No. 28611](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 28593 to Appropriate Monies in the Services for Redevelopment Capital Projects Fund for the Post Street Sidewalk Repair Project, for the 13th Street SNI Couplet Conversion and Pedestrian Improvement Project – Julian and St. James Streets, for the 13th Street SNI Couplet Conversion and Pedestrian Improvement Project – Hensley Historic District SJSU to Japantown Pedestrian Corridor Project, for the 13th Street SNI Couplet Conversion and Pedestrian Improvement Project – Jackson Street: Lightrail to Japantown Pedestrian Corridor Project Embossed Crosswalk at 4th and Jackson, for the Stockton Avenue/Julian Street Parking Lot Project, for the Non-Project specific Department of Public Works Services Project, and for the Underwood Multi-Family Exterior Improvement Program, and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”, [Resolution No. 75071](#); [Resolution No. 75072](#), 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 Pueblo Uno Project Area; [Resolution No. 75073](#), 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 Strong Neighborhoods Initiative Redevelopment Project Area and the Japantown Neighborhood Business District; and [Resolution No. 75074](#), 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 Julian-Stockton Redevelopment Project Area”; were adopted. (11-0.)

- 2.9 As referred by the Rules and Open Government Committee on June 17, 2009, adopt a position of support for AB 117 (Fong and Hill) – Interagency Council on Homelessness. (Housing)
[Rules Committee referral 6/17/09 – Item 6.1(a)]**

Documents Filed: Memorandum from City Clerk Lee Price, dated July 23, 2009 transmitting the recommendations of the Rules and Open Government Committee.

Action: A position of support for AB 117 (Fong and Hill) – Interagency Council on Homelessness, as referred by the Rules and Open Government Committee on June 17, 2009, was adopted. (11-0.)

- 2.10 As referred by the Rules and Open Government Committee on June 17, 2009, adopt a position of support for AB 767 (Ammiano) – Housing and Emergency Shelter Trust Fund of 2006: Reversion of Funds. (Housing)
[Rules Committee referral 6/17/09 – Item 6.1(b)]**

Documents Filed: Memorandum from City Clerk Lee Price, dated July 23, 2009 transmitting the recommendations of the Rules and Open Government Committee.

Action: A position of support for AB 767 (Ammiano) – Housing and Emergency Shelter Trust Fund of 2006: Reversion of Funds, as referred by the Rules and Open Government Committee on June 17, 2009, was adopted. (11-0.)

- 2.11 Approve travel by Council Member Chu to Olympic Valley, CA and Sacramento, CA on July 16-17, 2009 and July 17-18, 2009 to attend the League of California Cities Board Meeting and the League of California Cities Local Government summit on Governance and Fiscal Reform. Source of Funds: Mayor/Council Travel Fund. (Chu)
(Rules in Lieu referral 7/22/09)**

Documents Filed: Memorandum from Council Member Chu, dated July 10, 2009, requesting authorization to travel to Olympic Valley, CA to attend the League of California Cities Board Meeting.

Action: Council Member Chu's request to travel to Olympic Valley, CA and Sacramento, CA on July 16-17, 2009 and July 17-18, 2009 to attend the League of California Cities Board Meeting and the League of California Cities Local Government summit on Governance and Fiscal Reform was approved. (11-0.)

- 2.12 As recommended by the Rules and Open Government Committee on July 29, 2009:**
- (a) Appoint David Phillip Oster to a term ending June 30, 2012 on the Mobilehome Advisory Commission.**
 - (b) Appoint Kasey Ong to the Youth Commission for District 4.**
- (Chu)**
[Rules Committee referral 6/17/09 – Item 9.1]

Documents Filed: Memorandum from City Clerk Lee Price, dated July 30, 2009, transmitting the recommendations of the Rules and Open Government Committee.

Action: The appointments of David Phillip Oster to the Mobilehome Advisory Commission and Kasey Ong to the District 4 Youth Commission were approved. (11-0.)

END OF THE CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

3.1 Report of the City Manager, Debra Figone (Verbal Report)

The City Manager reported on employee impacts, including redeployments and layoffs, resulting from budget decisions.

**3.2 Report of the Rules and Open Government Committee – June 10, 2009
Mayor Reed, Chair**

Action: Deferred to August 11, 2009 per Orders of the Day.

**3.3 Report of the Rules and Open Government Committee – June 17, 2009
Mayor Reed, Chair**

Action: Deferred to August 11, 2009 per Orders of the Day.

JOINT COUNCIL/REDEVELOPMENT AGENCY

**9.1 Presentation and discussion of the State budget impacts on the City of San José and the Redevelopment Agency. (Mayor)
(Rules Committee referral 7/29/09)**

Documents Filed: Powerpoint Presentation “State Budget Impacts on the City of San José / San José Redevelopment Agency”, dated August 4, 2009.

The presentation of the State budget impacts on the City of San José and Redevelopment Agency was received. (11-0.)

STRATEGIC SUPPORT SERVICES

3.5 Report of the Public Safety, Finance and Strategic Support Committee – June 18, 2009 Council Member Nguyen, Chair

Documents Filed: Report of the Public Safety, Finance and Strategic Support Committee, dated June 18, 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 June 18, 2009 were accepted. (11-0.)

- 3.6 (a) Approving the terms of a Memorandum of Agreement with the Association of Engineers and Architects, International Federation of Professional and Technical Engineers, Local 21, Unit 041 and 042, and authorizing the City Manager to execute the agreement with a term of July 1, 2009 to June 30, 2010.**
- (b) Approving the terms of a Memorandum of Agreement with the Association of Engineers and Architects, International Federation of Professional and Technical Engineers, Local 21, Unit 043, and authorizing the City Manager to execute the agreement with a term of July 1, 2009 to June 30, 2010.**

CEQA: Not a Project. (Employee Relations)

Documents Filed: Memorandum from Director of Employee Relations Alex Gurza, dated July 20, 2009, recommending adoption of a resolution.

City Manager Debra Figone expressed appreciation to the Association of Professional and Technical Engineers for accepting a wage freeze during these economically difficult times.

Action: Upon motion by Vice Mayor Chirco, seconded by Council Member Campos and carried unanimously, [Resolution No. 75075](#), entitled: “A Resolution of the Council of the City of San José Approving Agreements Between the City of San José and the Association of Professional and Technical Engineers, Local 21, Units 041/042 and Unit 043, with Terms of July 1, 2009 to June 30, 2010”, were adopted. (11-0.)

- 3.7 Conduct a public hearing on the Sewer Service and Use Charges and Storm Sewer Service Charges report filed by the Director of Finance with the City Clerk’s Office and adopt a resolution approving the placement of recommended charges on the 2009-2010 tax roll; with such modifications as Council may make based on public hearing testimony. CEQA: Not a Project. (Finance)**

Documents Filed: (1) Memorandum from Director of Finance Scott P. Johnson, dated July 13, 2009, recommending conducting a public hearing and adoption of a resolution. (2) Proof of Publication of Notice of Public Hearing, executed on July 17, 2009, submitted by the City Clerk.

3.7 (Cont'd.)

Mayor Reed opened the public hearing.

Public Comment: Abbie E. Warren spoke in opposition to increased Sewer Service and Use charges.

Mayor Reed closed the public hearing.

Action: Upon motion by Council Member Herrera, seconded by Council Member Nguyen, and carried unanimously, [Resolution No. 75076](#), entitled: “A Resolution of the Council of the City of San José Approving the Annual Report for Fiscal Year 2009-2010 of the Director of Finance on Sanitary Sewer Service and Use Charges and Storm Sewer Service Charges and Approving the Placement of Charges as Set Forth Therein on the 2009-2010 Tax Roll”, was adopted. (11-0.)

3.8 **As referred by the Public Safety, Finance and Strategic Support Committee on June 18, 2009, accept the audit of the Employee Medical Benefits. (City Auditor)** **[Public Safety, Finance and Strategic Support Committee referral 6/18/09 – Item 3.3]**

Documents Filed: (1) Memorandum from City Clerk Lee Price, dated July 23, 2009, transmitting the recommendations of the Public Safety, Finance and Strategic Support Committee. (2) Presentation from the Office of the City Auditor on Employee Medical Benefits, dated August 4, 2009. (3) Letter from Bruce DeMers, President of the Association of Retired San José Police Officers and Firefighters, dated August 4, 2009, responding to the “Audit of the Employee Medical Benefits”.

City Auditor Sharon Winslow-Erickson offered a presentation on Potential Cost Containment Strategies of Employee Medical Benefits and responded to questions from Council.

Public Comments: The following provided input on the Employee Medical Benefits audit: Bob Brownstein, Fred Hirsch and Bill Alexander, Jay Wendling, Pat Boyd, Bob Leininger and Tom Reilly.

Action: Upon motion by Council Member Pyle, seconded by Council Member Nguyen and carried unanimously, the Employee Medical Benefits audit as referred by the Public Safety, Finance & Strategic Support Committee, was accepted. (11-0.)

COMMUNITY & ECONOMIC DEVELOPMENT

4.1 Report of the Community & Economic Development Committee – June 22, 2009, Council Member Pyle, Chair

Documents Filed: The Community and Economic Development Committee Report dated June 22, 2009.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the Community and Economic Development Committee Report and the actions of June 22, 2009 were accepted. (11-0.)

4.2 Consider an ordinance of the City of San José Amending Part 2 of Chapter 13.48 of Title 13 of the San José Municipal Code, entitled “Designation,” to revise Section 13.48.110.C to allow the City Council greater discretion on whether to initiate the procedure for the designation of a landmark so nominated. CEQA: Not a Project. (Planning, Building and Code Enforcement) (Continued from 6/30/09)

Action: Continued to September 1, 2009, per Administration.

4.3 Adopt a resolution approving a funding commitment of up to \$6,280,000 of Low and Moderate Income Housing Funds to Charities Housing Development Corporation, or its legal affiliate, for a land acquisition loan to acquire the Markham Terrace property, located at 2112 Monterey Road, from EHC Lifebuilders. CEQA: Mitigated Negative Declaration, File Nos. GP08-07-04 and PDC09-015. Council District 7. (Housing)

Documents Filed: Memorandum from Director of Housing Leslye Krutko, dated July 13, 2009, recommending adoption of a resolution.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Herrera, and carried unanimously, [Resolution No. 75077](#), entitled: “A Resolution of the Council of the City of San José Approving a Funding Commitment for Site Acquisition of the Markham Terrace Apartments Project”, was adopted. (10-0-1. Absent: Kalra.)

- 4.4 (a) **Adopt a resolution:**
- (1) **Approving an increase in the construction/permanent funding of up to \$717,000, bringing the total City construction/permanent funding up to \$5,297,000, to Charities Housing Development Corporation (“Charities”), or its designated affiliate, for a land acquisition/predevelopment/ construction/permanent loan for the development of the 42-unit 90 Archer Street Apartments project (“Project”), located at 90 Archer Street, to be made available to extremely low-income and very low-income households.**
 - (2) **Approving the forgiveness of up to \$125,000 in accrued interest on the City’s predevelopment and acquisition loans.**
 - (3) **Committing the use of \$1,800,000 of HOME Investment Partnership (“HOME”) program funds, previously committed to Charities for the future development of a rental housing project to lower-income households, as a project-specific award of funds to the 90 Archer project.**
- (b) **Approve the following Appropriation Ordinance amendments in the HOME Investment Partnership Program Fund (Fund 445) for FY 2009-2010:**
- (1) **Increase the Loans and Grants appropriation by \$417,656; and**
 - (2) **Decrease the Unrestricted Fund Balance by \$417,656.**

CEQA: Resolution No. 72768 and Addendum thereto, File No. PDC06-085. Council District 3. SNI: Rincon De Los Esteros. (Housing/City Manager’s Office)

Documents Filed: Joint memorandum from Director of Housing Leslye Krutko and Budget Director Jennifer Maguire, dated July 13, 2009, recommending adoption of a resolution and appropriation ordinance amendments.

As previously noted, Council Member Oliverio explained that his no vote was based upon no park fees, no ongoing property tax and no building and construction taxes.

Action: Upon motion by Council Member Herrera, seconded by Council Member Liccardo and carried, [Resolution No. 75078](#), entitled: “A Resolution of the Council of the City of San José Approving a Loan Increase, a Commitment of Home Funds, and Forgiveness of Accrued Interest for the 90 Archer Street Family Apartments”, and [Ordinance No. 28623](#), were adopted. (8-1-2. Noes: Oliverio. Absent: Kalra, Pyle.)

- 4.5 As referred by Community and Economic Development Committee on June 22, 2009, review and discuss issues for the continued preparation of the Draft Santa Clara Valley Habitat Plan. (Planning, Building and Code Enforcement) [Community and Economic Development Committee referral – Item 3.6]**

Documents Filed: (1) Memorandum from City Clerk Lee Price, dated July 23, 2009, transmitting the recommendations of the Community and Economic Development Committee. (2) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated July 29, 2009, transmitting proposed policies and feedback from the Local Partners' Management Team and the Liaison Group workshop.

Director of Planning, Building and Code Enforcement Joseph Horwedel and Staff offered a presentation on the Santa Clara Valley Habitat Plan and requested direction on select environmental issues.

Council discussion regarding an acceptable wildlife conservation strategy followed.

The Staff presentation was received.

PUBLIC SAFETY SERVICES

- 8.1 Approve a revised service delivery model for the San José Police Department's Community Policing Centers (CPCs) and/or CPC Services. CEQA: Not a Project. (Police/Parks, Recreation and Neighborhood Services/Library)**

Documents Filed: Joint memorandum from Chief of Police Robert L. Davis, Director of Parks, Recreation and Neighborhood Services Albert Balagso and Library Director Jane Light, dated July 21, 2009, recommending approval of a revised service delivery model.

Action: Upon motion by Council Member Campos, seconded by Council Member Pyle and carried unanimously, the revised service delivery model for the San José Police Department's Community Policing Centers (CPCs) and/or CPC Services was approved. (11-0.)

NEIGHBORHOOD SERVICES

- 5.2 Approve a staff report regarding accomplishments outlined in the Annual Trail Report. CEQA: Not a Project. (Parks, Recreation and Neighborhood Services)**

Action: Deferred per Rules and Open Government Committee.

- 5.3 (a) Consider a request to reconsider the City Council's action to reject all bids and direct Staff to re-advertise and re-bid the Educational Park Branch Library project. (Herrera)
- (b) If a motion to reconsider passes:
- (1) Award the construction contract for the Educational Park Branch Library to the low bidder, Barry Swenson Builder, to include the base bid and Add Alternate Nos. 1 through 5 in the amount of \$7,136,300, and approve a contingency in the amount of \$1,070,445.
 - (2) Approve the first amendment to the agreement for consultant services with Anderson Brule Architects, for the Project, extending the term of the agreement from October 31, 2010 to April 30, 2011, modifying the scope of services, and increasing the amount of compensation by \$90,000, for a total agreement amount not to exceed \$1,280,000.
- CEQA: Mitigated Negative Declaration, File No. PP08-024. Resolution approved by Council on November 6, 2007. Council District 4. (Public Works/ Library)**

Documents Filed: (1) Memorandum from Council Member Herrera, dated July 31, 2009, recommending a reconsideration of Councils' action of June 23, 2009 to reject all bids. (2) Memorandum from City Attorney Richard Doyle, dated August 3, 2009, providing legal interpretation of general contract principles. (3) Supplemental memorandum from Director of Public Works Katy Allen, dated June 22, 2009, providing additional information in support of bid protests. (4) Memorandum from Director of Public Works Katy Allen, dated August 4, 2009, transmitting a letter from Barry Swenson Builder. (5) Memorandum from Library Director Jane Light and Director of Public Works Katy Allen, dated May 26, 2009, recommending the construction contract be awarded to the low bidder. (6) Letter from Neil Struthers, Santa Clara Building & Construction Trades Council, dated August 3, 2009, urging the Council to uphold their original decision to rebid this project. (7) Letter from Blair Edsen, Project Manager, Barry Swenson Builder, dated April 22, 2009, offering background information to support their claim that grounds for disqualification of their bid is unfounded.

First Motion: Council Member Herrera moved that the City Council reconsider its previous action to reject all bids, and direct Staff to re-advertise and re-bid the Educational Park Branch Library project. Council Member Constant seconded the motion.

Public Comments: Speaking in support of reconsideration by the City Council to rebid this project, were: Don Huntley, Troy Wilhite, Jessie Thielen, Jack Wimberly, Ron Rodriguez, Robert Hightower, Lawrence DeSantis, James Shydrowski, Blair Edson, Daniel Lee, Greg Bahue, Warren Barry, Christian Hagen, Forrest Cerrato and L.Y. Lee; Ira Harris, Blaire Edsen, James Shydrowski, David Gibbons, John Cantlen, Christine Welsh, and Barry Swenson (Barry Swenson Builders); Jessie Woodyard, Jim Salata; Bob Kieve, Bill Baron, and Pat Sausedo (San José/Silicon Valley Chamber of Commerce); and Jim Eller.

5.3 (Cont'd.)

Speaking in support of rejecting all bids and in favor of re-advertising and rebidding the project, were: Rick Solis, Luke Vratny and David Collins (Carpenters Local 405); Chivago Jolly (Iron Workers/Building Trades); Robert Van Epps, Warren Barry, Cheryl Pollock and Bill Guthrie (UA Local 393); Jose Garcia and Neil Struthers (Building Trades Council); Eddie Reyes and Dennis Meakin (Ironworkers Local 377); Wayd LaPearle, Sylvia Carroll, Fred Hirsch, Ross Signorino, Danny Garza and Bob Brownstein; Bill Alexander and Dan Hellewig.

Extensive Council discussion followed.

Mayor Reed and Council Members Campos, Chu, Constant, Liccardo, Nguyen and Pyle offered meeting disclosures.

Action: On a call for the question, the motion carried, and Item (a) the City Council's action to reject all bids and direct Staff to re-advertise and re-bid the Educational Park Branch Library project, was approved. (6-5-0. Noes: Campos, Chu, Kalra, Nguyen, Pyle.)

Second Motion: Council Member Constant moved approval to award the construction contract for the Educational Park Branch Library to the low bidder, Barry Swenson Builder. Council Member Liccardo seconded the motion.

Action: On a call for the question, the motion carried, and Item (b)(1) to award the construction contract for the Educational Park Branch Library to the low bidder, Barry Swenson Builder, was approved. (6-5-0. Noes: Campos, Chu, Kalra, Nguyen, Pyle.)

Third Motion: Council Member Constant moved approval of the first amendment to the agreement for consultant services with Anderson Brule Architects. The motion was seconded by Council Member Liccardo.

Council Member Campos stated that after reviewing the facts sheet provided by the Building Trades Council, she was in favor of this project being re-bid and would not be supporting the motion.

Action: On a call for the question, the motion carried, and Item (b)(2) approving the first amendment to the agreement for consultant services with Anderson Brule Architects, for the Project, extending the term of the agreement from October 31, 2010 to April 30, 2011, was approved. (10-1-0. Noes: Campos).

ENVIRONMENTAL & UTILITY SERVICES

7.1 Accept this Report on the Request for Proposal for a Power Purchase and Site Lease Agreement for Solar Photovoltaic Power Production rejecting the sole proposal that was received and authorizing the City Manager to:

- (a) Enter into negotiations with SunPower Corporation (San José, CA) for a Power Purchase Agreement (PPA) to purchase solar energy for a maximum 25 year term.**
- (b) Present to Council a fully negotiated PPA for final review and approval after successful negotiation of the agreement.**

CEQA: Not a Project. (Finance/Environmental Services)

(Deferred from 6/23/09 – Item 3.7)

Action: Deferred to August 18, 2009 per Administration.

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>
9992	Montecito Vista Way between Esfahan Drive and Motecita Vista Drive	7	ROEM Development Corporation	4 Lots / 56 Units	Single Family Attached	Approve

In accordance with Sec. 19.16.140d of the San José Municipal Code, this is notice of the City Engineer's receipt of the following Final Maps for review:

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/Units</u>	<u>Type</u>
10039	East side of San Felipe Road, 700 feet north of Silver Creek Road	8	DAL Properties-LLC	21 Lots/ 15 Units	Single Family Detached

ADJOURNMENT

The Council of the City of San José was adjourned at 6:06 p.m. in memory of Paula Merloa, who passed away on July 11, 2009. Ms. Merloa was a lifelong District 7 resident and served as a voice for residents as a commissioner on the Mobilehome Advisory Commission from November 2005 until May 2009. Her passion was serving the community and bringing more resources to mobilehome residents.

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

rmk/08-04-09MIN

Access the video, the agenda and related reports for this meeting by visiting the City's website at <http://www.sanjoseca.gov/clerk/agenda.asp> or <http://www.sanjoseca.gov/clerk/MeetingArchive.asp>. For information on any ordinance that is not hyperlinked to this document, please contact the Office of the City Clerk at (408) 535-1266.