

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, NOVEMBER 10, 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, Constant, Herrera, Kalra, Liccardo, Oliverio, Pyle; Reed.

Absent: Council Members - Chu, Nguyen. (Excused)

Upon motion unanimously adopted, Council recessed at 9:30 a.m. to a Closed Session in Room W133, to confer with Legal Counsel pursuant to (A) Government Code subsection (a) of Section 54956.9 with respect to existing litigation: (1) Calderon, et al. v. City, et al.; Names of Parties Involved: Ascencion Calderon and Samuel Santana, City of San José, San José Police Department, Officer Kepler, Officer McAlvavey and Does 1-20; Court: Superior Court of California, County of Santa Clara; Case No: 1-07-CV088285; Amount of Money or Other Relief Sought: Damages according to proof. (B) to confer with Legal Counsel pursuant to Government Code subsection (c) of Section 54956.9 with respect to anticipation and initiation of litigation in one (1) matter. (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; Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Association of Firefighters. (2) Association of Legal Professionals of San José; Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; (3) Association of Building, Mechanical and Electrical Inspectors (ABMEI); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and ABMEI. (4) International Brotherhood of Electrical Workers (IBEW); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and IBEW; (5) Confidential Employees' Organization, AFSCME Local 101 (CEO); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CEO; (6) City Association of Management Personnel Agreement (CAMP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing

CLOSED SESSION (Cont'd.)

Contract or MOA: Memorandum of Agreement between City of San José and CAMP; (7) 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 between City of San José and MEF; (8) Association of Maintenance Supervisory Personnel (AMSP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AMSP; (9) Association of Engineers & Architects (AEA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AEA. (10) 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 International Union of Operating Engineers, Local No. 3; (11) San José Police Officers' Association; Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association. How to obtain a copy of existing contract or MOA: web: http://www.sanjoseca.gov/employee_relations/moa.asp; Telephone for Employee Relations: 408-535-8150.

By unanimous consent, Council recessed from the Closed Session at 11:10 a.m. and reconvened to Regular Session at 1:34 p.m. in the Council Chambers.

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

Absent: Council Members - Chu, Constant, Nguyen. (Excused)

INVOCATION

Bernard Smith performed "God Bless America" in honor of Veterans' Day. (District 10)

PLEDGE OF ALLEGIANCE

Vice Mayor Chirco and students from Lynnewood Elementary School led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Liccardo, seconded by Council Member Campos and carried unanimously, the Orders of the Day and the Amended Agenda were approved, and Item 4.3 was heard in conjunction with the San José Financing Authority Meeting. (8-0-3. Absent: Chu, Constant, Nguyen.)

CLOSED SESSION REPORT

City Attorney Doyle disclosed the following Closed Session actions of November 10, 2009:

A. Authority to Initiate Litigation:

Authority to initiate litigation was given in one (1) matter. The name of the action and the defendants, as well as the substance of the litigation shall be disclosed to any person upon inquiry once the action is formally commenced.

Council Vote: Ayes: Campos, Chirco, Constant, Herrera, Kalra, Liccardo, Oliverio, Pyle; Reed.

Noes: None.
Disqualified: None.
Absent: Chu, Nguyen. (Excused)
Vacant: None.

CEREMONIAL ITEMS

1.1 **Presentation of a commendation to Xactly Corporation for their innovative approach in optimizing sales performance for small and large companies. (Economic Development)**

Action: Vice Mayor Chirco, Council Member Liccardo and Chief Development Officer Paul Krutko recognized and commended Xactly Corporation for their innovative approach in optimizing sales performance for small and large companies.

1.2 **Presentation of a proclamation declaring November 14, 2009 as “World Diabetes Day” in the City of San José. (Liccardo)**

Action: Vice Mayor Chirco and Council Member Liccardo recognized November 14, 2009 as “World Diabetes Day” in the City of San José. Dr. Patrick Kearns, Valley Medical Center, accepted the plaque.

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. (8-0-3. Absent: Chu, Constant, Nguyen.)

2.1 Approval of minutes:

- (a) **Regular Minutes of September 1, 2009.**
- (b) **Greenprint 2009 Update Study Session Minutes of September 8, 2009.**
- (c) **Regular Minutes of September 15, 2009**
- (d) **Regular Minutes of September 22, 2009**
- (e) **Regular Minutes of September 29, 2009**
- (f) **Joint City/RDA/County Minutes of September 30, 2009**

Documents Filed: (1) The Regular Minutes dated September 1, 2009, September 15, 2009, September 22, 2009 and September 29, 2009. (2) The Greenprint 2009 Update Study Session Minutes dated September 8, 2009. (3) The Joint City/RDA/County Minutes dated September 30, 2009.

Action: The Minutes were approved. (8-0-3. Absent: Chu, Constant, Nguyen.)

- 2.3**
- (a) **Request for an excused absence for Vice Mayor Chirco from the Closed Session Meeting of the City Council on October 27, 2009 due to illness – medical appointment. (Chirco)**
 - (b) **Request for an excused absence for Vice Mayor Chirco from the Regular Meeting of the Rules and Open Government Committee on October 28, 2009 due to illness – medical appointment. (Chirco)**
(Rules Committee referral 10/28/09)

Documents Filed: Memoranda from Vice Mayor Chirco, dated October 5, 2009 and October 28, 2009, requesting excused absences due to medical appointments.

Action: The absences for Vice Mayor Chirco were excused. (8-0-3. Absent: Chu, Constant, Nguyen.)

- 2.4**
- As recommended by the Elections Commission, approve an ordinance amending Chapters 12.05 and 12.12 of Title 12 of the San José Municipal Code permitting persons subject to elections, campaign and lobbying provisions to request written advice from the City Attorney. (City Attorney's Office/City Clerk)**

Documents Filed: Memorandum from City Attorney Richard Doyle, dated October 29, 2009, recommending approval of an ordinance.

Action: [Ordinance No. 28660](#), entitled: “An Ordinance of the City of San José Amending Chapter 12.05 of Title 12 of the San José Municipal Code to Add Section 12.05.080 and Amending Section 12.12.610 of Chapter 12.12 of Title 12 to Permit Certain Persons to Request Formal Written Advice from the City Attorney”, was passed for publication. (8-0-3. Absent: Chu, Constant, Nguyen.)

- 2.5**
- As recommended by the Elections Commission, approve a resolution making various revisions to City Council Resolution No. 72547 which sets forth the regulations and procedures for the Commission's investigations and hearings. (City Attorney's Office/City Clerk)**

2.5 (Cont'd.)

Action: Deferred to November 17, 2009 per City Attorney's Office.

2.6 Approve the second amendment to the consultant agreement with RTKL Associates, Inc. for engineering design services for the New City Hall In-Building Wireless Reinforcement Design Project extending the term of the agreement from December 31, 2009 to December 31, 2010, at no cost to the City. CEQA: Not a Project. (Public Works/Information Technology)

Documents Filed: Memorandum from Director of Public Works Katy Allen and Chief Information Officer Stephen Ferguson, dated October 19, 2009, recommending approval of the second amendment to the consultant agreement.

Action: The second amendment to the consultant agreement with RTKL Associates, Inc. for engineering design services for the New City Hall In-Building Wireless Reinforcement Design Project extending the term of the agreement from December 31, 2009 to December 31, 2010, at no cost to the City was approved. (8-0-3. Absent: Chu, Constant, Nguyen.)

2.7 Accept the Downtown San José Property-Based Business Improvement District Financial Report for FY 2008-09. CEQA: Exempt: File No. PP08-095. Council District 3. (Public Works/Transportation)

Documents Filed: Memorandum from Director of Public Works Katy Allen and Acting Director of Transportation Hans Larsen, dated October 19, 2009, recommending acceptance of the report.

Council Member Liccardo congratulated the PBID Board and Groundwerx for their extraordinary work in San José, for making the downtown area safer and more appealing.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, the Downtown San José Property-Based Business Improvement District Financial Report for FY 2008-09 was accepted. (8-0-3. Absent: Chu, Constant, Nguyen.)

END OF CONSENT CALENDAR

COMMUNITY & ECONOMIC DEVELOPMENT

4.3 Adopt a resolution:

- (a) **Authorizing the issuance of tax-exempt multifamily housing revenue bonds designated as "City of San José Multifamily Housing Revenue Bonds (Belovida at Newbury Park Senior Apartments), Series 2009A" in an aggregate principal amount not to exceed \$26,200,000 (the "Bonds");**

- 4.3 (b) Approving a loan of Bond proceeds to Belovida at Newbury Park, L.P., a California limited partnership created by CORE Affordable Housing, LLC and EAH, Inc., to finance the construction of the Belovida at Newbury Park Senior Apartments located at 1777 Newbury Park Drive in San José;
- (c) Approving in substantially final form the Bonds, Trust Indenture, Loan Agreement, and Regulatory Agreement and Declaration of Restrictive Covenants;
- (d) Authorizing the City Manager, Director of Finance, Assistant Director of Finance, Treasury Division Manager, Debt Administrator, and Director of Housing, or their designees, to execute and, as appropriate, to negotiate, execute and deliver these Bond documents and other related Bond documents as necessary; and
- (e) Approving a change in the project's income restrictions, related to units restricted to extremely low-income and very low-income households, to 48 units restricted to households at or below 30% of Area Median Income ("AMI"), 136 units restricted to households at or below 50% of AMI, and one unrestricted manager's unit.

CEQA: Mitigated Negative Declaration, File No. PDC07-015. Council District 3. (Housing/Finance)
(Deferred from 10/27/09 – Item 4.2 and 11/3/09 – Item 4.3)

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, Item 4.3 was deferred to November 17, 2009. (8-0-3. Absent: Chu, Constant, Nguyen.) Note: The San José Financing Authority Meeting, including Items 2 and 3, were deferred to November 17, 2009.

STRATEGIC SUPPORT SERVICES

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

City Manager Debra Figone reported on the City's response to gang related violence on Halloween night, including the deployment of the Mayor's Gang Prevention Task Force resources immediately to the neighborhood where the tragedy occurred and explained that the Alum Rock and Mayfair Community Centers stayed open extended hours the past weekend. She added that Staff will assess the need for further late night programming at these sites and other sites throughout the City of San José.

3.2 Report of the Rules and Open Government Committee – October 21, 2009 Mayor Reed, Chair

Documents Filed: The Rules and Open Government Committee Report dated October 21, 2009.

Action: Upon motion by Vice Mayor Chirco, seconded by Council Member Pyle and carried unanimously, the Report of the Rules and Open Government Committee and the actions of October 21, 2009 were accepted. (8-0-3. Absent: Chu, Constant, Nguyen.)

3.4 Approve an ordinance amending Chapter 8.04 of Title 8 of the San José Municipal Code to add a new Section 8.04.030 allowing and granting the Independent Police Auditor (IPA) the limited contract authority to appoint an alternate IPA to assume the IPA's duties and responsibilities related to the auditing of Internal Affairs investigations of complaints when the IPA has a conflict of interest warranting disqualification of the IPA's Office. (City Attorney's Office)

Documents Filed: Memorandum from City Attorney Richard Doyle, dated October 28, 2009, recommending approval of an ordinance.

Motion: Council Member Liccardo moved approval of the Staff recommendations. Council Member Herrera seconded the motion.

City Attorney Richard Doyle responded to Council questions.

Council Member Campos requested that the Independent Police Auditor add a clause in the policy that provides that the City Council will be notified of any potential conflict, if such an event occurs, and be appraised of the estimated cost of contracting with an outside auditor.

Action: On a call for the question, the motion carried unanimously, [Ordinance No. 28661](#), entitled: "An Ordinance of the City of San José Amending Chapter 8.04 of Title 8 of the San José Municipal Code to Add a New Section 8.04.030 to Allow for the Appointment of an Alternate Independent Police Auditor to Assume the Responsibilities of the Independent Police Auditor when the Independent Police Auditor has Conflict of Interest Warranting Disqualification of the Office of the Independent Police Auditor", was passed for publication, with the IPA requested to add a clause in the policy that provides that the City Council will be notified of any potential conflict, if such an event occurs, and be appraised of the estimated cost of contracting with an outside auditor. (8-0-3. Absent: Chu, Constant, Nguyen.)

3.5 (a) Accept the draft profile of the Independent Police Auditor position, and approve the draft conflict of interest form and timeline for the recruitment.
(b) Direct staff and Consultant on next steps for posting the position and beginning to accept applicants.

CEQA: Not a Project. (Human Resources)

Action: Deferred to November 17, 2009 per Administration.

3.6 Report of the Rules and Open Government Committee – October 14, 2009
Mayor Reed, Chair

Documents Filed: The Rules and Open Government Committee Report dated October 14, 2009.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the Report of the Rules and Open Government Committee and the actions of October 14, 2009 were accepted. (8-0-3. Absent: Chu, Constant, Nguyen.)

COMMUNITY & ECONOMIC DEVELOPMENT

4.1 Report of the Community & Economic Development Committee – October 26, 2009 Council Member Pyle, Chair

Documents Filed: The Community & Economic Development Committee Report dated October 26, 2009.

Chief Development Officer Paul Krutko responded to Council questions and comments.

Action: Upon motion by Council Member Pyle, seconded by Council Member Liccardo and carried unanimously, the Report of the Community & Economic Development Committee and the actions of October 26, 2009 were accepted. (8-0-3. Absent: Chu, Constant, Nguyen.)

4.2 Consider an ordinance to approve a First Amendment to the Development Agreement with Novellus Systems, Inc. and Vista Montana as approved by Ordinance No. 28154 and entered into on December 20, 2007 to extend the reservation of the residential unit capacity under the North San José Area Development Policy an additional two years relative to the development of certain real properties located in North San José. CEQA: Addendum to the North San José Area Development Policy Update Final Environmental Impact Report. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-0-2).

DA - Novellus – District 4

(Continued from 10/20/09 – Item 11.3 and 11/3/09 – Item 4.2)

Documents Filed: (1) Memorandum from Council Member Chu, dated November 9, 2009, recommending approval of the Planning Commission and Planning Director recommendations. (2) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated October 28, 2009, transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. DA – Novellus, dated September 28, 2009, recommending approval. (3) Memorandum from the Planning Commission Secretary Joseph Horwedel, dated November 5, 2009, transmitting the recommendations of the Planning Commission. (4) Proof of Publications of Notices of Public Hearings, executed on September 25, 2009 and October 23, 2009, submitted by the City Clerk.

Mayor Reed opened the public hearing.

Public Comments: Erik Schoennauer, representing the Applicant, spoke in support to the memorandum from Council Member Chu.

Reed closed the public hearing.

Assistant Director of Planning, Building, and Code Enforcement Laurel Prevetti responded to Council questions.

4.2 (Cont'd.)

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, [Ordinance No. 28662](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 28154, which Ordinance Approved a Development Agreement with Novellus Systems, Inc. Relative to the Development of Real Property in North San José, To Allow Extension of Certain Deadlines Contained in the Original Development Agreement and To Authorize the City Clerk to Execute a First Amendment to the Original Development Agreement”, was passed for publication. (8-0-3. Absent: Chu, Constant, Nguyen.)

- 4.4 (a) **Accept report on Request for Proposal for the purchase of a Multi-Family Loan Portfolio Management System and adoption of a resolution authorizing the Director of Finance to:**
- (1) **Execute an agreement with MK Partners, Inc. (Encino, CA) for the implementation of the Multi-Family Loan Portfolio Management System in an amount not to exceed \$246,700 including all professional and technical support services required to implement the system as well as hosting services that will be provided by Salesforce.com Inc. (San Francisco, CA) under a separate subscription agreement.**
 - (2) **Execute change orders not to exceed a contingency amount of \$40,000 to cover any unanticipated changes in the system design and implementation.**
 - (3) **Execute ten one-year options to renew the agreements for continued technical support and hosting services subject to annual appropriation of funding.**
- (b) **Adopt the following Appropriation Ordinance amendments in the Low and Moderate Income Housing Fund (Fund 443) for 2009-2010:**
- (1) **Decrease the Ending Fund Balance by \$286,700; and**
 - (2) **Increase the Housing Department’s Non-Personal/Equipment Appropriation in the amount of \$286,700.**

**CEQA: Not a Project. (Finance/City Manager’s Office)
(Deferred from 11/3/09 – Item 2.5)**

Action: Deferred to November 17, 2009 per Administration.

NEIGHBORHOOD SERVICES

5.2 Accept report on Request for Proposal for the outsourcing of Happy Hollow Park and Zoo Retail Concessions and adopt a resolution authorizing the City Manager to:

- (a) Negotiate and execute a Retail Concession Agreement with Urban Park Concessionaires to provide retail services at Happy Hollow Park and Zoo inside the newly constructed “Explore & More Store,” effective from the date of execution by the City Manager through five (5) years, with fifteen percent (15%) of gross sales from the Retail Store to be paid to the City, with a Minimum Annual Guarantee of \$6,300 per month.**
- (b) Execute two additional one-year options to extend the agreement after the initial term of the Retail Concession Agreement.**

CEQA: Mitigated Negative Declaration, File No. PP05-142, dated April, 2007. (Parks, Recreation and Neighborhood Services)

(Deferred from 11/3/09 – Item 5.2)

Action: Deferred to November 17, 2009 per Administration.

ENVIRONMENTAL & UTILITY SERVICES

7.1 As recommended by the Transportation and Environment Committee on October 5, 2009:

- (a) Accept this staff report on key special event recycling accomplishments and opportunities for improvement**
- (b) Effective May 1, 2010, require special events with over 1,000 attendees, as a condition of their Event Authorization to do the following:**
 - (1) Ban *polystyrene food packing* use by food vendors;**
 - (2) Require the use of use # 1 Polyethylene terephthalate plastic recyclable beverage containers for cups 7oz and greater, and paper cups for less than 7 oz.; and**
 - (3) Collect, at minimum, plastics, glass, metals, and cardboard for recycling.**
- (c) Establish a Green Events Grants Program to help off-set additional costs associated with producing green events in San José.**

(Environmental Services)

[Transportation and Environment Committee referral 10/5/09 – Item C(1)]

(Deferred from 10/20/09 – Item 6.3)

Documents Filed: (1) Memorandum from City Clerk Lee Price, dated October 7, 2009, transmitting the recommendations of the Transportation and Environment Committee. (2) Supplemental memorandum from Director of Environmental Services John Stufflebean, dated October 30, 2009, providing updated information on the topics related to Staff's recommendations.

7.1 (Cont'd.)

Director of Environmental Services John Stufflebean clarified that there was one correction to the Staff recommendations: to change “Styrofoam™” to “polystyrene food packing”.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Pyle and carried unanimously, the Staff recommendations as outlined on Page 10, were accepted, with one correction: change “Styrofoam™” to “polystyrene food packing”. (8-0-3. Absent: Chu, Constant, Nguyen.)

OPEN FORUM

- (1) David Wall spoke in honor of Veterans’ Day and the sacrifices made by members of the armed forces.
- (2) Ross Signorino commented about a news item he heard on KGO radio regarding health benefits for domestic partners of City of San José employees.

ADJOURNMENT

The Council of the City of San José adjourned the afternoon session at 4:01 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

smd/11-10-09 MIN

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.

JOINT/REDEVELOPMENT AGENCY BOARD ITEM

The Joint Redevelopment Agency Board convened at 2:41 p.m. to consider Item 8.1 in a Joint Session and recessed at 3:57 p.m.

8.1 Joint Public Hearing on the Redevelopment Agency's Proposed FY 2009-2010 Revised Capital Budget and Revised Operating Budget and the 2010-2015 Capital Improvement Program (CIP).

Thirty nine speakers commented and urged the Council and the Board to consider the need for affordable housing and projects that support jobs, creating a fair process to receive public input and scrutiny, maintaining full funding for Convention Center project, improvements for the San José Municipal Stadium and noting that the proposal does not reflect the community values.

RECESS/RECONVENE

The City Council recessed at 3:57 p.m. from the afternoon Joint/Redevelopment Agency Board Session and reconvened at 7:06 p.m. in the Council Chambers, City Hall.

Present: Council Members - Chirco, Herrera, Kalra, Liccardo, Oliverio; Reed.

Absent: Council Members - Campos, Chu, Constant, Nguyen, Pyle. (Excused)

8.1 Joint Public Hearing on the Redevelopment Agency's Proposed FY 2009-2010 Revised Capital Budget and Revised Operating Budget and the 2010-2015 Capital Improvement Program (CIP).

Sixty nine speakers commented and urged the Council and the Board to consider the need for affordable housing and projects that support jobs, creating a fair process to receive public input and scrutiny, maintaining full funding for Convention Center project, improvements for the San José Municipal Stadium and noting that the proposal does not reflect the community values.

The Council of the City of San José and Redevelopment Agency Board was adjourned at 8:22 p.m.