



MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, NOVEMBER 3, 2009

The Council of the City of San José convened in regular session at 9:00 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 9:00 a.m. to a Closed Session in Room W133, to confer with Legal Counsel with respect to (A) Public Employee Performance Evaluation Pursuant to Government Code Section 54957: Title: City Attorney; Name: Richard Doyle; (B) to confer with Legal Counsel with respect to existing litigation pursuant to Government Code subsection (a) of Section 54956.9: (1) City, et al. v. Wet Investments, et al.; Names of Parties Involved: People of the State of California, ex rel., City Attorney of the City of San José, City of San José, Wet Investments, Inc., Michael Hamod, Does 1 through 25; Court: Superior Court of California, County of Santa Clara; Case No.: 1-09-CV-155931; Amount of Money or Other Relief Sought: Injunctive relief and penalties according to proof; (2) Wet Investments, et al v. City, et al.; Names of Parties Involved: Wet Investments, Inc., Michael Hamod, Jesus and Virginia Fernandez doing business as Tony's Pool Hall, City of San José, Does 1 through 25; Court: United States District Court, Northern District of California; Case No.: C09-04631-JW; Amount of Money or Other Relief Sought: Injunctive relief and damages according to proof; (C) to confer with Legal Counsel – Anticipated Litigation (Claim Filed): Significant exposure to litigation pursuant to subsection (b) of Section 54956.9 of the government Code: Claimant(s): In re Claim of Ghenis; Department: City/PRNS; (D) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) Association of Building, Mechanical and Electrical

CLOSED SESSION (Cont'd.)

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; 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.

By unanimous consent, Council recessed from the Closed Session at 10:40 a.m. and reconvened to Regular Session at 1:32 p.m. in the Council Chambers.

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

Absent: Council Members - None.

INVOCATION

The Almaden Seniors performed a scene from the play "Senior Moments. (District 10)

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance accompanied by third-grade students from Lynhaven Elementary School.

ORDERS OF THE DAY

Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the Orders of the Day and the Amended Agenda were approved. (11-0.)

CEREMONIAL ITEMS

1.1 Presentation of the Air Line Pilots Association 'Airport of the Year' Award to the City of San José. (Airport)

Action: Mayor Reed and Council Member Liccardo accepted the Air Line Pilots Association 'Airport of the Year' Award on behalf of the City of San José.

1.2 Presentation of a proclamation declaring the week of November 8th – 14th as “Nurse Practitioner Week” in the City of San José. (Constant)

Action: Mayor Reed and Council Member Constant proclaimed the week of November 8th – 14th as “Nurse Practitioner Week” in the City of San José.

1.3 Presentation of proclamation declaring the week of November 8th – 14th as “National Radiologic Technology Week” in the City of San José. (Constant)

Action: Mayor Reed and Council Member Constant proclaimed the week of November 8th – 14th as “National Radiologic Technology Week” in the City of San José.

1.4 Presentation of a proclamation declaring the month of November 2009 as “Pancreatic Cancer Awareness Month” in the City of San José. (Mayor/Constant)

Action: Mayor Reed and Council Member Constant proclaimed the month of November 2009 as “Pancreatic Cancer Awareness Month” in the City of San José.

1.5 Presentation of a commendation to the Westfield Oakridge Management Team for their efforts to increase economic development in the City of San José. (Pyle)

Action: Mayor Reed and Council Member Pyle recognized and commended the Westfield Oakridge Management Team for their efforts to increase economic development in the City of San José.

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. (11-0.)

2.2 Final adoption of ordinances:

- (a) **ORD. NO. 28656 – Rezoning certain real property situated on the north side of Kiely Boulevard, 550 feet westerly of Saratoga Avenue (370 South Kiely Boulevard), to the CN – Commercial Neighborhood Zoning District. C09-029**

Documents Filed: Proof of Publication of the Title of Ordinance No. 28656 executed on October 27, 2009, submitted by the City Clerk.

Action: Ordinance No. 28656 was adopted. (11-0.)

- 2.2 (b) **ORD. NO. 28657 – Rezoning certain real property generally situated on both sides of Berryessa Road, west of Union Pacific Railroad Tracks and east of Coyote Creek, from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District. PDC09-006**

Documents Filed: Proof of Publication of the Title of Ordinance No. 28657 executed on October 27, 2009, submitted by the City Clerk.

Action: Ordinance No. 28657 was adopted. (11-0.)

- (c) **ORD. NO. 28654 – Amending Sections 12.06.210, 12.06.310 and 12.06.540 of the San José Municipal Code to increase contribution limits and impose an annual increase on contribution limits based on the Consumer Price Index; amending Sections 12.06.230, 12.06.310 and 12.06.320 to clarify the contributions regulated; and repealing Sections 12.06.270 and 12.06.280 to eliminate redundancy.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 28654 executed on October 27, 2009, submitted by the City Clerk.

Action: Ordinance No. 28654 was adopted. (11-0.)

- 2.3 (a) **Request for an excused absence for Vice Mayor Chirco from the Closed Session Meeting of the City Council on October 20, 2009 due to illness – medical appointment. (Chirco)
(Rules Committee referral 10/21/09)**
- (b) **Request for an excused absence for Council Member Liccardo from the Closed Session Meeting of the City Council on October 20, 2009 due to illness. (Liccardo)
(Rules Committee referral 10/21/09)**
- (c) **Request for an excused absence for Council Member Liccardo from the Regular Meeting of the Community and Economic Development Committee on November 23, 2009 due to travel out of town. (Liccardo)
(Rules Committee referral 10/21/09)**

Documents Filed: (1) Memorandum from Vice Mayor Chirco, dated October 19, 2009, requesting an excused absence due to illness/medical appointment. (2) Memorandum from Council Member Liccardo, dated October 20, 2009 requesting an excused absence due to illness. (3) Memorandum from Council Member Liccardo, dated October 14, 2009, requesting an excused absence due to out-of-town travel.

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

- 2.4 **Approve a global settlement in *State of California ex rel. Armenta v. James Jones Co. et al.*, Los Angeles Superior Court case no. B173487, and authorize the City Attorney to execute a Settlement Agreement and Mutual Release relating to the City of San José's claim against James Jones Co., Mueller Co., Tyco International (US) Inc., and Watts Industries, Inc. for allegedly out-of-specification water distribution parts in exchange for a payment to the City in a net amount ranging between \$750,000 and \$800,000. CEQA: Not a Project. (City Attorney's Office)**

Documents Filed: Memorandum from City Attorney Richard Doyle, dated October 22, 2009, recommending approval of a global settlement and authorization for the City Attorney to execute a Settlement Agreement and Mutual Release.

Action: The global settlement in *State of California ex rel. Armenta v. James Jones Co. et al.*, Los Angeles Superior Court case no. B173487 was approved, and the City Attorney was authorized to execute a Settlement Agreement and Mutual Release relating to the City of San José's claim against James Jones Co., Mueller Co., Tyco International (US) Inc., and Watts Industries, Inc. (11-0.)

- 2.5 (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)

Council Member Oliverio pulled Item 2.5 from the Consent Calendar for reconsideration.

Motion: Council Member Oliverio moved rejection of the Staff recommendations, with direction to Staff to re-bid the project with outreach to competitors or use the alternative "Google Spreadsheet". The motion was seconded by Council Member Liccardo.

Finance/Purchasing Division Manager Mark Giovannetti responded to questions from Council regarding the Request for Proposal (RFP) and the competitive process involved.

2.5 (Cont'd.)

Substitute Motion: Council Member Liccardo moved approval of a one-week deferral to allow further review of the RFP and alternative software. The motion was seconded by Council Member Herrera.

Action: On a call for the question, the motion carried unanimously, and Item 2.5 was deferred to November 10, 2009 with Staff requested to provide a list of companies solicited and that reviewed the Request for Proposal online, and to review "Google Spreadsheet" as an alternative. (11-0.)

- 2.6**
- (a) Approve an agreement with Buck Consultants, LLC for consulting services for City-Paid Benefit Plans, consulting services for the Council Appointee money purchase retirement plan, and Actuarial Services for the City's self-funded dental PPO plan at a cost to the City of not to exceed \$95,000, for the period of January 1, 2010 through June 30, 2010, with options to extend the terms of the agreement through December 31, 2013 at annual costs of not to exceed \$190,000, subject to the appropriation of funds by Council.**
 - (b) Approve an agreement with Keenan & Associates for consulting services for Participant-Paid Voluntary Benefit Plans at a cost to the City of not to exceed \$25,000, for the period of January 1, 2010 through June 30, 2010, with options to extend the terms of the agreement through December 31, 2013, at an annual cost to the City of not to exceed \$50,000, subject to the appropriation of funds by Council.**
 - (c) Approve establishment of administrative fees to be paid by participants in the Participant-Paid Voluntary Benefit Plans, beginning as soon as administratively practicable, to recover the consulting costs associated with these programs and to replace current broker commissions, and authorize the Director of Human Resources to re-evaluate and adjust the fees annually as necessary to ensure that all such costs are covered by the fees.**
 - (d) Adopt a resolution authorizing the Director of Human Resources to execute the options to the agreements with Buck Consultants, LLC and Keenan & Associates, to extend the terms and increase the compensation payable, subject to the appropriation of funds by Council.**
 - (e) Adopt Appropriation Ordinance and Funding Sources Resolution amendments in the Benefit Fund (Fund 160) for 2009-2010 to:**
 - (1) Increase Transfers to the Benefit Fund by \$27,750.**
 - (2) Decrease the appropriation to the Human Resources Department for Health Plans by \$92,250.**
 - (3) Establish an appropriation to the Human Resources Department for Benefits Consultant Fee in the amount of \$120,000.**

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

Documents Filed: Joint memorandum from Director of Human Resources Mark Danaj and Budget Director Jennifer Maguire, dated October 13, 2009 recommending approval of agreements and establishment of administrative fees, with authorization to the Director of Human Resources to reevaluate and adjust fees, adoption of a resolution, and appropriation ordinance and funding sources resolution amendments.

2.6 (Cont'd.)

Action: An agreement with Buck Consultants, LLC for consulting services for City-Paid Benefit Plans, consulting services for the Council Appointee money purchase retirement plan, and Actuarial Services for the City's self-funded dental PPO plan, an agreement with Keenan & Associates for consulting services for Participant-Paid Voluntary Benefit Plans, establishment of administrative fees to be paid by participants in the Participant-Paid Voluntary Benefit Plans to recover the consulting costs associated with these programs and to replace current broker commissions were approved; the Director of Human Resources was authorized to re-evaluate and adjust the fees annually as necessary to ensure that all such costs are covered by the fees; Resolution No. 75154, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Human Resources to Execute Options to the Agreements with Buck Consultants, LLC and Keenan & Associates"; Resolution No. 75155, 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 Benefit Fund", and Ordinance No. 28659, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28593 to Appropriate Monies in the Benefit Fund for the Benefits Consultant Fee; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", were adopted. (11-0.)

2.7 **Adopt a resolution summarily vacating a portion of Rock Avenue along the north side, immediately west of Oakland Road, in front of Tract 9795. CEQA: Mitigated Negative Declaration, File No. PDC05-022. Council District 4. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated October 13, 2009, recommending adoption of a resolution.

Action: Resolution No. 28660, entitled: "A Resolution of the Council of the City of San José Summarily Vacating a Portion of Rock Avenue Along the North Side, Immediately West of Oakland Road, in Front of Tract 9795", was adopted. (11-0.)

2.8 **As recommended by the Rules and Open Government Committee on October 28, 2009, oppose Senate Bill No. 88 (DeSaulnier) Local Government Bankruptcy which would prevent local governments from filing for bankruptcy under Chapter 9 of the federal bankruptcy code without first receiving the approval of the California Debt and Investment Advisory Commission. (Finance)** **[Rules Committee referral 10/28/09 – Item D(1)(a)]**

Documents Filed: Memorandum from City Clerk Lee Price, dated October 29, 2009, transmitting the recommendations of the Rules and Open Government Committee.

Public Comments: Ross Signorino, Susan Bailey and Jerry Mungai spoke in opposition to proposed Senate Bill No. 88. David Wall expressed concern that this item was heard on the Consent Calendar.

2.8 (Cont'd.)

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera, and carried unanimously, a position of opposition was adopted for Senate Bill No. 88 (DeSaulnier) Local Government Bankruptcy which would prevent local governments from filing for bankruptcy under Chapter 9 of the federal bankruptcy code without first receiving the approval of the California Debt and Investment Advisory Commission. (11-0.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

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

Action: Deferred to November 10, 2009 per City Clerk.

3.3 Report of the Public Safety, Finance and Strategic Support Committee – October 15, 2009. Council Member Nguyen, Chair

Documents Filed: Public Safety, Finance & Strategic Support Committee Report dated October 15, 2009.

Public Comments: Ross Signorino expressed disagreement with the Mercury News' negative portrayal of the San José Police Department in a recent article. Timothy Fitzgerald criticized the San José Police Department for 'heavy-handed' use of force.

Council Member Nguyen provided a report of the Special Public Safety, Finance and Strategic Support Committee meeting held on October 14, 2009 and the public's opportunity to offer input on public safety and policing issues.

Mayor Reed recommended that proposed safety initiatives underway addressing public concerns regarding policing in San José be placed on the November 19, 2009 Public Safety, Finance & Strategic Support Committee agenda for discussion.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Pyle and carried unanimously, the Report of the Public Safety, Finance & Strategic Support Committee and the actions of August 20, 2009 were accepted, with discussion of review of initiatives underway dealing with the use of force by San José Police Department to be added to the November 19, 2009 Public Safety, Finance & Strategic Support Committee Agenda. (10-0-1. Absent: Constant.)

Action: Upon motion by Council Member Nguyen, seconded by Council Member Constant and carried unanimously, the Report of the Public Safety, Finance & Strategic Support Committee and the actions of October 15, 2009 were accepted. (11-0.)

- 3.4 Accept Team San José performance measures for 2009-2010. CEQA: Not a Project. (Economic Development) (Deferred from 10/20/09 – Item 3.5)**

Action: Deferred to November 17, 2009 per District 1.

COMMUNITY & ECONOMIC DEVELOPMENT

- 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. DA - Novellus – District 4 (Continued from 10/20/09 – Item 11.3)**

Action: Continued to November 10, 2009 per Administration.

- 4.3 (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”);**
- (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)

Action: Deferred to November 10, 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)

Action: Deferred to November 10, 2009 per Administration.

ADJOURNMENT

The Council of the City of San José was adjourned at 2:25 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

rmk/11/03/09MIN

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.