

## MINUTES OF THE CITY COUNCIL

**SAN JOSÉ, CALIFORNIA**

**TUESDAY, FEBRUARY 2, 2010**

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 9:31 a.m. to a Closed Session in Room W133, (A) to confer with Counsel – Anticipated Litigation (Claim Not Filed). With significant exposure to litigation pursuant to subsection (b) of Section 54956.9 of the Government Code: Number of matters to be discussed: 2; (B) to confer with Legal Counsel pursuant to Government Code Section 54956.9, subsection (b) with respect to anticipated litigation (Claim Filed): (1) PG&E v. Department of Transportation; (2) In re Claim of Ghenis v. PRNS; (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 (IAFF), Local 230; 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 (IAFF), Local 230; (2) Association of Legal Professionals of San José (ALP); 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

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## **CLOSED SESSION (Cont'd.)**

Management Personnel Agreement (CAMP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing 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); Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: City of San José – Association of Maintenance Supervisory Personnel (AMSP) Benefit & Compensation Summary. (9) Association of Engineers & Architects (AEA); Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and Association of Engineers & Architects (AEA); (10) International Union of Operating Engineers, Local No. 3 (OE#3); 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 (OE#3); (10) San José Police Officers' Association (SJPOA); 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 (SJPOA); 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 at 1:30 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**

Pastor Bill Buchholz, Family Community Church, provided the Invocation.

## **PLEDGE OF ALLEGIANCE**

Mayor Reed led the Pledge of Allegiance accompanied by Primary Plus students from District 1.

## **ORDERS OF THE DAY**

Upon motion by Council Member Herrera, seconded by Council Member Pyle and carried unanimously, the Orders of the Day and the Amended Agenda were approved, and Items 2.3(a), 2.3(d) and 3.4 were deferred to February 9, 2010.

## **CEREMONIAL ITEMS**

### **1.1 Presentation of a proclamation to the American Heart Association declaring February 5, 2010 as “National Wear Red Day” in the City of San José. (Campos/Kalra)**

Action: Mayor Reed, Vice Mayor Chirco and Council Members Campos, Herrera, Kalra, Pyle and Nguyen recognized February 5, 2010 as “National Wear Red Day” in the City of San José.

### **1.2 Presentation of a proclamation recognizing India’s Republic Day in the City of San José. (Kalra) (Rules Committee referral 1/27/10)**

Action: Mayor Reed and Council Member Kalra commended Rajesh Verma for his work with the Federated Indian Association and presented a proclamation recognizing India’s Republic Day in the City of San José.

## **CONSENT CALENDAR**

### **2.3 Approval of Council Committee Reports.**

- (a) **Rules and Open Government Committee Report of January 13, 2010. (Mayor)**
- (b) **Public Safety, Finance and Strategic Support Committee Report of January 21, 2010. (Nguyen)**
- (c) **Rules and Open Government Committee Report of January 6, 2010. (Mayor)**  
(Deferred from 1/26/10 – Item 3.3)
- (d) **Transportation and Environment Committee Report of January 11, 2010. (Liccardo) (Deferred from 1/26/10 – Item 6.1)**

Documents Filed: (1) Public Safety, Finance & Strategic Support Committee Report dated January 21, 2010. (2) The Rules and Open Government Committee Report January 6, 2010.

Action: The Public Safety, Finance & Strategic Support Committee Report and actions of January 21, 2010 and the Report of the Rules and Open Government Committee and the actions of January 6, 2010 were accepted. (11-0.)

Action: Items 2.3(a) and 2.3(d) were deferred to February 9, 2010 per Orders of the Day. (11-0.)

- 2.4 (a) **Request for an excused absence for Councilmember Constant from the Regular Meeting of the Rules and Open Government Committee on February 3, 2010 due to Authorized City Business: Local Agency Formation Commission of Santa Clara County (LAFCO) Meeting. (Constant) (Rules Committee referral 1/20/10)**

Documents Filed: Memorandum from Council Member Constant, dated January 14, 2010, requesting an excused absence due to authorized City business.

Action: The absence for Council Member Constant was excused. (11-0.)

- 2.5 **Adopt a resolution authorizing the City Manager to execute an Amendment to the Agreement with Team San José for the Management of the Convention Center and Cultural Facilities to provide for the ability of the City Auditor to continue to conduct annual performance audits. CEQA: Not a Project. (City Attorney's Office)**

Documents Filed: Memorandum from City Attorney Richard Doyle, dated January 20, 2010, recommending adoption of a resolution.

Public Comments: David Wall raised objections over third-party providers operating the Convention Center.

City Auditor Sharon Winslow-Erickson responded to questions regarding the basis for performance measurements.

Action: Upon motion by Council Member Pyle, seconded by Vice Mayor Chirco and carried unanimously, [Resolution No. 75267](#), entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute an Amendment to the Agreement with Team San José for the Management of the Convention Center and Cultural Facilities", was adopted. (11-0.)

- 2.6 (a) **Approve an ordinance amending the franchise with PG&E for the sale of gas within the City (Ordinance No. 15879 as amended by Ordinance Nos. 21676 and 26913) to add a franchise fee surcharge of 0.3% resulting in a total franchise fee paid to the City of 2.3% of gross receipts and to provide for the waiver of certain negotiation and arbitration rights under the franchise.**
- (b) **Approve an ordinance amending the franchise with PG&E for the sale of electricity within the City (Ordinance No. 15880 as amended by Ordinance Nos. 21677 and 26914) to add a franchise fee surcharge of 0.3% resulting in a total franchise fee paid to the City of 2.3% of gross receipts and to provide for the waiver of certain negotiation and arbitration rights under the franchise.**

**CEQA: Not a Project. (City Attorney's Office)**

Action: Deferred to February 9, 2010 per the City Attorney.

- 2.7 Adopt a resolution authorizing the Director of Finance to:**
- (a) Negotiate and execute a First Amendment to the Agreement for a Park Management System with VGS Systems Engineering Inc., doing business as Omni Ticket Network to add a Point of Sale and Inventory Control system for the food and beverage concessions at Happy Hollow Park & Zoo and increase compensation up to \$30,000 for a revised not to exceed contract amount of \$219,634.**
  - (b) Increase the contingency amount by \$5,000 from \$25,000 to \$30,000 to cover unanticipated changes in the system design and/or installation.**
- CEQA: Not a Project. (Finance)**

Documents Filed: Memorandum from Director of Finance Scott P. Johnson, dated January 11, 2010, recommending adoption of a resolution.

Action: [Resolution No. 75268](#), entitled: “A Resolution of the Council of the City of San José Authorizing the Director of Finance to Negotiate and Execute a First Amendment to the Agreement for a Park Management System for Happy Hollow Park and Zoo”, was adopted. (11-0.)

- 2.8**
- (a) Approve the proposed 2009-2011 Spending Plan for the Supplemental Law Enforcement Services (SLES) Fund for \$1,559,841.**
  - (b) Adopt the following 2009-2010 Appropriation Ordinance and Funding Sources Resolution Amendments in the Supplemental Law Enforcement Services Fund (Fund 414):**
    - (1) Increase the Earned Revenue by \$225,229; and**
    - (2) Establish a SLES Grant 2009-2011 appropriation for the Police Department in the amount of \$225,229.**
- 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 January 13, 2010, recommending approval of a Spending Plan and adoption of an appropriation ordinance and funding sources resolution.

Action: The proposed 2009-2011 Spending Plan for the Supplemental Law Enforcement Services (SLES) Fund for \$1,559,841 was approved, and [Ordinance No. 28699](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 28593 to Appropriate Monies in the Supplemental Law Enforcement Services (SLES) Fund for the Supplemental Law Enforcement Services Grant 2009-2011; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”, and [Resolution No. 75269](#), entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 75956 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2009-2010 to Adjust Revenues in the Supplemental Law Enforcement Services (SLES) Fund”, were adopted. (11-0.)

**2.9 Adopt a resolution summarily vacating a Public Service Easement and Wire Clearance Easement at 1730 Peregrino Way. CEQA: Not a Project. Council District 6. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated January 11, 2010, recommending adoption of a resolution.

Action: [Resolution No. 75270](#), entitled: "A Resolution of the Council of the City of San José Summarily Vacating a Public Service Easement and Wire Clearance Easement at 1730 Peregrino Way" was adopted. (11-0.)

## **STRATEGIC SUPPORT SERVICES**

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

City Manager Debra Figone highlighted a report just released by the County Assessor's Office which reported a drop in property tax receipts resulting from a decline in California's consumer price index.

**3.2 Accept the 2009 Community Satisfaction Survey. (City Manager's Office)**

Documents Filed: Memorandum from Communications Director Tom Manheim, dated January 20, 2010, recommending acceptance of survey results from the 2009 Community Satisfaction Survey.

Communications Director Tom Manheim introduced the 2009 Community Satisfaction Survey, and David Metz of FM3 Research presented the results of the Survey.

Action: Upon motion by Vice Mayor Chirco, seconded by Council Member Pyle and carried unanimously, the 2009 Community Satisfaction Survey results were accepted. (11-0.)

**3.3 Approve candidate screening criteria to be used by consultant in evaluating applicants, and provide direction as to the composition of the community panel that will participate in interviewing and providing input on the top tier candidates for the Independent Police Auditor (IPA) position. CEQA: Not a Project. (Human Resources)**

Documents Filed: (1) Memorandum from Director of Human Resources Mark Danaj, dated January 7, 2010, recommending approval of candidate screening criteria and panel composition of Police Auditor Executive recruitment. (2) Joint memorandum from Council Members Kalra and Chu, offering additional recommendations to the IPA recruitment. (3) Supplemental memorandum from Director of Human Resources Mark Danaj, dated January 28, 2010, providing additional information regarding IPA recruitment outreach efforts.

### 3.3 (Cont'd.)

Director of Human Resources Mark Danaj provided the recruitment status update and recommendations.

Public Comments: The following spoke in support of extending the recruitment period and urged greater public outreach: Betsy Wolf-Graves (Community Members Coalition), Kathleen Flynn, Tamon Norimoto (AACI), Socarro McCord, Marissa Saito speaking on behalf of Alfredo Villaseror (NCLR), Christian Hemingway, Anu Mandavilla (Coalition for Justice & Accountability) and Alofa Talivaa (Sierra Neighborhood Association). Ross Signorino offered suggestions for a civilian audit of the San José general population.

Motion: Council Member Nguyen moved approval of inclusions to the recruitment of the IPA auditor as follows: (1) Conduct one more community meeting at the end of February with an information memo on the meeting provided by Avery and Associates or Staff; (2) Require that all interview panelists live in San José; (3) Allow panelists to develop questions to ask candidates; (4) Interview panel to consist of 19 members rather than three panels with seven members each; (5) The four panelists from the IPA Advisory Committee should be randomly selected. The motion was seconded by Council Member Pyle.

Council Member Kalra requested to amend item (#5) of the motion, to allow interview panelists to be selected by Independent Police Auditor Advisory Committee (IPAAC) members. Council Members Nguyen and Pyle accepted the amendment.

Council Member Constant requested to amend the motion to include creation of structured outreach methodology for future outreach efforts. Council Members Nguyen and Pyle accepted the amendment.

Action: On a call for the question, the candidate screening criteria was approved with the following amendments: (1) Conduct one more community meeting at the end of February with an information memo on the meeting provided by Avery and Associates or Staff. (2) Require that all interview panelists live in San José. (3) Allow panelists to develop questions to ask the candidates, which are in addition to the questions the consultant might pose beforehand. (4) Interview panel to consist of 19 members rather than three panels with seven members each. (5) The four panelists from the Independent Police Auditor Advisory Committee (IPAAC) should be selected by the IPAAC. Staff was directed to create a structured outreach methodology for future outreach efforts. Council Members are to submit their designees for the interview panel by February 16, 2010. (11-0.)

- 3.5 As recommended by the Public Safety, Finance and Strategic Support Committee on December 17, 2009:**
- (a) Accept the FY 2009-10 First Quarter Revenue Collection Strategic Plan Report; and**
  - (b) Adopt a resolution authorizing the Director of Finance to write off 126 uncollectible accounts in an amount totaling \$1,702,757.42. (Finance)**
- [Public Safety, Finance and Strategic Support Committee referral 12/17/09 – Item D(3)]**  
**(Deferred from 1/12/10 – Item 3.7 and 1/26/10 – Item 3.5)**

Action: Deferred to February 9, 2010 per Orders of the Day.

- 3.6 As recommended by the Public Safety, Finance and Strategic Support Committee on January 21, 2010, accept the 2008-2009 Annual Performance Audit of Team San José, Inc. (City Auditor)**
- [Public Safety, Finance and Strategic Support Committee referral 01/21/10 – Item D(3)]**

Documents Filed: Memorandum from City Clerk Lee Price, dated January 22, 2010, transmitting the recommendations of the Public Safety, Finance & Strategic Support Committee.

City Auditor Sharon Winslow-Erickson presented the Annual Performance Audit of Team San José. Dan Fenton, San Jose Convention & Visitors Bureau CEO/Chairman of Team San José offered additional comments and responded to questions from Council.

Mayor Reed directed that the Public Safety, Finance & Strategic Support Committee provide Team San José performance audits on a quarterly basis.

Action: Upon motion by Council Member Constant, seconded by Council Member Nguyen and carried unanimously, the 2008-2009 Annual Performance Audit of Team San José, Inc. was accepted with direction for the Public Safety, Finance & Strategic Support Committee to provide a Performance Audit of Team San José to Council on a quarterly basis. (11-0.)

## **PUBLIC SAFETY SERVICES**

- 8.1 As recommended by the Public Safety, Finance and Strategic Support Committee on January 21, 2010:**
- (a) Accept the audit of Civilianization Opportunities in the San Jose Police Department; and**
  - (b) Accept the Administration’s response on the audit of Civilianization Opportunities in the San José Police Department.**
- (City Auditor/City Manager)**  
**[Public Safety, Finance and Strategic Support Committee referral 01/21/10 – Item D(1)]**

## 8.1 (Cont'd)

Documents Filed: Memorandum from City Clerk Lee Price, dated January 22, 2010, transmitting the recommendations of the Public Safety, Finance & Strategic Support Committee.

City Auditor Sharon Winslow-Erickson presented the Audit Report of Civilianization Opportunities in the San José Police Department. San José Police Captain Gary Kirby provided additional comments and answered questions from Council.

Public Comments: Ross Signorino expressed the importance of a skilled police presence in the field.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Constant and carried unanimously, the audit of Civilianization Opportunities in the San Jose Police Department and Administration's response on the audit of Civilianization Opportunities in the San José Police Department were accepted. (11-0.)

## COMMUNITY & ECONOMIC DEVELOPMENT

### 4.1 **Accept the report and direct staff to prepare an ordinance to revise Title 23 of the San José Municipal Code (the Sign Ordinance) consistent with the proposed draft signage strategy and conduct additional related community outreach. CEQA: Not a Project. (Planning, Building and Code Enforcement) (Continued from 1/12/10 – Item 4.3)**

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated November 17, 2009, recommending acceptance of the Draft Signage Strategy for the Sign Ordinance Update. (2) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated January 5, 2010, providing optional recommendations for individual elements of the preferred signage strategy. (3) "Comments to the Sign Ordinance Update" from Pacific Marketing Associates, Inc., dated November 17, 2009. (4) Letter from Kyra Kazantzakis, Market-Almaden Neighborhood Advisory Council, dated January 8, 2010, expressing concerns regarding staff recommendations. (5) Email from Bob Kleve and Carol Hamilton, dated January 11 and January 12, 2010, offering support and recommendations for the signage strategy.

Director of Planning, Building and Code Enforcement Joseph Horwedel continued the follow-up presentation from January 12, 2010 on the Sign Code Ordinance, beginning with "Electronic Display Signs For Ground Floor Uses In The Downtown" and responded to Council questions.

Council discussion followed.

#### 4.1 (Cont'd)

Motion: Council Member Pyle moved approval of Staff Option 1 of the Sign Code Ordinance. "Electronic Display Signs For Ground Floor Uses In The Downtown". The motion was seconded by Council Member Herrera.

Council Member Liccardo requested to amend the motion to include a discretionary process be defined by the Planning Department with an option to exceed specific restrictions at the discretion of the Planning Director. Council Members Pyle and Herrera accepted the amendment.

Public Comments: Ben Daniel (Foothill Presbyterian Church) expressed concerns that larger signs may influence the public's attention to favor larger places of worship. David Wall expressed that the revised ordinance, as is, is incomplete. Robert Atkinson (Sy West Development), Paul Zeger (Pacific Marketing) and Ross Signorino offered support for the Planning Departments' efforts and made additional suggestions for signage effectiveness.

Director of Planning, Building and Code Enforcement Joseph Horwedel presented an overview of Electronic/Digital Signs for Assembly Uses.

Motion: Council Member Constant moved approval of Staff Option 1 with the issue of "very large assembly areas" being taken as a separate issue. Vice Mayor Chirco seconded the motion. (11-0.)

Council discussion continued.

Motion: Council Member Constant moved approval of Staff Option 3 as it relates to "very large assembly uses" with Staff to return with a full analysis of what constitutes "very large assembly uses". Council Member Kalra seconded the motion. (11-0.)

Council Members Chu and Liccardo provided meeting disclosures.

Director of Planning, Building and Code Enforcement Joseph Horwedel presented an overview of Electronic/Digital Signs for Commercial Areas.

Director of Planning, Building and Code Enforcement Joseph Horwedel responded to questions from Council, and extensive Council discussion ensued.

Motion: Council Member Constant moved approval of a combination of Staff Options 3 and 4 as shown below in "Action". Council Member Pyle seconded the motion. (11-0.)

Mayor Reed requested that Staff return to Council on February 23, 2010 for discussion and direction of the remainder of the policy questions.

#### 4.1 (Cont'd.)

Action: On a call for the question the motions carried, and due to time constraints, Council provided direction on (3) out of eight (8) policy questions, as outlined in the supplemental memorandum as follows: (1) Electronic and Digital Signs for Large Downtown Ground-floor Spaces – Council approved Option 1: Allow one attached Programmable Display Sign (PDS) for each ground-floor occupancy frontage of 100+ linear feet or one attached PDS for any ground floor occupancy with a total occupancy frontage of 150+ linear feet on one or more public streets, with the discretionary process to be defined. (11-0.) (2) Electronic/Digital Signs for Assembly Uses – Council approved Option 1 for “Large Assembly Uses”, with Staff directed to return with a full analyses on “Very Large Assembly Areas”. (11-0.) (3) Electronic/Digital Signs for Commercial Areas – Council approved a combination of Options 3 and 4 with Staff directed to initiate a three-year pilot program in the Stevens Creek signage area including extending the border to include Kiely Boulevard. for freestanding digital signs and assess ways to accommodate dealerships with narrow frontages. Staff was directed to continue exploration of the Capitol Auto Row, Blossom Hill Road, Capitol Corridor near Eastridge and any other appropriate areas once the Stevens Creek Boulevard. signage area has been fully addressed. (11-0.)

#### OPEN FORUM

- (1) Ross Signorino offered bicycle safety tips for children.
- (2) David Wall offered criticism of the Regional Stormwater Permit Implementation Plan submitted to the Transportation and Environment Committee by the Environmental Services staff.

#### ADJOURNMENT

The Council of the City of San José adjourned at 5:58 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC  
City Clerk

rmk/02-02-10MIN

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