CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA **TUESDAY, MARCH 30, 2010**

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 (A) to confer with Legal Counsel pursuant to Government Code subsection (b) of Section 54956.9 with respect to anticipated litigation of significant exposure (Claim Not Filed) in one (1) matter. (B) Public Employment/Public Employee Appointment Pursuant to Government code Section 54957: Department or Agency: Independent Police Auditor; Title: Independent Police Auditor; (C) to confer with Legal Counsel pursuant to Government Code subsection (b) of Section 54956.9 with respect to anticipated litigation of significant exposure (Claim Filed): Claimant: In re Claim of Hull; City Department: Police Department; (D) to confer with Legal Counsel pursuant to Government Code subsection (a) of Section 54956.9 with respect to existing litigation: (1) Diaz, et al. v. City of San José; Names of Parties Involved: Juan Diaz, Keith Keesling, Christopher Murphy, Gary Weekley, Karen Allen and other employees similarly situated, City of San José; Court: United States District Court, Northern District of California; Case No: C07-06424 JW; Amount of Money or Other Relief Sought: Damages according to proof; (2) Welch, et al. v. City; Names of Parties Involved: Jeffrey Welch, Glen Biship, Mitchell Witsinski, Robert Culbertson and other employees similarly situated, City of San José; (3) City v. New-Tec; Name of Parties Involved: City of San José, a municipal corporation, New-Tec Circuit Sales, Inc.; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV164712; Amount of Money or Other Relief South: Eviction action where City is seeking to recover possession of commercial property and monetary damages; (E) 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 (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

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CLOSED SESSION (Cont'd.)

International Association of Firefighters; (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; 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 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 (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. 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 1:31 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 San José High Academy String Quartet performed a selection from Bach's Brandenburg concerto and an original piece for the Invocation. (District 3)

PLEDGE OF ALLEGIANCE

Mayor Reed and third-grade students from Success Academy led the Pledge of Allegiance.

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, with Item 2.3(a) and Item 3.3 deferred to April 6, 2010. (11-0.)

CEREMONIAL ITEMS

1.1 Presentation of a commendation recognizing Boynton High School as a 2010 Model Continuation High School. (Constant)

Action: Mayor Reed and Council Member Constant recognized Boynton High School as a 2010 Model Continuation High School.

1.2 Presentation of a proclamation declaring the Month of March 2010 as "Women's History Month" in the City of San José. (Herrera)

Action: Mayor Reed and Council Member Herrera recognized the Month of March 2010 as "Women's History Month" in the City of San José.

1.3 Presentation of a commendation to the San José Giants for providing thousands of San José residents the opportunity to participate in affordable family entertainment and for winning the 2009 California League Championship. (Nguyen)

Action: Mayor Reed and Council Member Nguyen commended the San José Giants for providing thousands of San José residents the opportunity to participate in affordable family entertainment and for winning the 2009 California League Championship.

1.4 Presentation of a proclamation declaring March 30, 2010 as "Welcome Home Vietnam Veterans Day" in the City of San José. (Herrera/Nguyen)
(Rules Committee referral 3/24/10)

Action: Mayor Reed and Council Members Nguyen and Herrera recognized March 30, 2010 as "Welcome Home Vietnam Veterans Day" 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.)

2.1 Approval of minutes.

(a) Regular Minutes of February 2, 2010.
(b) Economic Development Strategy Study Session Minutes of February 8, 2010.
(c) Regular Minutes of February 9, 2010.
(d) 2010-2011 Budget Planning Study Session Minutes of February 16, 2010.
(e) Regular Minutes of February 23, 2010.
(f) Joint City Council/San José Financing Authority Minutes of February 23, 2010.

Documents Filed: (1) Regular Minutes dated February 2, 9 and 23, 2010; (2) Economic Development Strategy Study Session Minutes dated February 8, 2010; (3) 2010-2011 Budget Planning Study Session Minutes dated February 16, 2010; (4) Joint City Council/San José Financing Authority Minutes dated February 23, 2010.

Action: The minutes were approved. (11-0.)

2.2 Final adoption of ordinances.

(a) ORD. NO. 28727 – Rezoning certain real property situated at the northwest and southwest corners of Coleman Avenue and Newhall Drive, to A(PD) Planned Development Zoning District. PDC09-004

Documents Filed: Proof of Publication of the Title of Ordinance No. 28727 executed on March 23, 2010, submitted by the City Clerk.

Action: Ordinance No. 28727 was adopted. (11-0.)

2.3 Approval of Council Committee Reports.

(b) Public Safety, Finance and Strategic Support Committee Report of March 18, 2010. (Nguyen)

(c) Rules and Open Government Committee Report of March 10, 2010. (Mayor) [Deferred from 3/23/10 – Item 2.3(b)]

Documents Filed: (1) Public Safety, Finance and Strategic Support Committee Report dated March 18, 2010. (2) The Rules and Open Government Committee Report dated March 10, 2010.

Action: The Report of the Public Safety, Finance and Strategic Support Committee and actions of March 18, 2010, and the Report of the Rules and Open Government Committee and the actions of March 10, 2010, were approved. (11-0.)

(a) Rules and Open Government Committee Report of March 17, 2010. (Mayor)

Action: Deferred to April 6, 2010 per Orders of the Day.

2.4 (a) Request for an excused absence for Councilmember Pyle from the Closed Session and Regular Session of the City Council on March 16, 2010 due to illness. (Pyle)
(Rules Committee referral 3/17/10)

(b) Request for an excused absence for Councilmember Pyle from the Regular Meeting of the Rules and Open Government Committee on March 17, 2010 due to illness. (Pyle)
(Rules Committee referral 3/17/10)

(c) Request for an excused absence for Councilmember Chu from the Regular Meeting of the Neighborhood Services and Education Committee on April 8, 2010 due to Authorized City Business: League of California Cities Housing Policy Committee Meeting in Sacramento, CA. (Chu)
(Rules Committee referral 3/17/10)

Documents Filed: (1) Memoranda from Council Member Pyle, dated March 16 and 17, 2010, requesting excused absences due to illness. (2) Memorandum from Council Member Chu, dated March 10, 2010, requesting excused absences due to authorized City business.

Action: The absences for Council Members Pyle and Chu were excused. (11-0.)

2.6 Adopt a resolution authorizing the City Manager and the City Manager's authorized designees to negotiate and execute:

(a) The Eleventh Amendment to the General Banking Services Agreement with Union Bank of California to increase the maximum annual compensation by $141,500 from $178,500, to an amount not to exceed $320,000 to provide final banking and transition services from July 1, 2009 through June 30, 2010;

(b) The Second Amendment to the Agreements with Wells Fargo Bank for General Banking Services and Merchant Card Processing Services to decrease the maximum annual compensation by $141,500 from $715,500, to an amount not to exceed $574,000 for the initial term through June 30, 2010, with no change in the total appropriation for banking services as approved by Council on June 23, 2009.

CEQA: Not a Project. (Finance)

Documents Filed: Memorandum from Deputy Director of Finance Julia H. Cooper, dated March 8, 2010, recommending adoption of a resolution.

Action: Resolution No. 75319, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager and the City Manager's Authorized Designees to Negotiate and Execute (I) The Eleventh Amendment to the General Banking Services Agreement with Union Bank of California ("UBOC") to Increase the Maximum Annual Compensation by $141,500 from $178,500 to an Amount Not To Exceed $320,000 to Provide Final Banking and Transition Services from July 1, 2009 through June 30, 2010; and (II) The Second Amendment to the Agreements with Wells Fargo Bank for General Banking Services and Merchant Card Processing Services to Decrease the Maximum Annual Compensation By $141,500 from $715,500 to an Amount Not To Exceed $574,500 for the Initial Term through June 30, 2010, with No Change in the Total Appropriation for Banking Services as Approved by the City Council on June 23, 2009", was adopted. (11-0.)

2.7 Adopt a resolution authorizing the City Manager to sign and submit a Declaration for Acceptance of Funds, in the amount of $200,000 in September 2012, from Final Judgment in the People of the State of California v. Equilon Enterprises LLC, et al for the enforcement of the California Health and Safety Code for Underground Storage of Hazardous Substances. CEQA: Not a Project. (Fire)

Documents Filed: Memorandum from Fire Chief Darryl Von Raesfeld, dated March 15, 2010, recommending adoption of a resolution.

Action: Resolution No. 75320, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute and Submit a Declaration for Acceptance of Funds to be Used for the Enforcement of the California Health and Safety Code Relating to Underground Storage of Hazardous Substances", was adopted. (11-0.)

2.8 Approve a consultant agreement with Kimley-Horn and Associates, Inc. for signal timing services associated with the implementation of the Signal Retiming for San José Traffic Light Synchronization Project from the date of execution to June 30, 2011 in a total amount not to exceed $678,000. CEQA: Resolution Nos. 60197 and 63179, File No. PP08-154. (Transportation)

Documents Filed: Memorandum from Acting Director of Transportation Hans Larsen, dated March 8, 2010, recommending approval of a consultant agreement for signal timing services.

Action: The consultant agreement with Kimley-Horn and Associates, Inc. for signal timing services associated with the implementation of the Signal Retiming for San José Traffic Light Synchronization Project from the date of execution to June 30, 2011 in a total amount not to exceed $678,000, was approved. (11-0.)

2.9 Approve an agreement with Kimley-Horn & Associates, Inc. for intelligent transportation system technology consultant services for the Wide and Metropolitan Area Network Redesign, Installation, and Configuration from the date of execution to June 30, 2011, in a total amount not to exceed $272,000. CEQA: Resolution No. 68905, File No. PP02-07-193. (Transportation)

Documents Filed: Memorandum from Acting Director of Transportation Hans Larsen, dated March 8, 2010, recommending approval of a consultant agreement for intelligent transportation technology consultant services.

Action: The consultant agreement with Kimley-Horn and Associates, Inc. for intelligent transportation system technology consultant services for the Wide and Metropolitan Area Network Redesign, Installation, and Configuration from the date of execution to June 30, 2011, in a total amount not to exceed $272,000, was approved. (11-0.)

2.10 Adopt a resolution authorizing the City Manager and the Chief of Police to execute the Memorandum of Understanding between the Santa Clara County Sheriff's Office and the South Bay Region Node Member Agencies to establish the South Bay Information Sharing System. CEQA: Not a Project. (Police)
(Rules Committee referral 3/24/10)

Documents Filed: Memorandum from Chief of Police Robert L. Davis, dated March 12, 2010, recommending adoption of a resolution.

Action: Resolution No. 75321, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager and the Chief of Police to Execute a Memorandum of Understanding Between the Santa Clara County Sheriff's Office and the South Bay Region Node Member Agencies to Establish the South Bay Information Sharing System", was adopted. (11-0.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

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

The City Manager provided a report on discussions with bargaining units. She noted there were no offers on the table and no agreements made.

3.2 As recommended by the Public Safety, Finance and Strategic Support Committee on March 18, 2010:

(a) Adopt a resolution:

(1) Making a determination that the public interests and necessity demand:

(a) The Silicon Valley Regional Interoperability Authority (SVRIA) acquire, construct, maintain, and operate the Silicon Valley Regional Interoperability Project (SVRIP) and the projects entered into pursuant to the SVRIA Joint Powers Agreement; and

(b) The SVRIA be empowered to exercise the power to issue revenue bonds.

(2) Authorizing the City Manager to execute SVRIA Joint Powers Agreement;

(3) Authorizing the City Manager to execute the Amendment to the Second Amended Joint Funding Agreement (JFA Amendment) to allow the Silicon Valley Regional Interoperability Project to transfer its assets to a joint powers authority; and

(b) Recommend that the Mayor appoint two elected City officials and alternates to represent the City on the SVRIA Board of Directors.

(City Manager's Office)

[Public Safety, Finance and Strategic Support Committee referral 3/18/10 – Item D(2)]

Action: Deferred to April 20, 2010 per Administration.

3.3 As recommended by the Public Safety, Finance and Strategic Support Committee on March 18, 2010:

(a) Accept the Procurement Report.

(b) Direct the City Attorney to draft an ordinance amending the San José Municipal Code provisions with respect to:

(1) Council Appointees' contract authority:

(a) Include a Consumer Price Index for All Urban Consumers adjustment to automatically increase the contract approval authority limits every three years; and

(b) Include incidental services as part of the purchase of supplies, materials, and equipment.

3.3 (Cont'd.)

(b) Direct the City Attorney to draft an ordinance amending the San José Municipal Code provisions with respect to:

(2) The procurement of goods and services:

(a) Change the protest procedures for purchases under $100,000;

(b) Allow for an online formal bid procedure, including a reverse auction process to purchase goods and services;

(c) Expand the conditions for cooperative purchases to include non-profit organizations that are made up of multiple public agencies in California or elsewhere;

(d) Establish that the list of required award factors used in requests for quotes and requests for proposals is subject to revision by the Director of Finance, on a case-by-case basis, if it is determined that it is in the best interest of the City to do so;

(e) In formal bidding, allow award of contract to more than one bidder when exact quantities and or delivery dates are unknown; and

(f) For Request for Quotes (RFQ) and formal Request for Proposals (RFP) allow award of contract to more than one proposer when such action is in the best interest of the City.

(3) Unclaimed and Surplus Personal Property:

(a) Streamline the noticing requirements for bids of surplus personal property; and

(b) Raise the threshold requiring the sale of surplus personal property by sealed bid or auction from $400 to $1,000. (Finance)

[Public Safety, Finance and Strategic Support Committee referral 3/18/10 – Item D(5)]

Action: Deferred to April 6, 2010 per Orders of the Day.

COMMUNITY & ECONOMIC DEVELOPMENT

4.1 Conduct a Public Hearing on the draft Consolidated Plan - Five Year Plan 2010–2015 and Annual Action Plan FY 2010-2011, which is required by the U.S. Department of Housing and Urban Development in order to receive federal housing and community development funding, and announce that as of March 22, 2010, the draft Consolidated Plan and its associated Analysis of Impediments to Fair Housing Choice are available to the public for review and comment. CEQA: Not a Project. (Housing)

4.1 (Cont'd.)

Documents Filed: (1) Memorandum from Director of Housing Leslye Krutko, dated March 8, 2010, recommending a Public Hearing be held on the draft Consolidated Plan - Five Year Plan 2010–2015 and Annual Action Plan FY 2010-2011. (2) Supplemental memorandum from Director of Housing Leslye Krutko, dated March 22, 2010, to implement the previous draft dated March 8, 2010. (3) Letter from Diem Ngo, Executive Director, Vietnamese Voluntary Foundation, Inc., (VIVO) dated March 26, 2010, appealing the FY 2010-12 CDBG Funding recommendations as it relates to VIVO's program. (4) Proof of Publication of Notice of Public Hearing, executed on March 19, 2010 submitted by the City Clerk.

Director of Housing Leslye Krutko provided an overview of the Department of Housing's proposed action plans and brief analysis of entitlement funding.

Mayor Reed opened the public hearing.

Public Comment: Diem Ngo and Trang Nguyen (Vietnamese Voluntary Foundation, Inc.) voiced objection to the Community Development Funding which would impact VIVO's employment services program.

Mayor Reed closed the public hearing.

Action: No action was taken. The Public Hearing was continued to May 4, 2010.

NEIGHBORHOOD SERVICES

5.2 Approve the recommendation to reduce the Citywide Aquatics Program to operate during the 2010 Summer only at Camden and Mayfair Community Centers. CEQA: Not a Project. (Parks, Recreation and Neighborhood Services)

Action: Deferred to April 6, 2010 per Administration.

5.3 As recommended by the Public Safety, Finance and Strategic Support Committee on March 18, 2010, accept the Audit of Community Center Staffing. (City Auditor) [Public Safety, Finance and Strategic Support Committee referral 3/18/10 – Item D(7)]

Documents Filed: Memorandum from City Clerk Lee Price, dated March 25, 2010, transmitting the recommendations of the Public Safety, Finance and Strategic Support Committee.

5.3 (Cont'd.)

City Auditor Sharon Winslow-Erickson provided an overview of the Community Center Staffing Audit.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Pyle and carried unanimously, the recommendations of the March 18, 2010 Public Safety, Finance and Strategic Support Committee to accept the Audit of Community Center Staffing was accepted. (11-0.)

5.1 As referred by the Neighborhood Services and Education Committee on March 11, 2010, accept the Reuse Update and approve Administration's recommendations:

(a) Remove three facilities (St. James Senior Center, Capitol Park/Goss Neighborhood Center, and Hank Lopez Community Center) from the approved 2009-2010 Community Center Reuse list and transfer to other City uses.

(b) Adopt a resolution authorizing the City Manager to demolish the St. James Senior Center and convert to parkland consistent with the November 2002 St. James Park Master Plan Update. CEQA: Exempt, File No. PP02-108.

(c) Adopt a resolution authorizing the City Manager to negotiate and execute an agreement with the Community Child Care Council of Santa Clara County (4Cs) for a term of up to five years as lead service provider for the JTS Northside Community Center consistent with the proposal submitted by 4Cs in response to the City's Reuse Request for Proposal (RFP) issued on December 23, 2009 that shall include provisions for teen, senior, and veteran's services. If negotiations are unsuccessful, authorize the City Manager to negotiate and execute an agreement per Recommendation #d.

(d) Adopt a resolution authorizing the City Manager to continue to solicit, negotiate, and execute agreements with viable service providers for the Los Paseos Youth Center and the Alma Youth/Senior Center utilizing existing Council-approved policies including, but not limited to, Council Policy 7-1 (Below Market Lease), Council Policy 7-12 (Reuse Policy), and/or because the RFP process failed to elicit acceptable proposals for these two facilities, enter into direct negotiations on a sole-source basis for these two facilities. If unsuccessful, facility closures would occur on June 30, 2010.

CEQA: Not a Project. (Parks, Recreation and Neighborhood Services)
[Neighborhood Services and Education Committee referral 3/11/10 – Item D(3)]

Documents Filed: (1) Memorandum from Council Member Liccardo, dated March 26, 2010 recommending adoption of the Staff recommendations with suggested modifications. (2) Joint memorandum from Council Members Campos and Kalra, dated March 26, 2010, offering recommendations for the Community Center Reuse Update and Request for Proposal (RFP). (3) Memorandum from City Clerk Lee Price, dated March 17, 2010, transmitting the recommendations of the Neighborhood Services and Education Committee. (4) Supplemental memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated March 24, 2010, providing additional information regarding the Community Center Reuse Update and RFP Recommendations.

5.1 (Cont'd.)

Director of Parks, Recreation and Neighborhood Services Albert Balagso provided the Facility Reuse update.

Motion: Council Member Liccardo moved approval of Staff's recommendations with changes as outlined in his memorandum of March 26, 2010. Council Member Herrera seconded the motion.

Substitute Motion: Council Member Campos moved approval to operate the six community center facilities per Staff's recommendation, additionally moving acceptance of her memorandum co-authored with Council Member Kalra, dated March 26, 2010, and asked that Staff return with appropriate noticing and policy consideration in applying any cost savings as noted below in "Action". Council Member Kalra seconded the motion.

Extensive Council discussion followed.

Council Member Herrera offered support of Council Member Liccardo's motion but with flexibility in providing services.

Public Comments: The following individuals spoke in support of services offered at the affected reuse facilities and urged their preservation: Tili Ayala, Dee Urista and Rudy Martinez (Gardner Advisory Council); Jane Hills, Greg Kepferle and Aaron Carrera (Catholic Charities and Washington United Youth Center); Toni Sunsereno, Elena Martinez, Marian, Mirya Molino, Augustine, Rosa Pereida, Francisco Alvarez, Carolina, Apolo, Ernesto Martinez, Steve Barrientos and Debbie Murillo (Alma Action Center); Penny Aguilar (Northside Post 858); Linda Dittes (AFSCME – MEF); and Poncho Guerra (Sacred Heart Community Services).

Action: On a call for the question, the substitute motion carried, Resolution No. 75322, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Demolish the St. James Senior Center"; Resolution No. 75323, entitled: "A Resolution of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with the Community Child Care Council of Santa Clara County for the JTS Northside Community Center", and Resolution No. 75324, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Solicit, Negotiate and Execute Agreements with Service Providers for the Los Paseos Youth Center and the Alma Youth/Senior Center", were adopted, and Staff was directed to return to Council with recommendations regarding policy considerations outlined in the Joint Memorandum dated March 26, 2010 from Council Members Campos and Kalra. The Council referred to the City Manager and the Budget Process a discussion about applying any cost savings realized through employee concessions, City Auditor recommendations for changes, or other efficiencies in operations to staffing or other assistance in order to keep community centers open. (7-4. Noes: Constant, Herrera, Liccardo, Oliverio.)

ENVIRONMENTAL & UTILITY SERVICES

7.1 (a) Adopt a resolution authorizing the City Manager to negotiate contract amendments as follows:

(1) Amend the Residential Recycle Plus Services Agreements to extend the term of the Agreement with GreenWaste Recovery, Inc. for Citywide yard waste collection and processing, residential street sweeping, and multi-family dwelling solid waste processing services; and GreenTeam of San José for District B and multi-family solid waste collection and processing services through June 30, 2015; to enhance services; and to modify the compensation provisions.

(2) Exercise the option to extend the Recycle Plus Services Agreements with California Waste Solutions and Garden City Sanitation for an additional two years to June 30, 2015, and to negotiate and execute amendments to these Agreements for enhanced services and modified compensation.

(3) Exercise the option to extend the Agreement with GreenWaste Recovery, Inc. for Neighborhood Clean-Up Services in Recycle Plus Collection Districts A and C for an additional two years to June 30, 2015, and amend the Agreement to include enhanced services and modified compensation.

(4) Amend the Agreement with GreenWaste Recovery, Inc. for Public Litter Can Solid Waste Collection Services Citywide to extend the maximum term for an additional four years to June 30, 2015; to modify the compensation; and to make technical adjustments to Agreement terms.

(5) Amend the Agreement with GreenTeam of San José for Integrated Collections at City Facilities to extend the term an additional 30 months to expire June 30, 2015; to modify the compensation; and to make technical adjustments to the Agreement terms.

(b) In the alternative, if the Council decides to not engage in a competitive procurement, adopt a resolution authorizing the City Manager to negotiate new solid waste collection agreements with the existing contractors through June 30, 2021, and include as part of this direction that:

(1) During the negotiation and until the Administration returns to Council with the proposed agreements, all contact between the existing contractors and the City must be directed to the Administration staff designated for negotiations and all inquiries to staff, elected officials and consultants must be referred to the designated staff;

(2) Require contractors to provide an option for billing, customer service and remittance processing services; and

(3) Return to Council in June 2010 with two-year extension amendments for Council consideration if the Administration and the contractors are unable to agree on proposed terms for service through June 30, 2021.

CEQA: Not a Project. (Environmental Services)

7.1 (Cont'd.)

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean, dated March 18, 2010, recommending adoption of a resolution. (2) Memorandum from Director of Environmental Services John Stufflebean, dated March 19, 2010, regarding Proposition 218 Public Notices for Sewer Service and Use Charge/Storm Sewer Service Charge. (3) Supplemental memorandum from Director of Environmental Services John Stufflebean, dated March 24, 2010, providing amendments to Solid Waste Service Agreements. (4) Statement and Declaration of Conflict of Interest Form from Council Member Chu, dated March 30, 2010. (5) Email from Myron Crawford, Berg & Berg Enterprises, dated April 3, 2010, in opposition to rate increases. (6) Letter from Frank Weigel, Chief Operating Officer, GreenWaste Recovery, dated March 30, 2010, in support of an eight-year continuous renewal agreement with GreenWaste.

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

Council Member Chu recused himself due to a conflict of interest (Income from California Waste Solutions).

Director of Environmental Services John Stufflebean responded to questions from Council.

Motion: Council Member Liccardo moved approval of Staff's recommendation. Council Member Nguyen seconded the motion.

Public Comments: Offering support for "Alternative A" extending the term of the Agreement with GreenWaste Recovery, were: Joel Corona (California Waste Solutions), Alan Fong, Steven Jones (Garden City Sanitation) and Emily Hanson (GreenWaste Recovery).

Action: On a call for the question, the motion carried unanimously, Resolution No. 75325, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate New Agreements with Green Waste Recovery, Inc., Green Team of San José, California Waste Solutions and Garden City Sanitation for Residential Recycle Plus Services for a Term Through June 30, 2021; or in the Alternative, if Negotiations are not Successful, Amendments to Agreements for Solid Waste Collection Services with These Same Companies to Extend the Terms to June 30, 2015, Enhance Services and Modify Compensation Provisions", was adopted, with direction given to Staff to strive to reach an eight-year agreement and return in one year with a proposal for the Evergreen area. (10-0-0-1. Disqualified: Chu.)

JOINT COUNCIL/REDEVELOPMENT AGENCY

9.1 (a) Holding of a Tax Equity and Fiscal Responsibility Act (TEFRA) Hearing by the City in connection with the 2010A Bonds relating to certain affordable housing projects identified in Exhibit A. (Hearing Held on 3-23-10)

(b) Adoption of a resolution of the Redevelopment Agency Board:

(1) Authorizing the issuance of the following series of Redevelopment Agency of the City of San Jose Merged Area Redevelopment Project housing set-aside tax allocation bonds;

(a) Housing Set-Aside Tax-Exempt Refunding Tax Allocation Bonds, Series 2010A in an amount not to exceed $57,000,000 (the "2010A Bonds");

(b) Housing Set-Aside Taxable Tax Allocation Bonds, Series 2010B in an amount not to exceed $15,000,000 (the "2010B Bonds"); and

(c) Taxable Subordinate Housing Set-Aside Tax Allocation Variable Rate Bonds, Series 2010C in an amount not to exceed $93,000,000 (the "2010C" Bonds and collectively with the 2010A Bonds and 2010B Bonds, the "Bonds").

(2) Approving in substantially final form the Bonds, Eighth Supplemental Fiscal Agent Agreement, Subordinate Fiscal Agreement, a Continuing Covenant Agreement supplementing the Subordinate Fiscal Agreement, a Bond Purchase Agreement relating to the 2010A and 2010B Bonds, one or more Continuing Disclosure Agreements, a preliminary Official Statement relating to the 2010A and 2010B Bonds; authorizing the Agency's Executive Director and Chief Financial Officer to execute and, as appropriate, negotiate these documents and other related documents as necessary, after consultation with Bond Counsel and the Financial Advisor for the Bonds;

(3) Authorizing the Agency's Executive Director and Chief Financial Officer, and their designees, to take all necessary actions in connection with the issuance of the Bonds, and;

9.1 (b) Adoption of a resolution of the Redevelopment Agency Board (Cont'd):

(4) Authorizing the Agency General Counsel to negotiate and execute an agreement with Hawkins, Delafield & Wood LLC, for a total amount not to exceed $270,000 for Bond Counsel and Disclosure Counsel fees.

(c) Adoption of a resolution of the City Council:

(1) Approving the issuance of the Bonds by the Redevelopment Agency; approving the execution and delivery of one or more tax regulatory agreements; and making a finding pursuant to Redevelopment Law that the Merged Area will benefit from the projects located outside of the Merged Area that are financed or refinanced by the Bonds;

(2) Authorizing the City Manager and her designees to take all necessary actions in connection with issuance of the Bonds, and;

(3) Certifying that a TEFRA hearing was held in accordance with applicable federal regulations.

CEQA: Exempt, File No. PP10-058. (City Manager's Office/ Redevelopment Agency)
(Deferred from 3/23/10 – Item 9.3)

Documents Filed: (1) Joint memorandum from City Manager Debra Figone and Redevelopment Agency Executive Director Harry S. Mavrogenes, dated March 11, 2010, recommending holding of a Tax Equity and Fiscal Responsibility Act (TEFRA) Hearing by the City, Adoption of resolutions of the Redevelopment Agency Board and of the City Council. (2) Supplemental memorandum from City Manager Debra Figone and Redevelopment Agency Executive Director Harry S. Mavrogenes, dated March 25, 2010, designating a public hearing date. (3) Proof of Publication of Notice of Public Hearing, executed on March 8, 2010 submitted by the City Clerk.

Action: Upon motion by Council Member Pyle, seconded by Council Member Nguyen and carried unanimously, the. Holding of a Tax Equity and Fiscal Responsibility Act (TEFRA) Hearing by the City in connection with the 2010A Bonds relating to certain affordable housing projects identified in Exhibit A was approved; Redevelopment Agency Board Resolution 5955, Redevelopment Agency Board Resolution No. 5956, and Resolution No. 75328, entitled: "A Resolution of the Council of the City of San José Approving the Issuance by the Redevelopment Agency of the City of San José of its Merged Area Redevelopment Project Housing Set-Aside Tax-Exempt Refunding Tax Allocation Bonds, Housing Series 2010A in an Aggregate Principal Amount Not to Exceed $57,000,000 and its Merged Area Redevelopment Project Housing Set-Aside Taxable Refunding Tax Allocation Bonds, Housing Series 2010B, in an Aggregate Principal Amount Not to Exceed $15,000,000 and Its Merged Area Redevelopment Project Taxable Subordinate Housing Set-Aside Tax Allocation Variable Rate Bonds, Series 2010C in an Aggregate Principal Amount Not to Exceed $93,000,000; Approving the Execution and Delivery of the Fiscal Agreements, A Continuing Covenant Agreement and One or More Tax Regulatory Agreements; Approving the Sale and issuance of the Bonds for Purposes of the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA"); Approving and Authorizing Certain Other Actions in Connection Therewith", were adopted. (10-0-1. Absent: Herrera)

4.2 As referred by the Rules and Open Government Committee on January 27, 2010, accept reports providing an overview of current Municipal Code provisions and enforcement policies as they relate to the issue of cultivation, possession and distribution of cannabis for medicinal purposes and provide direction on any further municipal regulations or enforcement guidelines on this topic. (City Attorney's Office/ Police)

Documents Filed: (1) Supplemental memorandum from City Attorney Richard Doyle and Chief of Police Robert L. Davis, dated March 16, 2010, providing additional information regarding workload assessment from the City Administration as requested at the January 27, 2010 meeting of the Rules and Open Government Committee. (2) Memorandum from City Clerk Lee Price, dated March 17, 2010, transmitting Direction on Municipal Regulations and Enforcement Pertaining to Medicinal Use of Cannabis submitted for the Rules and Open Government Committee's consideration. (3) Joint memorandum from Mayor Reed, Vice Mayor Chirco and Council Member Constant, dated March 25, 2010, providing recommendations for the City Council in adopting principles in regard to medical marijuana collectives and cooperatives. (4) Memorandum from Council Member Oliverio, dated March 29, 2010, providing recommendations for adopting a moratorium on marijuana collectives and for creating an ordinance allowing the medical use of cannabis in San José. (5) Letter from James Anthony, Attorney at Law, dated March 25, 2010, regarding the City Attorney's "No Action" supplemental memorandum of March 16, 2010. (6) Letter from Eric Welch, Attorney at Law, dated March 26, 2010, regarding a "cease and desist" demand issued by the City of San José. (7) Email from Antonina Ettare and letter from Barbara Killey, Attorney at Law, both received March 29, 2010, in support of Council Member Oliverio's recommendations. (8) Letter from Dennis Cunningham, President, Naglee Park Campus Community Association, dated March 29, 2010, supporting City regulation of cannabis clubs with an intent to protect residential neighborhoods from adverse impacts. (9) "Center for Medicinal Cannabis Research" provided by the U.C. San Diego Health Sciences, prepared February 11, 2010. (10) "Medical Cannabis Dispensing Collectives and Local Regulation provided by Americans for Safe Access, received March 24, 2010.

Mayor Reed offered opening remarks, and City Attorney Richard Doyle clarified Staff's intent to provide an overview of current municipal provisions and enforcement procedures for Council's consideration.

Council Member Oliverio outlined his Memorandum of March 29, 2010 detailing recommendations regarding adoption of an ordinance allowing the medical use of cannabis in the City of San José.

Motion: Council Member Oliverio moved approval of his memorandum and requested that Item 1(b) of his memorandum be changed to reflect "the number of *collectives* in the City" rather than the number of *dispensaries*. Council Member Liccardo seconded the motion.

4.2 (Cont'd.)

Deputy Director of Planning, Building and Code Enforcement Mike Hannon responded to Council's questions regarding code violations; Director, Planning, Building and Code Enforcement Joseph Horwedel responded to Council's questions regarding the consequences of an increased workload.

Mayor Reed voiced opposition to related zoning issues being allowed on the November ballot and a special tax requiring two-thirds voter approval.

Council Member Liccardo moved an amendment to the motion, recommending that the two-thirds requirement be dropped and to proceed *without* the proposed moratorium. Council Member Oliverio accepted the amendment to his motion.

Council Member Nguyen expressed that she could not support the motion without a moratorium.

Public Comments: Speaking in support of an ordinance allowing the medical use of cannabis in San José, safe access and regulation were: Jonathon Steigman, Jonathon Lustig, Steve DeAngelo, Nathan Coleman, Frederick Remer, Eric Engstrom, Gregory Bock, Nicole Bock, Dave Hodges, Theresa Tillery, Yolanda Coleman, Jermaine King, James Silva, Darlene Welch, Ross Signorino, John Shannon, Roger Jacowitz, Sergio Avila, Daniel Hovland, Juan Chavez, Paul Stewart, James Anthony, Lauren Vasquez, Andy Schwaderer, Mariah Almadora, Russ Jones, Pat Knoop, Kimberly Cue, Craig Litwin, Robert Jacob, James Suner, John Crying Rain, Brian David, Art Sanchez, Jay Swartz, Douglas Scanland and Robert Horrocks. Expressing opposition to allowing dispensaries in residential areas and increased illegal activity were: Kathleen Cohen, Leslie Gray, Les Levitt, Richard Smoker, Julie Engelbrecht and Susan Dworak. Edward Jonathans, Tili Ayala, Tim Eskez and Ron Kirkish spoke against legalization of marijuana dispensaries and against drugs.

Further Council discussion followed, and City Manager Debra Figone addressed the need for continued financial analysis.

Action: On a call for the question, the motion carried, the Staff Reports were accepted, and the memorandum from Council Member Oliverio dated March 29, 2010 was approved, as modified, excluding a moratorium, with direction to Staff to return to Council on June 8, 2010 with: 1) a draft ordinance establishing regulations for the control and taxation of collectives and reflecting principles 1, 2, and 4 outlined in the Joint Memorandum dated March 25, 2010 from Mayor Reed and Vice Mayor Chirco; 2) a community outreach plan; and 3) an analysis for Council consideration about the process for placing the issue on the November 2, 2010 ballot asking for Citywide support for the restricted zoning of medical marijuana collectives/cooperatives in San José according to State law by taxing them at 3% per $1,000 gross receipts including the allowance for indexing for inflation. (6-4-1. Noes: Campos, Chu, Nguyen, Pyle. Absent: Constant)

ADJOURNMENT

The Council of the City of San José adjourned at 6:55 p.m. in memory of Raymond William McWard, father of Jennifer Maguire, Budget Director. (City Manager's Office)

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

rmk/3-30-10.MIN

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