

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, MAY 11, 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 9:32 a.m. to a Closed Session in Room W133 (A) to confer with Legal Council pursuant to Government Code subsection (c) of Section 54956.9 with respect to initiation of litigation in one (1) matter. (B) to confer with Legal Counsel pursuant to Government Code subsection (a) of Section 54956.9 with respect to existing litigation: (1) City, et al. v. Purple Elephant, et al; Names of Parties Involved: People of the State of California, ex rel., City Attorney of the City of San José and the City of San José, Mark Coleman, an Individual, Mark Coleman, dba Purple Elephant Pharmacy, Mark Coleman, dba Acme Pharmacy, Purple Elephant Cooperative, Inc., a California Corporation, V.M. Khosla and S.V. Khosla, Trustees of the Khosla Family Revocable Trust dated January 17, 2001 and Does 1 through 50; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV-171223; Amount of Money or Other Relief Sought: Nuisance Abatement and Injunctive Relief Action. (2) San José Cannabis Buyer's Collective/Pharmers, et al. v. Horwedel, et al; Names of Parties Involved: San José Cannabis Buyer's Collective, LLC, Pharmers's Health Center Cooperative, Inc., Joseph Horwedel, as Director of the City of San José Department of Planning, Building and Code Enforcement; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV-170271; Amount of Money or Other Relief Sought: Petition for Writ and Action to Require Obedience of the Medical Marijuana Program Act and Request for Stay of Enforcement. (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 (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 International Association of Firefighters. (2) Association of Legal Professionals of San José (ALP); Nature of Negotiations: Wages/Salaries, Hours,

CLOSED SESSION (Cont'd.)

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 11:55 a.m. and reconvened to Regular Session at 1:32 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

Students from Linda Vista Elementary School and Joseph George Middle School presented a Spring Musical Skit entitled "Into the Woods". (District 5)

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Pyle, seconded by Council Member Nguyen and carried unanimously, the Orders of the Day and the Amended Agenda were approved, and Items 2.3(a) and (b) were deferred to May 18, 2010. (10-0-1. Absent: Oliverio.)

CEREMONIAL ITEMS

1.1 Presentation of a proclamation declaring the month of May 2010 as “Fruit and Veggie Month” in the City of San José. (Kalra)

Action: Mayor Reed and Council Member Kalra recognized the month of May 2010 as “Fruit and Veggie Month” in the City of San José.

1.2 Presentation of a gift from the Better Living Educational Foundation to the City of San José. (Mayor)

Action: On behalf of the City of San José, Mayor Reed and Council Member Campos accepted a gift of \$5,000 from the Better Living Education Foundation/Silicon Valley Taiwan Tree Project Society.

1.3 Presentation of a proclamation declaring the week of May 9 through 15, 2010 as “National Tourism Week” in the City of San José. (Constant)

Action: Mayor Reed and Council Member Constant recognized the week of May 9, 2010 through May 15, 2010 as “National Tourism Week” in the City of San José. Mayor Reed presented the plaque to Daniel Fenton and Team San José Staff members

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. (10-0-1. Absent: Oliverio.)

2.2 (a) ORD. NO. 28711 – Rezoning certain real property situated at 1164 McLaughlin Avenue from R-1-8 Single Family Residence to CG Commercial General Zoning District. C09-031

2.2(a) (Cont'd.)

Documents Filed: Proof of Publication of the Title of Ordinance No. 28711 executed on May 4, 2010, submitted by the City Clerk.

Action: [Ordinance No. 28711](#) was adopted. (10-0-1. Absent: Oliverio.)

2.3 Approval of Council Committee Reports.

- (a) **Rules and Open Government Committee Report of April 21, 2010. (Mayor)**
- (b) **Community and Economic Development Committee of April 26, 2010. (Pyle)**

Action: Deferred to May 18, 2010 per Orders of the Day.

2.4 (a) Request for an excused absence for Mayor Reed from the Regular Meeting of the Rules and Open Government Committee on April 21, 2010 due to Authorized City Business: Travel to Sacramento, CA as part of the Silicon Valley Leadership Group Advocacy Trip. (Mayor)

Documents Filed: Memorandum from Mayor Reed, dated April 28, 2010, requesting an excused absence due to authorized City business.

Action: The absence for Mayor Reed was excused. (10-0-1. Absent: Oliverio.)

2.6 Approve an agreement between the City and Great Oaks Water Company, in the amount of \$3,600.00, for grant of a permanent easement over portions of the City-owned property identified as APN 678-02-035 and located at the southern most terminus of Basking Ridge Avenue, and authorize the Director of General Services to execute all documents necessary to implement the agreement. CEQA: Exempt, File No. PP09-212. (General Services)

Documents Filed: Memorandum for Director of General Services Peter Jensen, dated April 19, 2010, recommending approval of an agreement.

Action: An agreement between the City and Great Oaks Water Company, in the amount of \$3,600.00, for grant of a permanent easement over portions of the City-owned property identified as APN 678-02-035 and located at the southern most terminus of Basking Ridge Avenue, and authorize the Director of General Services to execute all documents necessary to implement the agreement was approved. (10-0-1. Absent: Oliverio.)

2.7 Approve the second amendment to the agreement for design consultant services with HNTB Corporation for the Happy Hollow Park & Zoo Pedestrian Bridge Rebid Project, extending the term of the agreement from June 30, 2010 to December 31, 2010, and increasing the amount of compensation by \$50,000 for a total amount not to exceed \$799,000. CEQA: Mitigated Negative Declaration, File No. PP05-142, dated April 2007. (Public Works)

2.7 (Cont'd.)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated April 19, 2010, recommending approval of the second amendment to the agreement.

Action: The second amendment to the agreement for design consultant services with HNTB Corporation for the Happy Hollow Park & Zoo Pedestrian Bridge Rebid Project, extending the term of the agreement from June 30, 2010 to December 31, 2010, and increasing the amount of compensation by \$50,000 for a total amount not to exceed \$799,000 was approved. (10-0-1. Absent: Oliverio.)

2.8 Approve the proposed Fiscal Year 2009/10- 2014/15 Work Plan for the Rule 20A and Rule 20B (In-Lieu Fee) Underground Utility Program. CEQA: Mitigated Negative Declaration, File No. PP08-257. (Public Works)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated April 19, 2010, recommending approval of the work plan.

Action: The proposed Fiscal Year 2009/10- 2014/15 Work Plan for the Rule 20A and Rule 20B (In-Lieu Fee) Underground Utility Program was approved. (10-0-1. Absent: Oliverio.)

2.9 Adopt a resolution authorizing the City Manager, or designee, to:

- (a) Submit a request to the Metropolitan Transportation Commission (MTC) for the allocation of Fiscal Year 2010-2011 Transportation Development Act, Article 3 (TDA3) State grant funding in the amount of \$379,423.**
- (b) Accept any grant funding from MTC and negotiate and execute any grant documents to effectuate the grant.**

CEQA: Exempt, File No. PP08-186 and PP10-078. (Transportation)

Documents Filed: Memorandum from Acting Director of Transportation Hans Larsen, dated April 19, 2010, recommending adoption of a resolution.

Action: [Resolution No. 75367](#), entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager or Designee to Submit an Application to the Metropolitan Transportation Commission for the Allocation of Fiscal Year 2010 – 2011 Transportation Development Act, Article 3, (TDA 3) Grant Funding in an Amount Not to Exceed \$379,423 and to Negotiate and Execute Any Grant Documents to Effectuate the Grant", was adopted. (10-0-1. Absent: Oliverio.)

2.10 As recommended by the Rules and Open Government Committee on May 5, 2010, extend the appointment of Mayor Reed to the Bay Area Water Supply and Conservation Agency's San Francisco Bay Area Regional Water System Financing Authority. (Mayor)

2.10 (Cont'd.)

Documents Filed: Memorandum from Mayor Reed, dated April 28, 2010, requesting to the Rules and Open Government Committee to extend his appointment to the Bay Area Water Supply and Conservation Agency's San Francisco Bay Area Regional Water System Financing Authority.

Action: The appointment of Mayor Reed to the Bay Area Water Supply and Conservation Agency's San Francisco Bay Area Regional Water System Financing Authority was extended. (10-0-1. Absent: Oliverio.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

3.2 **Adopt a Statement of Policy and City Council Questions related to the selection of a new Fire Chief as described in this memo, in compliance with City Charter Section 411.1. CEQA: Not a Project. (City Manager's Office)**

Documents Filed: Memorandum from City Manager Debra Figone, dated April 28, 2010, recommending adoption of a Statement of Policy and City Council Questions related to the selection of a new Fire Chief.

Director of Human Resources Mark Danaj offered a brief Staff report and responded to Council questions.

Motion: Vice Mayor Chirco moved approval of the Staff recommendations, including the addition of the amendment as depicted in "Action". Council Member Pyle seconded the motion.

Brief discussion followed.

Action: On a call for the question, the motion carried unanimously, the Statement of Policy and City Council Questions were adopted, as amended, with an additional question added to Attachment 2: Knowing that motions of non-confidence have been passed by Fire Unions throughout the State, how will the candidate respond to similar motions passed within the bargaining units of this department. (10-0-1. Absent: Oliverio.)

3.3 (a) **Approve an Ordinance to provide for a temporary business tax suspension program targeted to the first 1,000 applications plus any additional eligible applications submitted by businesses with thirty-five (35) or fewer employees that enter into a new lease or renew an existing lease between January 1 - June 30, 2010 and pay past due obligations owed the City as described in the Ordinance.**

- 3.3 (b) **Adoption of the following Funding Sources Resolution amendments in the General Fund:**
- (1) **Increase the revenue estimate for Transfers and Reimbursements in the amount of \$406,250 to recognize a transfer from the Low and Moderate Income Housing Fund; and**
 - (2) **Decrease the revenue estimate for Licenses and Permits by \$406,250 to reflect the estimated loss of Business Tax revenue.**
- (c) **Adoption of the following Appropriation Ordinance amendments in the Low and Moderate Income Housing Fund:**
- (1) **Decrease the Reserve for the Loan Origination and Annual Monitoring Fee in the amount of \$406,250; and**
 - (2) **Establish a Transfer to the General Fund in the amount of \$406,250.**
- CEQA: Not a Project. (Finance/City Manager's Office)**

Documents Filed: Memorandum from Director of Finance Scott P. Johnson and Budget Director Jennifer Maguire, dated April 19, 2010, recommending approval of an ordinance and adoption of an appropriation funding sources resolution and appropriation ordinance amendments.

Director of Finance Scott P. Johnson responded to Council questions and concerns.

Motion: Council Member Liccardo moved approval of the Staff recommendations, with the application period expiration date extended to September 1, 2010. Council Member Herrera seconded the motion.

Council Member Oliverio arrived to the Council Meeting at 1:53 p.m.

Council Member Liccardo requested that Staff conduct outreach to small businesses via ethnic chambers of commerce.

Action: On a call for the question, the motion carried, [Ordinance No. 28743](#), entitled: "An Ordinance of the City of San José To Provide for a Temporary Business Tax Suspension Program for Taxpayers with Thirty Five or Fewer Employees that Enter into a New Lease or Renew an Existing Lease Between January 1 – September 1, 2010 and Pay Past Due Obligations Owed the City as Provided in the Ordinance", was passed for publication, as amended, with the application period expiration date extended to September 1, 2010. Staff was directed to conduct outreach to small businesses via ethnic chambers of commerce. [Resolution No. 75368](#), 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 General Fund" and [Ordinance No. 28744](#), entitled: "An Ordinance of the City of San José Amending Ordinance No. 28593 to Appropriate Monies in the in the Low and Moderate Income Housing Fund for the Transfer to the General Fund; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", were adopted. (10-1. Noes: Campos.)

COMMUNITY & ECONOMIC DEVELOPMENT

4.1 Approve an ordinance amending Chapter 17.38, of Title 17 of the San José Municipal Code, to:

- (a) Change the title of the Chapter from “Neglected Vacant Houses” to “Maintenance and Rehabilitation of Neglected Vacant or Abandoned Buildings” and expand the provisions of the existing ordinance to include any neglected vacant or abandoned buildings.
- (b) Require all vacant or abandoned buildings to be rehabilitated within 180 calendar days after the building is vacant, unless the building meets certain maintenance or other requirements specified in the ordinance.
- (c) Require all vacant or abandoned historic buildings or structures listed on the National Register of Historic Places, California Register of Historic Resources, or City of San José Register of Historic Landmarks to install and maintain an operating alarm system approved by the City’s Fire Marshal.
- (d) Make other clarifying changes to the ordinance as described in the memorandum to Council.

CEQA: Exempt, File No. PP10-099. (Planning, Building and Code Enforcement)

Action: Deferred to May 18, 2010 per Administration.

NEIGHBORHOOD SERVICES

5.1 Adopt a resolution authorizing the City Manager to submit an application to the YMCA of Santa Clara Valley in an amount not to exceed \$1,500,000 to support the efforts of a Summer Nutrition Collaborative and to negotiate and execute a grant agreement accepting the grant and any collateral documents, and to execute amendments to the grant agreement to extend or modify the grant period or to accept additional grant funds up to twice the original amount under this grant. **CEQA: Not a Project. (Parks, Recreation and Neighborhood Services)**

Action: Deferred to 05/18/10 per Administration.

TRANSPORTATION & AVIATION SERVICES

6.1 Report on bids and award of contract for the 2010 Proposition 1B Street Resurfacing Project to the low bidder Top Grade Construction Inc. in the amount of \$2,838,698, and approval of a 5% contingency in the amount of \$141,935. **CEQA: Exempt, File No. PP06-066. (Transportation)**

Documents Filed: Memorandum from Acting Director of Transportation Hans Larsen, dated April 19, 2010, recommending award of the contract to the low bidder.

6.1 (Cont'd.)

Action: Upon motion by Council Member Liccardo, seconded by Vice Mayor Chirco and carried unanimously, the award of contract for the 2010 Proposition 1B Street Resurfacing Project to the low bidder Top Grade Construction Inc. in the amount of \$2,838,698, with related contingency, was approved. (11-0.)

OPEN FORUM

- (1) Robert Cortese urged the City Council to repeal the fireworks ban and suggested ways to make fireworks safe for the residents.
- (2) Dr. Joan Todd, Historical Ventures, and Jim Piazza, Green Earth, expressed concerns about difficulties in establishing businesses in the City of San José.

ADJOURNMENT

The Council of the City of San José was adjourned at 2:10 p.m. in memory of Wanda Daniel, Recreation Program Specialist, who passed away on April 2, 2010. Wanda's career spanned nearly 30 years in the Parks, Recreation and Neighborhood Services Department, providing recreation classes and senior services to the community.

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

smd/05-11-10 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.