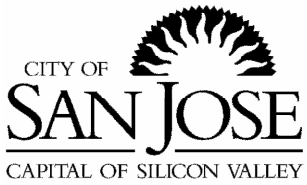

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA **TUESDAY, MARCH 16, 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, Herrera, Kalra, Liccardo, Nguyen, Oliverio; Reed.

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

Upon motion unanimously adopted, Council recessed at 9:31 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) to confer with Legal Council pursuant to Government Code subsection (b) of Section 54956.9 (Claim Filed) with respect to anticipated litigation of significant exposure: (1) In re Claim of Ghenis; City Department: Parks, Recreation and Neighborhood Services; (2) In re Claim of Villegas; City Department: Transportation. (C) to confer with Legal Counsel pursuant to Government Code subsection (a) of Section 54956.9 with respect to existing litigation: (1) In re Roszell; Amount of Money or Other Relief Sought: Administrative Appeal; (2) In re: Abundiz; Amount of Money or Other Relief Sought: Administrative Appeal; (3) San José Silicon Valley Chamber of Commerce Political Action Committee, et al, v. City of San José; Names of Parties Involved: San José Silicon Valley Chamber of Commerce Political Action Committee. Compac Issues Fund, sponsored by the San José Silicon Valley Chamber of Commerce, the City of San José, San José Elections Commission, Does 1 through 10. (D) 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, 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.

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.

CLOSED SESSION (Cont'd.)

(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 1:33 p.m. in the Council Chambers.

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

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

INVOCATION

The Brenda Lopez Folklorico Dancers provided traditional Mexican dances for the Invocation. (District 3)

PLEDGE OF ALLEGIANCE

Mayor Reed and the third graders from Anderson Elementary School led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Herrera, seconded by Vice Mayor Chirco and carried unanimously, the Orders of the Day and the Amended Agenda were approved. (9-0-2. Absent: Constant, Pyle.)

CONSENT CALENDAR

Upon motion by Council Member Herrera, seconded by Council Member Nguyen and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (9-0-2. Absent: Constant, Pyle.)

2.3 Approval of Council Committee Reports.

(a) Rules and Open Government Committee Report of February 24, 2010. (Mayor)

(b) Transportation and Environment Committee Report of March 1, 2010. (Liccardo)

(c) Community and Economic Development Committee Report of February 22, 2010. (Pyle)

Documents Filed: (1) The Rules and Open Government Committee Report dated February 24, 2010. (2) Transportation and Environment Committee Report dated March 1, 2010. (3) Community and Economic Development Committee Report dated February 22, 2010.

Public Comments: David Wall complained that his comments were not reflected correctly in the minutes of the Rules and Open Government Committee and the Community and Economic Development Committee.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Herrera and carried unanimously, the Committee Reports were approved. (9-0-2. Absent: Constant, Pyle.)

2.6 Approve an agreement with HDR, Inc. for consultant services for the Spreckles Sanitary Sewer Force Main Supplement and Pump Station Rehabilitation Project from the date of execution to June 30, 2013, in a total amount not to exceed $897,463. CEQA: Exempt, File No. PP09-104. Council District 4. (Public Works)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated February 22, 2010, recommending approval of the agreement.

Action: The agreement with HDR, Inc. for consultant services for the Spreckles Sanitary Sewer Force Main Supplement and Pump Station Rehabilitation Project from the date of execution to June 30, 2013, in a total amount not to exceed $897,463 was approved. (9-0-2. Absent: Constant, Pyle.)

2.7 Adopt a resolution of intention to conditionally vacate a portion of McLellan Avenue, Grant Street, and Edwards Avenue and setting a public hearing on April 6, 2010 at 1:30 p.m. CEQA: Resolution No. 75043. Council District 3. (Public Works/General Services)

Documents Filed: (1) Memorandum from Director of Public Works Katy Allen and Director of General Services Peter Jensen, dated February 22, 2010, recommending adoption of a resolution. (2) Supplemental memorandum from Director of Public Works Katy Allen, dated March 9, 2010, providing the necessary CEQA information, additional clarification on the timing and a revised location map for the proposed conditional vacation of a portion of McLellan Avenue, Grant Street and Edwards Avenue.

Action: Resolution No. 75305, entitled: "A Resolution of the Council of the City of San José Setting a Public Hearing to Consider Whether to Conditionally Vacate a Portion of McLellan Avenue, Edwards Avenue and Grant Street", was adopted. (9-0-2. Absent: Constant, Pyle.)

2.8 As recommended by the Rules and Open Government on March 10, 2010, approve the following short-term assignments:

(a) Remove Council Member Chu from the Mobilehome Advisory Commission and add him to the Small Business Development Commission.

(b) Remove Council Member Nguyen from the Small Business Development Commission and add her to the Mobilehome Advisory Commission.

(Mayor)
[Rules Committee referral 3/10/10 – Item G(1)]

Documents Filed: Memorandum from City Clerk Lee Price, MMC, dated March 11, 2010, transmitting the recommendations of the Rules and Open Government Committee.

Action: The short-term assignments for Council Members Chu and Nguyen were approved. (9-0-2. Absent: Constant, Pyle.)

2.9 As recommended by the Rules and Open Government on March 10, 2010, appoint Nathaniel Montgomery to the Project Diversity Screening Committee. (Oliverio)
[Rules Committee referral 3/10/10 – Item G(2)]

Documents Filed: Memorandum from City Clerk Lee Price, MMC, dated March 11, 2010, transmitting the recommendations of the Rules and Open Government Committee.

Action: Nathaniel Montgomery was appointed to the Project Diversity Screening Committee. (9-0-2. Absent: Constant, Pyle.)

2.10 As recommended by the Rules and Open Government on March 10, 2010:

(a) Approve the Great American Litter Pickup Event as a City Council sponsored Special Event.

(b) Approve and accept donations from various individuals, businesses or community groups to support the event.

(City Clerk)

[Rules Committee referral 3/10/10 – Item H(3)]

Documents Filed: Memorandum from City Clerk Lee Price, MMC, dated March 11, 2010, transmitting the recommendations of the Rules and Open Government Committee.

Action: The Great American Litter Pickup Event as a City Council sponsored Special Event was approved and donations from various individuals, businesses or community groups to support the event were accepted. (9-0-2. Absent: Constant, Pyle.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

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

City Manager Debra Figone reported that an information memorandum from the Director of Housing was distributed on Monday, March 15, 2010, highlighting the 2010-2011 Community Development Block Grant (CDBG) funding program recommendations and projected budget. City Manager Figone added that a report on the retirement contribution rates will be forthcoming.

3.2 Accept the FY 2009-2010 Status Report on the Citywide Capital Improvement Program. CEQA: Not a Project. (Public Works)

Action: Deferred to March 23, 2010 per Administration.

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, et al and 3/2/10 – Item 4.1)

Action: Deferred to March 23, 2010 per District 1.

4.2 (a) Adopt a resolution authorizing the Office of Economic Development to develop, produce, and conduct the Amgen Tour of California and 2010 San José Cycling Classic on City streets and at various City venues throughout the week of May 15-22, 2010, as a City Event with registration fees of $25-$200 per rider and a vendor booth fee up to $500 per booth.

(b) Adopt the following Appropriation Ordinance and Funding Source Resolution Amendments in the General Fund for San José Cycling Events:

(1) Establish a City-wide Appropriation to the Office of Economic Development for San José Cycling Events in the amount of $137,000.

(2) Increase the estimate for Other Revenue by $137,000.

CEQA: Exempt, File No. PP10-043. (Economic Development/City Manager's Office)

Documents Filed: Memorandum from Chief Development Officer Paul Krutko and Budget Director Jennifer Maguire, dated February 26, 2010, recommending adoption of a resolution and appropriation and funding sources resolution amendments.

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

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

Mayor Reed requested that Staff take a look at how many officers are on overtime, and the reserve officers who are not on overtime, in order to find an opportunity to restructure the staffing to save the promoters a major expense.

Council Member Campos objected to the Staff recommendations and stated she cannot support these events using public funds at this time, considering the City's huge budget deficit.

Public Comments: Ross Signorino expressed support to the Staff recommendations.

Action: On a call for the question, the motion carried, Resolution No. 75306, entitled: "A Resolution of the Council of the City of San José Authorizing the Office of Economic Development to Develop, Produce and Conduct the Amgen Tour of California and 2010 San José Cycling Classic on City Streets and at Various City Venues Throughout the Week of May 15 – 22, 2010, as a City Event with Registration Fees for $25 – $200 Per Rider"; Ordinance No. 28726, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28593 for the San José Cycling Events Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption" and Resolution No. 75307, 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", were adopted. (8-1-2. Noes: Campos. Absent: Constant, Pyle.)

4.3 Adopt a resolution authorizing the City Manager, or designee, to submit a response to the Google Fiber for Communities Request for Information (RFI) in accordance with guidelines discussed in the memorandum to Council. CEQA: Statutorily Exempt, CEQA Guidelines Section 15262. (Economic Development)
(Rules Committee referral 3/10/10)

Documents Filed: (1) Memorandum from Chief Development Officer Paul Krutko, dated March 9, 2010, recommending adoption of a resolution outside the normal process due to the March 26, 2010 RFI response deadline. (2) Staff presentation dated March 16, 2010 summarizing the Google Fiber for Communities Request for Information.

Chief Development Officer Paul Krutko outlined the Google Fiber for Communities Request for Information.

Mayor Reed requested that the Council Offices receive an electronic version of the Request for Information.

Action: Upon motion by Vice Mayor Chirco, seconded by Council Member Herrera and carried unanimously, Resolution No. 75308, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Submit a Response to the Google Fiber for Communities Request for Information", was adopted. Staff requested to copy the Council Offices on the electronic version of the Request for Information. (9-0-2. Absent: Constant, Pyle.)

NEIGHBORHOOD SERVICES

5.1 Conduct a public hearing and adopt a resolution setting forth the new Schedule of Parkland Fees to reflect the 2008 Residential Land Value Study, with the exception of fees for North San José and Downtown to remain the same, to be effective on May 15, 2010. CEQA: Not a Project. (Parks, Recreation and Neighborhood Services)

Action: Continued to April 13, 2010 per Administration.

JOINT COUNCIL/REDEVELOPMENT AGENCY

The Council/Redevelopment Agency Board convened at 2:11 p.m. to consider Item 9.2 in a Joint Session.

9.2 (a) Accept the staff report regarding Business Attraction/Retention and Development Initiatives.
(b) Discussion and direction to the City Manager regarding the suspension of business taxes for certain small businesses.
(c) Discussion and direction to the City Manager regarding staff recommendation for a Downtown parking incentive to allow free or discounted parking.

9.2 (d) Direct the City Manager to include a discussion of an appropriate City investment strategy in development incentives in the context of the overall City budget, including alternative amounts to be invested, potential return on investment and priority areas for investment, in the Community and Economic Development City Service Area presentation during the City Budget Study Sessions in May.
CEQA: Not a Project. (Economic Development)
(Deferred from 2/23/10 – Item 9.3 and 3/9/10 – Item 9.1)

Documents Filed: (1) Memorandum from Mayor Reed and Council Members Liccardo, Herrera and Pyle, dated March 12, 2010, recommending direction to Staff as reflected in "Action" on Page 9. (2) Memorandum from Chief Development Officer Paul Krutko, dated March 5, 2010, recommending as stated in Item 9.2(a)-(d) on Pages 7 and 8. (3) Staff presentation dated March 16, 2010 outlining the Development Incentives.

Chief Development Officer Paul Krutko, Director of Finance Scott Johnson and Assistant Director of Transportation James Ortball provided the Staff Reports on Development Incentives, Business Tax Suspension and Downtown Parking Incentives.

Motion: Council Member Liccardo moved approval of the Staff recommendations and the memorandum he cosigned with Mayor Reed and Council Members Herrera and Pyle, including additional revisions to Items (2) and (4) of the joint memorandum. Council Member Herrera seconded the motion.

Extensive Council discussion followed.

Council Member Campos expressed opposition to the motion and stated she cannot support it at this time.

Council Member Chu requested to amend the motion to reduce the number of employees to eight with regard to the Business License Tax suspension. Council Member Liccardo declined to accept the amendment.

Mayor Reed provided meeting disclosures.

Council Member Campos encouraged her colleagues to look at a Business Tax Amnesty Program. Council Member Kalra concurred and expressed support to such a program which can help to save jobs.

Public Comments: Expressing support to the Staff recommendations were Kevin Fitzpatrick, Legacy Partners – Legacy Civic Center, Scott Knies, San José Downtown Association, Greg Sellers, Burnham Energy, Doug Feece, Feece Real Estate Group/Community Towers, Pat Sausedo, San José Silicon Valley Chamber of Commerce, and John Althoff. Ross Signorino expressed concern that the City Council is focusing too much on the downtown and not in other areas of San José.

Council Member Kalra requested that the City Manager explore other opportunities such as a Business Tax Amnesty Program.

9.2 (Cont'd.)

Action: On a call for the question, the motion carried, the Staff recommendations were accepted, as amended by the memorandum from Mayor Reed and Council Members Liccardo, Herrera and Pyle, dated March 12, 2010 as modified, with Staff directed to: (1) Adopt a suspension of business license taxes for the first 1,000 businesses that provide documentary evidence of a new lease or lease renewal (i.e. signed since January 1, 2010) by June 30, 2010, with the requirement that: (a) Businesses can only qualify when they have brought current all past due fees and obligations to the City. (b) Qualifying businesses must have 35 employees or fewer. (2) Adopt a new Parking Incentive Program that offers free parking to any tenant who signs a new or renewed lease: (a) With no more than 50 employees. (b) A duration equal to one half the term of the lease. (c) Up to the maximum of facility space availability (d) *A 50% discount for the term of duration up to two years or half the term of the lease when renewing an existing lease, with a cap of 500 total spaces;* (3) *Staff to return to Council within 120 days either to discuss the progress of the program; or if the Staff is concerned about the rate of usage, Staff to return to Council with any proposed modifications.* (4) Regarding impact fee deferrals: (1) Adopt Staff recommendation to return to the May 2010 City Budget Study Sessions with further discussion. (2) Direct the City Manager to identify, at any time prior to May, any immediate opportunities for incentivizing business investment utilizing the "net new" concept and to bring those to the full Council for consideration with all necessary haste. (5) Partner with the San José/Silicon Valley Chamber of Commerce to offer a reduced rate membership at the Chamber for any business qualifying for a City incentive. (6) Business Tax Amnesty Program as a revenue generating idea based upon past history referred to the City Manager. (6-3-2. Noes: Campos, Chu, Kalra. Absent: Constant, Pyle.)

The Joint Council/Redevelopment Agency Board was adjourned at 3:36 p.m.

RECESS/RECONVENE

The City Council recessed at 3:36 p.m. from the Joint/Redevelopment Agency Board meeting and reconvened at 7:04 p.m. in the Council Chambers, City Hall.

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

Absent: Council Members - Constant. (Excused)

CEREMONIAL ITEMS

1.1 Presentation of a commendation recognizing April Bowen, Heidi Golab, Pam Foley, and DeAnna Pursai as District 9 Stars. (Chirco)
(Orders of the Day)

Action: Mayor Reed and Vice Mayor Chirco recognized and commended April Bowen, Heidi Golab, Pam Foley, and DeAnna Pursai as "District 9 Stars".

JOINT COUNCIL/REDEVELOPMENT AGENCY

The Council/Redevelopment Agency Board convened at 7:13 p.m. to consider Item 9.1 in a Joint Session.

9.1 Review and discuss the FY 2010-2011 Mayor's March Budget Message. (Mayor)

Mayor Reed presented a brief overview of the Mayor's Budget Message for Fiscal Year 2010-2011.

Mayor Reed opened the public hearing.

Council Member Liccardo arrived to the meeting at 7:23 p.m.

Public Comments: Providing comments and expressing concerns about employees losing benefits, to allow the Employee Labor Unions to be creative and to come up with viable solutions, to maintain current staffing at the libraries, objecting to the reduction of library hours to three days a week, to align employee salaries with the private sector, to obtain concessions from the Employee Labor Unions, to keep the prevailing/living wages as is, to keep the community centers open, objecting to cutting City services such as public safety, neighborhood parks and to bring employee costs down, were the following speakers: Linda Dittes, La Verne S. Washington, AFSCME MEF/CEO, Sal Ventura, IBEW 332, Ray Simpson, AEA IFPTE 21, Nancy Ostrowski, AEA/CAMP, Judy Purrington, Susan Bailey, Jerry Mungai, Pat Sausedo, San José Silicon Valley Chamber of Commerce, Linda Spencer, Friends of the Almaden Library, Alex Guy, Susan Abele, Therese Wiese, Josue Garcia, Building Trades, Antonina, Lourdes Nuno, CAE, Elisa Koff-Ginsborg, Sylvia Ruiz, SEUI and Bill Erlendson.

9.1 (Cont'd.)

Mayor Reed closed the public hearing.

City Manager Debra Figone responded to Council questions and concerns.

Action: Item 9.1 was continued to March 23, 2010.

The Joint Council/Redevelopment Agency Board adjourned at 8:04 p.m.

PUBLIC HEARINGS

City Clerk Lee Price read the requests for continuance of the applications. Upon motion by Council Member Liccardo, seconded by Council Member Chu, and carried unanimously, the below noted continuances and actions were taken as indicated. (10-0-1. Absent: Constant.)

11.2 Consider an ordinance rezoning the real property located on the north side of Auzerais Avenue between Bird Avenue and Royal Avenue from LI Light Industrial to A(PD) Planned Development Zoning District to demolish an existing gas station building and construct a new gas station mini-mart/car wash on a 0.6 gross acre site (395 Bird Avenue) (Vintners Distributors, Inc. Sunny Goyal, Owner/Developer). SNI: Burbank/Del Monte. CEQA: Exempt. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1).
PDC09-023 – District 6
(Continued from 2/23/10 – Item 11.5)

Director of Planning, Building and Code Enforcement Joseph Horwedel provided a brief Staff Report.

Mayor Reed opened the public hearing.

Public Comments: The Applicant, speaking on behalf of Sunny Goyal, the Owner/Developer, stated that this was a project that will service the community and bring improvement to the surrounding neighborhood.

Mayor Reed closed the public hearing.

Council Member Oliverio explained that within the last six months Council rejected off-sale liquor licenses in District 5 and District 3 which has impeded grocery stores to come to these areas. He observed that off-sale liquor licenses should be reserved for grocery stores and not gas stations. He encouraged his colleagues to support his motion to deny the planned development.

Motion: Council Member Oliverio moved to deny Item 11.2. Council Member Nguyen seconded the motion.

11.2 (Cont'd.)

Council Member Oliverio noted he does not support the off-sale of alcohol at gas stations, even though the application for a Conditional Use Permit was not the issue on the floor tonight.

City Attorney Richard Doyle and Director of Planning, Building and Code Enforcement Joseph Horwedel responded to Council questions.

Extensive Council discussion ensued.

Council Member Oliverio urged his colleagues to reject the application tonight and added that the Applicant could return at another time to apply for a Conditional Use Permit.

On a call for the question, the motion failed. (4-6-1. Noes: Chirco, Herrera, Kalra, Liccardo, Pyle; Reed. Absent: Constant.)

Council Member Kalra stated that perhaps there was a way to be able to go through with the project. He suggested deferring the application tonight with direction to Staff to continue discussions with the Applicant.

Council Member Oliverio voiced his objection to a deferral of the application.

Action: Upon motion by Council Member Kalra, seconded by Council Member Liccardo and carried, Item 11.2 was deferred and Staff was directed to continue discussions with the Applicant. (9-1-1. Noes: Oliverio. Absent: Constant.)

11.3 Consider an ordinance rezoning the real property located on the west side of Coleman Avenue, north of Newhall Drive (former FMC site) from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District to allow an 18,000-seat professional sports stadium as a permitted use on an approximately 94.8 gross-acre site in addition to previously approved uses on the site (City of San José, Owner). CEQA: EIR Resolution to be adopted. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1).
PDC09-004 – District 3

Documents Filed: (1) Memorandum from Mayor Reed and Council Member Liccardo, dated March 12, 2010, recommending approval of the Staff recommendations with additional conditions. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC09-004, dated February 3, 2010. (3) Memorandum from Planning Commission Secretary Joseph Horwedel, dated February 24, 2010, transmitting the Planning Commission recommendation. (4) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated March 16, 2010, providing additional information received pertaining to the infeasibility of certain mitigation measures that were identified in the Final Environmental Impact Report for the soccer stadium project to reduce noise impacts

11.3 (Cont'd.)

Documents Filed: (Cont'd.)

resulting from implementation of the project. (5) Proof of Publication of Notice of Public Hearing, executed on January 29, 2010, submitted by the City Clerk. (6) Staff presentation dated March 16, 2010 summarizing the Stadium Project. (7) Letter from Donald P. Garber, dated March 15, 2010, expressing support to the proposed stadium project. (8) Copy of letter from Gary Filizetti, President, Devon Construction Inc., to Lewis N. Wolff, San José Earthquakes, dated March 11, 2010, regarding the stadium cost analysis. (9) Copy of letter from Dan Beckerman, CEO/CFO, AEG, to Lewis N. Wolff, San José Earthquakes, dated March 10, 2010, expressing ideas about the Soccer Stadium feasibility. (10) Ten emails from the public all dated March 16, 2010 regarding the proposed stadium.

Director of Planning, Building and Code Enforcement Joseph Horwedel provided the staff presentation.

Mayor Reed opened the public hearing.

Lewis Wolff, San José Earthquakes, spoke to the merits of the project which will provide significant economic benefits to the City of San José through its positive impact on local businesses, job growth and by hosting a wide variety of unique events at the stadium year round. Keith Wolff and David Allioto provided a brief visual presentation on the proposed 18,000 seat stadium project.

Motion: Council Member Liccardo moved approval of the memorandum he cosigned with Mayor Reed, including additional changes, and Council Member Liccardo read the Statement of Overriding Considerations. Council Member Pyle seconded the motion.

Public Comments: Speaking in support to the proposed stadium were Kevin De Coite, Signs Now, John Kennett, Larry Stone, Pat Dando, San José Silicon Valley Chamber of Commerce, Neil Struthers, Building Trades Council, Don Gagliardi, Soccer Silicon Valley, Patricia Ernstrom, San José Sports Authority, John Di Napoli, Michael Mulcahy, Daniel Fenton, Team San José, John Shrader, Steven Beitashour, Warren Barry, Local 393, Gary Filizetti, Devcon Construction, Shiloh Ballard, SVLG, Josue Garcia, Building Trades Council, Mark Petersen, Duran & Venables, Ken Maderios, Aramark, John Jussen, Almaden Valley Youth Soccer, David Heslop, Preston Pipelines, Neil Diaz, Brian Bothman, Robert A. Bothman Inc., Bryan Jarvis, Alida Bray, History San José, Darrell March, Fairmont San José, Michael Jurewicz, Sprig Electric, M. Craggs, Jason Calvillo, Almaden Press, Joe Corona, Laborers Local 270, Richard Hernandez, Luke Vratney, Drywall/Lathers Local 9144, Steven Douglas, Douglas Parking LLC, Enrique Arquillo, Jesus Orodeza, Anthony Salciccia, Tony and Alba's Pizza, Keith Blackey, Robert Van Epps, Bill Guthrie, UA Local 393, Dr. Michael T. Furlong, Furlong Vision Correction, Michael Oberlander, Marcus Pelletier, Courtney Shawlee, Leslie Reynolds, Art Bernstein, San José Downtown Association, J. Ramon Estevez, Ben Field, South Bay Labor Council, Colin McCarthy, Mike Fox, Goodwill of Silicon Valley and James Lull.

11.3 (Cont'd.)

Residents from the Newhall Neighborhood expressed concerns about mitigation measures for the neighborhood such as placing limits on the number of events and restrictions of evening and weekly uses, public participation forums, a firm commitment for mitigation, and concerns about the noise level, pollution and bright lights: Jerome Krinock, Hauke Nehrenheim, Matthew Bright, Benjamin Brooks, Cheryl Foust, Mary Ann Lewis, Joanne Curve and John Urban.

Mayor Reed and Council Member Liccardo provided meeting disclosures.

Director of Planning, Building and Code Enforcement Joseph Horwedel responded to Council questions and concerns. Discussion followed.

Council Member Kalra requested that Staff provide to the Community & Economic Development Committee progress updates on the overall mitigation plan and timeline for the Hitachi, IStar, Great Oaks and FMC properties; information memorandum about discussions with labor bargaining units for the stadium and hotel sites.

Council Member Campos requested an information memorandum be circulated to Council outlining the construction timeline for the stadium project when it becomes available.

Action: On a call for the question, the motion carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, A Statement of Overriding Considerations was read into the record: "The Final Environment Impact Report for this proposed project identified significant and unavoidable environmental impacts. However, as described in more detail in the proposed resolution of the EIR findings for this item there is no feasible way to lessen or avoid these significant effects for this project and approval of this proposed project is anticipated to result in several benefits to the City. All of these benefits outweigh the significant, unavoidable environmental impacts identified in the Final EIR for this Project"; the memorandum from Mayor Reed and Council Member Liccardo, dated March, 12, 2010, was approved as amended, with Staff directed to: (1) Make all necessary findings to approve adoption of the Environmental Impact Report (EIR) entitled: "Airport West Stadium and Great Oaks Place Project". (2) Approve Staff recommendation of Planned Development Rezoning to A(PD) Planned Development Zoning District to allow a professional sports stadium with up to 18,000 seats, in addition to the already allowed uses, on an approximately 94.8 acre site, with the additional conditions: (a) Prior to the start of construction, Applicant shall prepare a proposed "Good Neighbor Process" which will confirm the Applicant's commitment to comply with all mitigation conditioned on the project by the Planning Director as required by the EIR, to provide contact information to local residents for the expression of any concerns and to provide a means for ongoing communication between the Applicant and the surrounding community. (b) Prior to the date of the hearing on the Planned Development Permit, Applicant shall hold one community meeting with City Staff to obtain community input concerning required

11.3 (Action Cont'd.)

mitigation plans by the City of San José. Applicant will be available to respond to any additional community concerns prior to the issuance of the Planned Development Permit. Applicant, along with the project's contractor, shall hold an additional community meeting prior to the start of construction, to address construction related issues. *Community meetings will be held at a time and place convenient for working residents in that community.* (c) Outreach for those community meetings shall include residents and businesses located between Newhall Street and Interstate 880 and the residents of the Newhall neighborhood to the west of the Union Pacific railroad tracks; Ordinance No. 28727, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated at the Northwest and Southwest Corners of Coleman Avenue and Newhall Drive, to A(PD) Planned Development Zoning District", was passed for publication and CEQA Resolution No. 75309 was adopted. Staff agreed to provide to the Community & Economic Development Committee progress updates on the overall mitigation plan and timeline for the Hitachi, IStar, Great Oaks and FMC properties; information memorandum about discussions with labor bargaining units for the stadium and hotel sites; and an information memorandum outlining the construction timeline for the stadium project, when it becomes available. (10-0-1. Absent: Constant.)

ADJOURNMENT

The Council of the City of San José was adjourned at 10:21 p.m. in memory of J. Lindsey Wolf, a former City employee who was San Jose's first citywide public information officer under Mayor Tom McEnery and who over 22 years guided critical communications efforts both citywide and on behalf of the City's numerous environmental programs.

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

smd/03-16-10 MIN

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