

## MINUTES OF THE CITY COUNCIL

**SAN JOSE, CALIFORNIA**

**TUESDAY, NOVEMBER 16, 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, Herrera, Kalra, Liccardo, Nguyen, Oliverio, Pyle; Reed.

Absent: Council Members - Constant. (Excused)

Upon motion unanimously adopted, Council recessed at 9:00 a.m. to a Closed Session in Room W133 (A) Public Employment/Public Employee Evaluation pursuant to Government Code Section 54957: Department: Office of the City Clerk; Title: City Clerk. (B) Public Employment/Public Employee Evaluation pursuant to Government Code Section 54957: Name: LaDoris Cordell; Title: Independent Police Auditor. (C) to confer with Legal Counsel pursuant to Government Code subsection (a) of Section 54956.9 with respect to existing litigation: (1) In re Medrano; Amount of Money or Other Relief Sought: Administrative Appeal. (D) to confer with Legal Counsel pursuant to Section 54956.9 subsection (b) of the Government Code with respect to anticipated litigation of significant exposure (Claim Filed): Claimants: In re Claim of Mohsenzadegan; City Department: DOT. (E) to confer with Legal Counsel pursuant to Government Code subsection (c) of Section 54956.9 with respect to anticipated litigation in one (1) matter. (F) ) to confer with Legal Counsel pursuant to Government Code subsection (a) of Section 54956.9 with respect to existing litigation: In re Compania Mexicana De Aviacion, S.A. de C.V., Debtor in a Foreign Proceeding; Names of Parties Involved: In re Compania Mexicana De Aviacion, S.A. de C.V., Debtor in a Foreign Proceeding, City of San José; Court: United States Bankruptcy Court, Southern District of New York; Case No: 10-14182(MG); Amount of Money or Other Relief Sought: Damages according to proof. (G) 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. Web: <http://www.sanjoseca.gov/employeerelations/moa.asp>; Telephone for Employee Relations: 408-535-8150.

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

By unanimous consent, Council recessed from the Closed Session at 10:45 a.m. and reconvened to Regular Session at 1:33 p.m. in the Council Chambers.

Present: Council Members - Campos, Chirco, Chu, Constant, Herrera, Kalra, Liccardo, Nguyen, Oliverio (1:40 p.m.), Pyle; Reed.

Absent: Council Members - All Present.

## **INVOCATION**

Almaden Senior Association Members presented the Invocation. (District 10)

## **PLEDGE OF ALLEGIANCE**

Mayor Reed led the Pledge of Allegiance.

## **ORDERS OF THE DAY**

Upon motion by Council Member Pyle seconded by Vice Mayor Chirco and carried unanimously, the Orders of the Day and the Amended Agenda were approved, and Item 2.4(b) was dropped. (10-0-1. Absent: Oliverio.)

## **CLOSED SESSION REPORT**

City Attorney Doyle disclosed the following Closed Session actions of November 16, 2010:

### **A. Authority to Initiate Litigation:**

Authority to initiate litigation was given in one matter. The names of the action(s) and the defendant(s), as well as the substance of the litigation shall be disclosed to any person upon inquiry once the action(s) are formally commenced.

Council Vote: Ayes: Campos, Chirco, Chu, Herrera, Kalra, Liccardo, Nguyen, Oliverio, Pyle; Reed.

Noes: None.  
Disqualified: None.  
Absent: Constant.

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

### **B. Public Employee Appointment Pursuant to Government Code Section 54957:**

Title: City Clerk

Name: Dennis Hawkins

Council Vote: Ayes: Campos, Chirco, Chu, Herrera, Kalra, Liccardo, Nguyen, Oliverio, Pyle; Reed.

Noes: None.

Disqualified: None.

Absent: Constant.

## **CEREMONIAL ITEMS**

### **1.1 Presentation of a proclamation declaring November 1-30, 2010 as the “2010 Combined Giving Campaign”. Environmental Services)**

Action: Mayor Reed and Director of Environmental Services John Stufflebean recognized November 1 through November 30, 2010 as the “2010 Combined Giving Campaign”.

### **1.2 Presentation of a proclamation recognizing the month of November 2010 as “National Alzheimer’s Disease Awareness Month” in the City of San José. (Herrera)**

Action: Mayor Reed and Council Members Herrera and Constant recognized the month of November 2010 as “National Alzheimer’s Disease Awareness Month”.

### **1.3 Presentation of a proclamation declaring November 16, 2010 as “GIS Day” in the City of San José. (Constant) (Rules Committee referral 11/10/10)**

Action: Mayor Reed and Council Member Constant recognized November 16, 2010 as “Geographic Information Systems (GIS) Day”.

### **1.4 Presentation of a proclamation declaring the week of November 22 – 27, 2010 as “Family Week” in the City of San José. (Kalra) (Rules Committee referral 11/10/10)**

Action: Mayor Reed and Council Member Kalra recognized the week of November 22 through November 27, 2010 as “Family Week”.

## CONSENT CALENDAR

Upon motion by Council Member Pyle, 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: Chu, Herrera.)

### 2.1 Approval of Minutes.

Action: There were none.

### 2.2 Final adoption of ordinances.

- (a) **ORD. NO. 28844** – An interim ordinance of the City of San José establishing a temporary moratorium, in the event that State of California Proposition 19 passes by a majority of the electorate participating in the November 2, 2010 statewide election, on the establishment or expansion of businesses involving the cultivation, processing, distribution, transportation, sale, possession or consumption of marijuana that may be allowed under Proposition 19, pending the review and possible amendment by the City of San José of land use and other regulations applicable to such businesses or uses, and setting forth the legislative findings to support such temporary moratorium.

Action: Item 2.2(a) was dropped.

- (b) **ORD. NO. 28846** – Rezoning certain real property situated at the northerly corner of Clayton Road and Hickerson Drive (10160 Clayton Road) from the R-1-5 Residential Zoning District to the A(PD) Planned Development Zoning District. PDC09-027

Documents Filed: Proof of Publication of the Title of Ordinance No. 28846 executed on November 9, 2010, submitted by the City Clerk.

Action: [Ordinance No. 28846](#) was adopted. (9-0-2. Absent: Chu, Herrera.)

- (c) **ORD. NO. 28848** – Amending Section 3.36.580 of Part 4 of Chapter 3.36 of Title 3 of the San José Municipal Code to suspend the distribution of funds from the Police and Fire Department Retirement Plan Supplemental Retiree Benefit Reserve during Fiscal Year 2010-2011.

Documents Filed: Proof of Publication of the Title of Ordinance No. 28848 executed on November 12, 2010, submitted by the City Clerk.

Action: [Ordinance No. 28848](#) was adopted. (9-0-2. Absent: Chu, Herrera. First Reading: 8-2-1. Noes: Chu, Kalra. Absent: Campos.)

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

- (a) Rules and Open Government Committee Report of October 27, 2010. (Mayor)**
- (b) Transportation and Environment Committee Report of November 1, 2010. (Liccardo)**
- (c) Community and Economic Development Committee Report of October 25, 2010. (Pyle)**

Documents Filed: (1) The Rules and Open Government Committee dated October 27, 2010. (2) The Transportation and Environment Committee Report dated November 1, 2010. (3) The Community and Economic Development Committee Report dated October 25, 2010.

Public Comments: David Wall presented his point of view on the recent Police Leadership in Equity Quarterly Report and the cost of the high speed rail.

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

- ### **2.4**
- (a) Request for an excused absence for Council Member Chu from the City Council Study Session on November 18, 2010 due to Authorized City Business: League of California Cities Board of Directors Meeting in San Diego, CA. (Chu)  
(Rules Committee referral 11/03/10)**

Documents Filed: Memorandum from Council Member Chu, dated October 29, 2010, requesting an excused absence.

Action: The absence for Council Member Chu was excused. (9-0-2. Absent: Chu, Herrera.)

- (b) Request for excused absences for Council Member Campos from the City Council Study Session on November 8, 2010, and the Closed Session and Afternoon Session of the City Council on November 9, 2010 due to mandatory trainings and meetings for all Newly Elected Assembly Members. (Campos)**

Documents Filed: Memorandum from Council Member Campos, dated November 5, 2010, requesting excused absences.

Action: Dropped per Orders of the Day.

### **2.5 City Council Travel Reports.**

Action: There were none.

- 2.6 Approve a grant agreement with the Association of Bay Area Governments which will provide trash capture equipment for installation in existing storm drainage infrastructure necessary for compliance with the requirements of the San Francisco Bay Municipal Regional Stormwater Permit. CEQA: Not a Project, File No. PP10-066(a) – cooperative purchase. The execution of this agreement is not a project. However, additional CEQA review will be required for the actual construction activities related to the installation of some of these trash capture devices based upon the specific physical environmental circumstances of the sites selected. (Environmental Services)**

Documents Filed: Memorandum from Director of Environmental Services John Stufflebean, dated October 25, 2010, recommending approval of a grant agreement.

Public Comments: David Wall spoke in favor of the Staff recommendations.

Action: Upon motion by Council Member Pyle, seconded by Council Member Nguyen and carried unanimously, a grant agreement with the Association of Bay Area Governments was approved. (9-0-2. Absent: Chu, Herrera.)

- 2.7 Approve a First Amendment to Lease with Legacy Partners for 3,013 square feet of office space located at 75 E. Santa Clara for the Independent Police Auditor for an additional five years beginning on November 1, 2010. The cost of lease payments will be \$4,820.80 per month during the first year of the extended term, \$4,971.45 for the second year, \$5,122.10 for the third year, \$5,272.75 for the fourth year, and \$5,423.40 for the fifth year. CEQA: Exempt, File No. PP10-066(f). Council District 3. (General Services)**

Documents Filed: Memorandum from Director of General Services Peter Jensen, dated October 29, 2010, recommending approval of a first amendment to the lease.

Public Comments: David Wall spoke in opposition to the Staff recommendation. Robert Cortese suggested relocating the Independent Police Auditor to the Old City Hall. Mr. Cortese was referred to Assistant City Manager Edward K. Shikada for further information.

Action: Upon motion by Council Member Pyle, seconded by Council Member Nguyen and carried unanimously, the First Amendment to Lease with Legacy Partners for 3,013 square feet of office space located at 75 E. Santa Clara for the Independent Police Auditor for an additional five years beginning on November 1, 2010. The cost of lease payments will be \$4,820.80 per month during the first year of the extended term, \$4,971.45 for the second year, \$5,122.10 for the third year, \$5,272.75 for the fourth year, and \$5,423.40 for the fifth year was approved. (9-0-2. Absent: Chu, Herrera.)

- 2.8 (a) **Approve Contract Change Order No. 26 for Watson Park Remediation and Phase I Improvements Project in the amount of \$132,332 and adoption of a resolution authorizing the Director of Public Works to execute Contract Change Order No. 26.**
- (b) **Approve an increase in the project delivery budget in the amount of \$84,328.**
- (c) **Approve an increase in the contingency budget in the amount of \$325,094.**
- CEQA: Mitigated Negative Declaration, File No. PP07-130, September 2008. Council District 3. SNI: 13<sup>th</sup> Street. (Public Works)**

Documents Filed: Memorandum from Assistant Director of Public Works David Sykes, dated November 3, 2010, recommending approval of the change order, increase in the project delivery budget, with related contingency.

Action: [Resolution No. 75632](#), entitled: “A Resolution of the Council of the City of San José Authorizing the Director of Public Works to Execute Contract Change Order No. 26 with Joseph J. Albanese, Inc. for the Watson Park Remediation and Phase I Project in the Amount of \$1,32,332”, was adopted, and increases in the project delivery budget in the amount of \$84,328 and in the contingency budget in the amount of \$325,094 were approved. (9-0-2. Absent: Chu, Herrera.)

- 2.9 **Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the Services for Redevelopment Capital Projects Fund (City-side Redevelopment Fund) for 2010-2011:**
- (a) **Increase the estimate for Earned Revenue by \$116,000.**
- (b) **Establish the appropriation to the Department of Public Works for the Improvement District 99-218SJ Deferral of Assessments Fiscal Year 2010-2011 (PSM 613) in the amount of \$116,000.**
- (Public Works/City Manager’s Office)**

Documents Filed: Memorandum from Director of Public Works Katy Allen and Budget Director Jennifer Maguire, dated October 27, 2010, recommending adoption of appropriation ordinance and funding sources resolution amendments.

Action: [Ordinance No. 28851](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 28765 to Appropriate Monies in Services for Redevelopment Capital Projects Fund for the Improvement District 99-218SJ Deferral of Assessments Fiscal Year 2010-2011; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption” and [Resolution No. 75633](#), entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 75447 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2010-2011 to Adjust Revenues in the Services for Redevelopment Capital Projects Fund”, were adopted. (9-0-2. Absent: Chu, Herrera.)

- 2.10 **Approve travel by Council Member Chu to San Diego, California on November 17 – 19, 2010 to attend the League of California Cities Board of Directors Meeting as San José’s designated representative. Source of Funds: Mayor & Council Travel Fund. (Chu)**
- (Rules Committee referral 11/03/10)**

**2.10 (Cont'd.)**

Documents Filed: Memorandum from Council Member Chu, dated October 28, 2010, recommending approval of travel.

Action: The travel request for Council Member Chu was approved. (9-0-2. Absent: Chu, Herrera.)

**2.11 Approve travel by Council Member Chu to Denver, Colorado on December 1 – 4, 2010 to attend the National League of Cities Congress of Cities Conference and Annual Business Meeting. Source of Funds: Mayor & Council Travel Fund. (Chu) (Rules Committee referral 11/03/10)**

Documents Filed: Memorandum from Council Member Chu, dated October 28, 2010, recommending approval of travel.

Action: The travel request for Council Member Chu was approved. (9-0-2. Absent: Chu, Herrera.)

**2.12 As recommended by the Rules and Open Government Committee on November 10, 2010:**

- (a) Approve the District 6 showing of the film “Trashed” 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 11/10/10 – Item H(4)]**

Documents Filed: Memorandum from City Clerk Lee Price, MMC, dated November 9, 2010, transmitting the recommendations of the Rules and Open Government Committee.

Action: The District 6 showing of the film “Trashed” as a City Council sponsored Special Event was approved and approval to accept donations from various individuals, businesses, or community groups to support the event was authorized. (9-0-2. Absent: Chu, Herrera.)

**END OF CONSENT CALENDAR**

**STRATEGIC SUPPORT SERVICES**

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

City Manager Debra Figone reported on the previously outlined agenda for the November 18, 2010 Special City Council Meeting which will focus on the FY 2011/12 budget process and projected \$70M deficit, annual labor negotiations, retirement reform progress, organizational and service area restructuring and service delivery model changes.

- 3.2 (a) **Hold a Tax Equity and Fiscal Responsibility Act (“TEFRA”) Hearing for the issuance of \$14,000,000 of tax-exempt 501(c)(3) revenue bonds by the California Municipal Finance Authority (“CMFA”) for the benefit of Lincoln Glen Manor for Senior Citizens Project located at 2671 Plummer Avenue, San José, CA.**
- (b) **Adopt a resolution approving the issuance of Tax-Exempt Revenue Bonds, by the CMFA in an aggregate principal amount not to exceed \$14,000,000 to be used to (a) refund, on a current basis, all outstanding ABAG Finance Corporation for Nonprofit Corporations Insured Certificates of Participation (Lincoln Glen Manor for Senior Citizens), Series 2000, executed and delivered to (i) refinance certain existing indebtedness of Lincoln Glen Manor for Senior Citizens (“the Corporation”), (ii) finance the renovation of existing buildings, and (iii) finance the costs of construction of a 31 unit assisted living facility; (b) finance the conversion of 8 independent living units (from a 20 unit building) into 11 memory care beds for patients suffering from Alzheimer’s disease and dementia; and (c) finance the expansion, remodeling and updating of the Corporation’s Central Manor, all located at the Corporation’s multi-level facility for the elderly at 2671 Plummer Avenue in the City to be owned and operated by the Corporation and located within the City.**

**CEQA: Not a Project, File No. PP10-067, Non-Project Specific Funding Mechanism. (Finance)**

Documents Filed: Memorandum from Director of Finance Scott P. Johnson, dated October 25, 2010, recommending holding a TEFRA Hearing and adoption of a resolution.

Mayor Reed opened the TEFRA Hearing.

Public Comments: There was no testimony from the floor. Mayor Reed closed the TEFRA Hearing.

Action: Upon motion by Council Member Pyle, seconded by Vice Mayor Chirco and carried unanimously, [Resolution No. 75634](#), entitled: “A Resolution of the Council of the City of San José Approving the Issuance of the California Municipal Finance Authority Tax-Exempt Revenue Bonds (Lincoln Glen Manor for Senior Citizens), Series 2011, In An Aggregate Principal Amount Not To Exceed \$14,000,000, For the Purpose of Financing and Refinancing Facilities for Lincoln Glen Manor for Senior Citizens and Certain Other Matters Relating Thereto”, was adopted. (10-0-1. Absent: Herrera.)

- 3.3 **Approve an Ordinance to retroactively amend Chapter 3.48 of the San José Municipal Code to allow rollovers from the City’s Police and Fire Department Retirement Plan and Federated City Employees Retirement System into the City’s Deferred Compensation Plan. CEQA: Not a Project, File No. PP10-068(b), Municipal Code, Title 3. (Human Resources)**

Documents Filed: Memorandum from Director of Human Resources Mark Danaj, dated November 4, 2010, recommending approval of an ordinance.

### 3.3 (Cont'd.)

Action: Upon motion by Vice Mayor Chirco, seconded by Council Member Pyle and carried unanimously, [Ordinance No. 28852](#), entitled: “An Ordinance of the City of San José Amending Chapter 3.48 of Title 3 of the San José Municipal Code to Allow the City of San José Deferred Compensation Plan to Accept Rollovers of Eligible Distributions from the City of San José’s Pension Plans and Credit Such Distributions to Terminated Employees’ City of San José Deferred Compensation Plan Accounts”, was passed for publication. (11-0.)

### 3.4 **Adopt a resolution amending and restating Resolution No. 72859 to provide that there shall be no supplemental retiree benefit reserve distribution from the Federated City Employees Retirement Plan during Fiscal Year 2010-11. (Rules Committee referral 11/10/10)**

Documents Filed: Supplemental memorandum from Director of Employee Relations Alex Gurza, dated November 16, 2010, providing the Federated City Employees Retirement Board’s recommendation on the City Council’s action to suspend SRBR payments for Fiscal Year 2010-2011.

Action: Upon motion by Vice Mayor Chirco, seconded by Council Member Herrera and carried, [Resolution No. 75635](#), entitled: “A Resolution of the Council of the City of San José Amending and Restating Resolution No. 72859 Regarding the Supplemental Retiree Benefit Reserve of the Federated City Employees Retirement Fund, To Suspend the Distribution of Funds from the Reserve During Fiscal Year 2010-2011”, was adopted. (8-3. Noes: Campos, Chu, Kalra.)

## COMMUNITY & ECONOMIC DEVELOPMENT

### 4.1 **Adopt a resolution:**

- (a) **Authorizing the Director of Housing to negotiate and execute contracts to implement the federally funded Neighborhood Stabilization Program 2 Single-Family Acquisition/Rehabilitation/Resale Program for up to (1) \$5,600,000 with the Cypress Group, and (2) \$5,600,000 with Community Rehabilitation Partners for a total of \$11,200,000.**
- (b) **Authorizing the Director of Housing to negotiate and execute subsequent contract amendments with the Cypress Group and Community Rehabilitation Partners to include future program income received from the resale of NSP 2 homes.**

**CEQA: Exempt, File No. PP10-166. Council Districts 2, 3, 4, 5, 6, 7, 8 and 10. SNI: 13th Street, University, Washington, Greater Gardner, K. O. N. A., Mayfair, Tully Senter, Gateway East, West Evergreen, Spartan Keyes, East Valley/680 Communities, Edenvale/Great Oaks, Hoffman/Via Monte. (Housing)**

Documents Filed: Memorandum from Director of Housing Leslye Corsiglia, dated October 26, 2010, recommending adoption of a resolution.

#### 4.1 (Cont'd.)

Action: Upon motion by Council Member Nguyen, seconded by Council Member Herrera and carried unanimously, [Resolution No. 75636](#), entitled: “A Resolution of the Council of the City of San José Authorizing the Director of Housing to Negotiate and Execute Contracts to Implement the Neighborhood Stabilization Program 2 with the Cypress Group and Community Rehabilitation Partners and To Negotiate and Execute Any Subsequent Contract Amendments”, was adopted. (11-0.)

- 4.2
- (a) **Accept staff report on licensing and regulating tobacco retail establishments.**
  - (b) **Direct the City Attorney to draft an ordinance amending the San Jose Municipal Code to add a new Chapter to license and regulate establishments engaged in the sale of tobacco and tobacco related products.**
  - (c) **Direct the City Attorney to draft a resolution amending the City’s Schedule of Fees and Charges to establish fees associated with the licensing and regulation of tobacco retail establishment.**
  - (d) **Direct the City Attorney to draft a resolution amending the City’s Schedule of Administrative Fines to establish fine amounts for violations of the new Chapter.**

**CEQA: Not a Project, File No. PP10-068(b). (Planning, Building and Code Enforcement)**

Documents Filed: (1) Memorandum from Council Members Campos, Chu and Kalra, dated November 12, 2010, as described in “Action”. (2) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated November 2, 2010, as recommended above in Item 4.2(a)-(d). (3) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated November 10, 2010, informing the City Council that the City of San José received \$128,190 from the County of Santa Clara’s Public Health Department. (4) Staff presentation dated November 16, 2010 summarizing the Tobacco Retail Establishment Licensing Program.

Code Enforcement Administrator Jamie L. Matthew presented the report on the Tobacco Retail Establishment Licensing Program.

Motion: Council Member Campos moved approval of the memorandum she cosigned with Council Members Chu and Kalra, the Staff memorandum dated November 2, 2010, accepting the Staff recommendations, directing the City Attorney to return to City Council on *December 14, 2010*, with an analysis of program costs required to enforce State and local tobacco laws regarding illegal sales to minors that can be recovered through fees collected by Tobacco Retail License Program and directing the City Manager to return to City Council on *December 14, 2010* with information on potential youth decoy enforcement partnerships. Council Member Chu seconded the motion.

Council Member Constant expressed opposition and concern about duplication of the State laws and suggested waiting until the economy was better.

## 4.2 (Cont'd.)

Public Comments: Speaking in opposition to the Staff recommendations because it was unnecessary and costly to the City, of high State and local taxes, the loss of revenue for social programs and loss of business, imposing costly remodels to hide the displays and very detrimental to small businesses were, Andrew Reddy, Club Havana, Charles Janigian, California Association of Retail Tobacconists, Bob Gray, Donna Brown, Mission Pipe, Bill Davis, Mathew Harrison, West Coast Cigars, Debbie Morton, Smokers Paradise, Ashok Kuma, 7-Eleven, Kpish Goyal, small gas station owner and Tom Robinson, Rotten Robbie.

Speaking in support to the Staff recommendations were Janie Burkhart, County of Santa Clara Public Health, Emily Lam, Silicon Valley Leadership Group, Vy Hoeng and Patsy Ann Cortez, Community Advocate Teens of Today.

City Attorney Richard Doyle, City Manager Debra Figone, Director of Planning, Building and Code Enforcement Joseph Horwedel and Code Enforcement Administrator Jamie L. Matthew responded to Council questions.

Extensive Council discussion ensued.

Council Member Oliverio explained that he could not support the motion today unless there was actual enforcement that the community shows respect to the law and an example was made of selling tobacco illegally to minors.

Council Member Chu requested to amend the motion to direct Staff to identify and include two or three other languages in the outreach effort, in addition to English, Spanish and Vietnamese. The amendment was accepted by Council Member Campos.

Council Member Herrera requested to amend the motion to direct Staff to eliminate all State duplications and include an economic analysis. The amendment was accepted by Council Members Campos and Chu.

Action: On a call for the question, the motion carried, the memorandum from Council Members Campos, Chu and Kalra, dated November 12, 2010, was approved, *as amended:* (1) Accept Staff recommendations. (2) Direct the City Attorney to return to City Council on *December 14, 2010*, with an analysis of program costs required to enforce State and local tobacco laws regarding illegal sales to minors that can be recovered through fees collected by Tobacco Retail License Program. (3) Direct the City Manager to return to City Council on *December 14, 2010*, with information on potential youth decoy enforcement partnerships. (4) In addition to English, Spanish and Vietnamese, identify and include two or three other languages in the outreach effort. (5) Eliminate all State duplications. (6) Include an economic analysis. (9-2. Noes: Constant, Oliverio.)

## NEIGHBORHOOD SERVICES

- 5.1 (a) **Report on bids and award of contract for the Watson Park Phase II Improvements Project to the low bidder, Joseph J. Albanese, Inc., for the base bid and Add Alternate No. 1 in the amount of \$1,702,000, and approval of a contingency in the amount of \$158,000.**
- (b) **Adopt the following Appropriation Ordinance amendments in the Subdivision Park Trust Fund (Fund 375):**
- (1) **Increase the appropriation to the Parks, Recreation and Neighborhood Services Department for the Watson Park Phase II Development (Soccer Field) by \$416,000.**
  - (2) **Decrease the appropriation to the Parks, Recreation and Neighborhood Services Department for the Reserve: Future PDO/PIO Projects by \$416,000.**

**CEQA: Mitigated Negative Declaration, File No. PP07-130, September 2008. Council District 3. SNI: 13<sup>th</sup> Street. (Public Works/Parks, Recreation and Neighborhood Services/City Manager's Office)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, Director of Parks, Recreation and Neighborhood Services Albert Balagso and Budget Director Jennifer Maguire, dated October 25, 2010, recommending award of the contract to the low bidder and adoption of appropriation ordinance resolution amendments.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, the award of contract for the Watson Park Phase II Improvements Project to the low bidder, Joseph J. Albanese, Inc., for the base bid and Add Alternate No. 1 in the amount of \$1,702,000, with related contingency was approved and [Ordinance No. 28853](#), entitled: "An Ordinance of the City of San José Amending Ordinance No. 28765 to Appropriate Monies in the Subdivision Park Trust Fund for the Watson Park Phase II Development (Soccer Field) Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", was adopted. (10-0-1. Absent: Constant.)

## TRANSPORTATION & AVIATION SERVICES

- 6.1 **Approval of Various Actions Related to the California High Speed Rail Train Project. CEQA: Not a Project, File No. PP10-066(e), agreement involving no physical change to the environment. The recommended actions are advisory to the CHSRA. The CHSRA is in the process of preparing an EIR for the High-Speed Train project. (Transportation)**  
**(Deferred from 10/19/10 – Item 6.2)**

Action: Deferred to December 07, 2010 per Administration.

**6.2 Initiate a public hearing regarding the formation of Maintenance District 23, generally located along Berryessa east of Interstate 680 to Piedmont Road, and continue the public hearing and all subsequent actions, including the election process and formation, until January 11, 2011. CEQA: Exempt, File No. PP10-090. Council District 4. (Public Works/Transportation)**

Documents Filed: (1) Supplemental memorandum from Director of Public Works Katy Allen, dated November 8, 2010, modifying the Council action to allow all property owners to receive the full 45 day noticing of the public hearing for proposed Maintenance District 23, to initiate the public hearing and continue the public hearing and all subsequent actions, including the election process and formation, until January 11, 2011. (2) Statement and Declaration of Conflict of Interest Form from Council Member Chu, dated November 16, 2010, disclosing he owns real property within 500 feet of the property.

Mayor opened the public hearing.

Public Comments: Speaking in protest to the formation of Maintenance District 23 were Margaret Perry, Alan Perry and Ian Champeny, County of Santa Clara.

City Attorney Richard Doyle disclosed that Council Member Chu was recused from participating in the discussion due to a conflict of interest, he lives within 500 feet of the property.

Council discussion ensued.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, the Public Hearing on the formation of Maintenance District 23 was continued to January 11, 2011 at 1:30 p.m. (9-0-1-1. Disqualified: Chu. Absent: Constant.)

## **ENVIRONMENTAL & UTILITY SERVICES**

**7.1 Hold a public hearing on the application of Revolution Resource Recovery, LLC for a Commercial Solid Waste and Recyclables Collection Franchise, approve the ordinance granting the franchise, and approve the Commercial Solid Waste and Recyclables Collection Franchise Agreement for a term from December 21, 2010 to June 30, 2012 with the option of three one-year extensions. CEQA: Exemption; File No. PP08-228. (Environmental Services)**

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean, dated October 25, 2010, recommending holding a public hearing and approval of an ordinance. (2) Proof of Publication of Notice of Public Hearing, executed on October 22, 2010, submitted by the City Clerk

## 7.1 (Cont'd.)

Public Comments: Mayor Reed opened the public hearing. There was no testimony from the floor. Mayor Reed closed the public hearing.

Action: Upon motion by Vice Mayor Chirco, seconded by Council Member Pyle and carried unanimously, [Ordinance No. 28854](#), entitled: “An Ordinance of the City of San José Granting a Commercial Solid Waste and Recyclables Collection Franchise to Revolution Resource Recovery, LLC”, was passed for publication. (11-0.)

## NEIGHBORHOOD SERVICES

### 5.2 Adopt a resolution to:

- (a) **Implement a pilot program, through December 31, 2011, to authorize staff:**
  - (1) **To proceed with the development of any new park, trail or recreational facility for which there is (1) an appropriation of all funding necessary for the full development of the project including design and construction for all improvements and amenities set forth in the City Council approved master plan for that project and (2) identification of funding for a three-year park establishment period.**
  - (2) **To proceed with the development of any new park, trail or recreational facility for which there is (1) an appropriation of funding for the design and construction of the project for all improvements and amenities set forth in the City Council approved master plan for the project and (2) a “donation” agreement for all work during the three-year park establishment period.**
  - (3) **To use parkland fees and Construction & Conveyance taxes to fund a three-year park establishment period as part of the full cost of the development of any new park, trail or recreational facility, provided that including such funding does not prevent funding the design and building of a new park, trail, or recreational facility identified as an “existing” or “Priority 1” project in the adopted Greenprint Update.**
- (b) **Modify the park maintenance exemption to the City’s prevailing wage requirements approved by the City Council on February 12, 2008 to include any “donated” park establishment period services or park maintenance by a developer or other entity with, or without, an interest in a development in the City, provided that the donation is for a minimum of two years and meets the other conditions set forth in the memorandum.**

**CEQA: Not a Project, File No. PP10-068, General Procedure and Policy Making. (Parks, Recreation and Neighborhood Services)  
(Deferred from 11/9/10 – Item 5.1)**

## 5.2 (Cont'd.)

Documents Filed: (1) Memorandum from Vice Mayor Chirco and Council Members Liccardo, Oliverio and Pyle, dated November 11, 2010, recommending acceptance of the Staff recommendations with modifications. (2) Memorandum from Council Member Chu, dated November 15, 2010, recommending acceptance of the Staff recommendations with amendments. (3) Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated October 20, 2010, recommending adoption of a resolution. (4) Staff presentation dated November 16, 2010 summarizing the Funding Recommendations for New Park Facilities. (5) Letter from Marc Liebman, Ph.D., Superintendent, Berryessa Union School District, dated November 15, 2010, expressing support for the completion of Mabury/Commodore Park. (6) Two emails from the public both dated November 16, 2010, expressing support for the completion of Mabury/Commodore Park.

Parks, Recreation and Neighborhood Services Division Manager Matt Cano presented the report on the Funding Recommendations for New Park Facilities.

Motion: Council Member Liccardo moved approval of the revised memorandum he cosigned with Vice Mayor Chirco and Council Members Oliverio and Pyle, including the revision from the City Attorney. Council Member Oliverio seconded the motion.

Director of Parks, Recreation and Neighborhood Services Albert Balagso responded to Council questions.

Council Members Liccardo and Oliverio accepted the following amendment from the Director of Parks, Recreation and Neighborhood Services: provided that including such funding does not prevent funding the design and building of a new park, trail or recreational facility identified as an “existing” or “Priority 1” project in the adopted Greenprint Update.

Public Comments: Speaking in support to the Staff recommendations were Nancy Thomas, Mike Flaughner and Matthew Bright.

Action: On a call for the question, the motion carried unanimously, the memorandum from Vice Mayor Chirco and Council Members Liccardo, Oliverio and Pyle, dated November 11, 2010, was approved as revised: Accepting the Staff recommendations with the following modifications: (1) Implement a pilot program for the parks identified as “fully funded” in staff’s memorandum, and for any other park for which an alternative maintenance funding plan can be established by December 31, 2012, to authorize the City Manager, where appropriate to advance park development, to: (a) Implement “Alternative B” – to allow park projects to proceed through design and construction with non-General Fund dollars utilized for a three-year “establishment period,” but only where a longer-term plan can be implemented for funding maintenance. (b) Concurrent with, or in lieu of, “Alternative B,” proceed with negotiations with willing developers under “Alternative A,” to *credit* some portion of a development’s PDO/PIO fees where that developer

## 5.2 (Action Cont'd.)

contributes the same or substantially similar amount to a fund--e.g., a “maintenance trust” established through the San José Parks Foundation—restricted to pay for maintenance and operations for that park for a minimum of 10 years, *provided that including such funding does not prevent funding the design and building of a new park, trail or recreational facility identified as an “existing” or “Priority 1” project in the adopted Greenprint Update.* (2) Restrict staff’s proposed modification of the prevailing wage policy for developer-financed maintenance of parks to those circumstances in which the developer has not benefited from any waiver of, reduction of, or compensation for park development fees associated with the specific park they are proposing to maintain. In addition, concur with staff’s proposal that the prevailing wage exemptions applies when maintenance services are provided solely by a donor such as a homeowners association, corporation, social fraternal organization, or neighborhood volunteers. (3) Authorize the City Manager to negotiate and execute any agreements or amendments with developers pursuant to Recommendation 1; and [Resolution No. 75638](#), entitled: “A Resolution of the Council of the City of San José To: (1) Implement a Pilot Program, Through December 31, 2012, To Authorize City Staff to Proceed with the Development of Any New Park, Trail or Recreational Facility that Meets Certain Funding Criteria and (2) Modify the Park Maintenance Exemption to the City’s Prevailing Wage Requirements”, was adopted, as amended. (9-0-2. Absent: Campos, Constant.)

## OPEN FORUM

- (1) Carl Guardino, Silicon Valley Leadership Group, presented an invitation to join the 2010 Turkey Trot 5K Run/Walk & 10K Run on November 25, 2010 at Guadalupe River Park.
- (2) Mike Flaucher expressed concerns about a cannabis club near El Parador Senior Housing on Bascom Avenue.
- (3) Robert Cortese raised concerns about karaoke piracy.

## ADJOURNMENT

The Council of the City of San José was adjourned at 4:40 p.m. in memory of Michelle Wagner, member of the Santa Visits Alviso Foundation in District 4, who passed away on September 3, 2010. (Chu)

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC  
City Clerk  
smd/11-16-10 MIN

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## **JOINT REDEVELOPMENT AGENCY ITEM**

The Redevelopment Agency Board convened at 4:40 p.m. to consider Items 8.1 in a Joint Session.

### **8.1 City Council and Redevelopment Agency Board approval of:**

- (a) The fourth amendment to the Cooperation Agreement between the Redevelopment Agency and the City of San José, extending the term for the loan and employment of an Agency employee to the Office of the Mayor to serve as Senior Policy Advisor, Economic Development and Land use by one year.**
- (b) The fourth amendment to the Cooperation Agreement between the Redevelopment Agency and the City of San José, extending the term for the loan and employment of an Agency employee to the Office of the Mayor to serve as Schedule Coordinate by one year.**

**CEQA: Not a Project.**

Documents Filed: Memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes, dated November 4, 2010, recommending approval of the amendments to the cooperation agreements.

Action: Upon motion by Council Member Constant, seconded by Council Member Herrera and carried unanimously, the fourth amendment to the Cooperation Agreement between the Redevelopment Agency and the City of San José, extending the term for the loan and employment of an Agency employee to the Office of the Mayor to serve as Senior Policy Advisor, Economic Development and Land use by one year and the fourth amendment to the Cooperation Agreement between the Redevelopment Agency and the City of San José, extending the term for the loan and employment of an Agency employee to the Office of the Mayor to serve as Schedule Coordinate by one year were approved. (10-0-1. Absent: Campos.)

The Council of the City of San José and Redevelopment Agency Board was adjourned at 4:40 p.m.