



MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, SEPTEMBER 21, 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, Nguyen, Oliverio, Pyle; Reed.

Absent: Council Members - Liccardo. (Excused)

Upon motion unanimously adopted, Council recessed at 9:30 a.m. to a Closed Session in Room W133 (A) to confer with legal counsel pursuant to Section 54956.9 subsection (b) of the Government Code with respect to anticipated litigation of significant exposure: (1) In re: Claim of Ghenis; City Department: PRNS; (2) In re: Claim of Banuelos; City Department: DOT; (3) In re: Claim of Ortiz; City Department: DOT; (4) In re: Claim of Head; City Department: PRNS; (5) In re: Claim of Pham; City Department: Police. (B) to confer with Legal Counsel pursuant to Government Code subsection (b) of Section 54956.9 with respect to anticipated litigation of significant exposure in one (1) matter. (C) to confer with Legal Counsel pursuant to Government Code subsection (c) of Section 54956.9 with respect to anticipated litigation in three (3) matters. (D) to confer with Legal Counsel pursuant to Government Code subsection (a) of Section 54956.9 with respect to existing litigation: (1) Beltran v. City; Names of Parties Involved: Consuela Beltran, City of San José, Does 1 -50; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV170281; Amount of Money or Other Relief Sought: Damages according to proof; (2) Citizens Against Airport Pollution v. City et al; Names of Parties Involved: Citizens Against Airport Pollution, an unincorporated association and Does 1 to 5, City of San José, City Council of the City of San José and Does 6 to 10, Does 10 to 30, Real Parties in Interest; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV177290; Amount of Money or Other Relief Sought: City to set aside and void approvals relating to 8th addendum to Airport Master Plan; (3) Sky Chefs, Inc. v. City of San José; Names of Parties Involved: Sky Chefs, Inc., City of San José; Court: United States District Court, Northern District of California; Case No: C09-03735 RS; Amount of Money or Other Relief Sought: Declaratory and injunctive relief; (4) Elliott v. City; Names of Parties Involved: Greg Elliott, City of San José, Does 1-20; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV172738; Amount of Money or Other Relief Sought: Damages according to proof; (5) City v.

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International Association of Firefighters, et al; Names of Parties Involved: City of San José, International Association of Firefighters, Local 230; Court: Superior Court of California, County of Santa Clara; Case No: 1-06-CV-075858; Amount of Money or Other Relief Sought: Motion to compel arbitration; (6) City v. Association of Building, Mechanical and Building Inspectors; Names of Parties Involved: City of San José, Association of Building, Mechanical and Building Inspectors; Court: State of California Public Employment Relations Board; Case No: SF-CO-168-M; (7) Great Oaks Water, Inc. v. City, et al; Names of Parties Involved: Great Oaks Water Company, Inc., John W.S. Roeder, Betty B. Roeder, Betty B. Roeder Trust A and William C. Miller, Jr., and Betty B. Roeder, Trustees of the Walter S. Roeder Trust B, City of San José, San José Redevelopment Agency, South Bay Water Recycling, Does 1-100; Amount of Money or Other Relief Sought: Damages according to proof; (8) Murrel v. City; Names of Parties Involved: Dawn Murrel, City of San José, Does 1-100; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV172575; Amount of Money or Other Relief Sought: Damages according to proof; (9) City v. IAFF (Michael Baldwin); Names of Parties Involved: City of San José, International Association of Firefighters, , Local 230, Michael Baldwin; Court: Superior Court of California, County of Santa Clara; Court of Appeal of the State of California, Sixth Appellate District; Case No: 1-09-CV142109, HO34726; (10) California Building Industry Association v. City, et al; Names of Parties Involved: California Building Industry Association, a California Nonprofit Corporation, City of San José, a California Municipal Corporation, City Council and Mayor of the City of San José, Does 1-200; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV-167289; Amount of Money or Other Relief Sought: Declaratory and Injunctive relief; (11) Bernal, et al v. City, et al; Names of Parties Involved: Mike C. Bernal, Susan R. Bernal, Nanetta Bernal, Lillian Bernal Auvinen, Katherine Lira, Diana Bernal-Tuyor, Mike A. Bernal, Gary James Bernal, Domenico Loverde, Tomas J. Martinez, Authur Paul Lira, Jr., Jerimiah Lira, Sommer Kai Espinosa, Lucia A. Bernal, Guillermo Espinosa, City of San José, Does 1-25; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV-116141; Amount of Money or Other Relief Sought: Damages according to proof; (12) Berg & Berg Enterprises, LLC v. City, et al; Berg & Berg Enterprises, LLC, City of San José, City Council and Does 1-50; Court: Superior Court of California, County of Santa Clara; Case No: 1-07-CV-091955; Amount of Money or Other Relief Sought: Damages according to proof; (13) Cicala, et al v. City, et al; Names of Parties Involved: Paul Cicala, Enrico Sagullo, Erick Sanchez, City of San José, Robert Davis, Officers Ordaz, Higgins, Marfia, Kyono, Siegel and Does; Court: United States District Court, Northern District of California; Case No: C08-04032 PVT; Amount of Money or Other Relief Sought: Damages according to proof; (14) Contreras v. City, et al; Names of Parties Involved: Emily Contreras and Jose Lua, Sr, individually and as Administrators of the Estate of Richard A. Lua, City of San José, Chief Robert Davis, Officer Eric Bachman, Officer Patrick Lynch, Genevieve Black and Does 1-10; Court: United States District Court, Northern District of California; Case No: C-10-00953-RMW; Amount of Money or Other Relief Sought: Damages according to proof; (15) Diamond Enterprises, et al v. City, et al; Names of Parties Involved: Jenny Wolfes Diamond Enterprises, SJ DBA Studio 8, City of San José; Court: Superior Court of California, County of Santa

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Clara; Case No: 1-06-CV071844; Amount of Money or Other Relief Sought: Damages according to proof; (16) Ho v. City, et al; Names of Parties Involved: Phuong Quang Ho, City of San José; Chief Robert Davis, Sgt. Jeffrey Martin, Officer Steven Payne, Jr., Officer Gabriel Reyes, Officer Kenneth Siegel, Officer Jerome Smith; Court: United States District Court, Northern District of California; Case No: CV-10-01825 HRL; Amount of Money or Other Relief Sought: \$11 Million; (17) Kerkeles v. City, et al; Names of Parties Involved: Michael Kerkeles, AKA Michael Kerk, City of San José, Matthew Christian, Does 1-25; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV103523; Amount of Money or Other Relief Sought: Damages according to proof; (18) Moscoso v. City, et al; Names of Parties Involved: Aleyda Maritza Moscoso, Personal Representative of the Estate of Jorge Luis Truillo, Robert L. Davis, City of San José, John Does 1-25; Court: United States District Court, Northern District of California; Case No: C07 02998 JF; Amount of Money or Other Relief Sought: Damages according to proof; (19) Naymark, et al v. City, et al; Names of Parties Involved: Janice Naymark, Ronald Naymark, City of San José, San José Police Department, Robert Davis, City of Campbell, Campbell Police Department, David Gullo, Town of Los Gatos, City of Monte Sereno, Los Gatos/Monte Sereno Police Department, Scott Seaman, City of Palo Alto, Lynn Johnson, City of Santa Clara, Santa Clara Police Department, Stephen D. Lodge, State of California, California Highway Patrol, Michael L. Brown, County of Santa Clara, Office of the Santa Clara County Sheriff, Laurie Smith and Does 1-25; Court: Superior Court of California, County of Santa Clara; Case No: 1-07-CV080008; Amount of Money or Other Relief Sought: Injunctive relief. (20) Noreen Salinas v. City, et al; Names of Parties Involved: Noreen Salinas, City of San José, Chief Robert Davis, Taser International, Inc., Does 1-10; Court: United States District Court, Northern District of California; Case No: C08-02625 RS (consolidated with C09-04410RS); Amount of Money or Other Relief Sought: Damages according to proof; (21) Swayzer v. City; Names of Parties Involved: Prince Swayzer II and Deborah Porter as Individuals and Jill Scott as Guardian Ad Litem for J.P.S., a minor and as Administrator of the Estate of Prince Swayzer III, deceased, City of San José, Taser International Inc. and Does 1-100; Court: United States District Court, Northern District of California; Case No: C10-03119 HRL; Amount of Money or Other Relief Sought: Damages according to proof; (22) Valdez, et al v. City, et al; Names of Parties Involved: Francisco Valdez, Ricardo Valdez, Daniel Martinez, Jamil Stubbs, City of San José, San José Police Chief Robert Davis, Officer R. Agaman (4041), Officer Martin (3894), Officer Rickert (3734), Officer Wallace (3922), Officer Orlando, Does 1-2500; Court: United States District Court, Northern District of California; Case No: C09 00176 RMW; Amount of Money or Other Relief Sought: Damages according to proof; (23) Vasquez v. City, et al; Names of Parties Involved: Ramon Jose Vasquez, Brian Ferrante, Individually and as an Officer of the San José Police Department and Tom Morales, Individually as an Officer of the San José Police Department, Does 1-50; Court: United States District Court, Northern District of California; Case No: CV10-00948 LKH; Amount of Money or Other Relief Sought: Damages according to proof; (24) Watson-Stalker et al v. City, et al; Names of Parties Involved: Tracy Watson, Renee Stalker, Olivia Stalker, Shafer Watson, Riley Watson, County of Santa Clara, County of Santa Clara Department of Family and Children Services, County of Santa Clara Department of County Counsel, County of

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Santa Clara District Attorney's Office, Santa Clara Valley Medical Center, Evergreen School District, City of San José, San José Police Department, Norma Sparks, Yazmina Letona, Sharon Burgan, Jewels Ramirez, Vu Tran, Ann Miller Ravel, Rima Singh, Aaron West, George Kennedy, Clifton Black, Rose Real, Robert Pruitt, Cheryl Harms, Claudia Blodgett, Gary Kishimoto, John Hamilton, Anita Noble, Janet Kahle, Mary Ritter, David Kearns, Rajul Kazi, Robert Davis, William Hoyt, Craig Blank; Court: United States District Court, Northern District of California; Case No: C06-04029 RMW; Amount of Money or Other Relief Sought: Damages according to proof; (25) City v. Union Pacific Railroad Company; Names of Parties Involved: City of San José, Union Pacific Railroad Company, a Delaware Corporation and Does 1-15; Court: Superior Court of California, County of Santa Clara; Case No: 1-04-CV-026149; Amount of Money or Other Relief Sought: Seeking to obtain real property through eminent domain for fair market value; (26) Carrasco v. City, et al; Names of Parties Involved: Arthur Carrasco, Hector Solorio, Virginia Solorio, Louisa Maldonado, City of San José and Does 1-100; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV-165390; Amount of Money or Other Relief Sought: Damages according to proof; (27) Toan Nguyen v. City; Names of Parties Involved: Toan Thanh Nguyen, Ann Thuy Nguyen, City of San José Department of Transportation, City of San José Department of Public Works; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV-115637; Amount of Money or Other Relief Sought: Damages according to proof; (28) Lefall, et al v. City; Names of Parties Involved: Dion Lefall, George Louie, Gloria Vaughn, Derrick Jackson, City of San José; Court: Superior Court of California, County of Santa Clara; Case No: 1-07-CV-094037; Amount of Money or Other Relief Sought: Damages according to proof; (29) Simmons v. City, et al; Names of Parties Involved: Hugh Patrick Simmons, Michelle Simmons, San José Electrical Contractor, Inc., Pacific Dream Homebuilders, Dream Homebuilders, Royal Cabinetry and Designs, Inc., Thomas F. Sramek, Acevedo Trucking, Rodolfo Acevedo, Suzanne Sramek, City of San José, Does 2-100; Court: Superior Court of California, County of Santa Clara; Case No: 1-09-CV148054; Amount of Money or Other Relief Sought: Damages according to proof; (30) De La Rosa, et al v. City, et al; Names of Parties Involved: Richard E. De La Rosa, Dennis Fong, Jose Mendoza, City of San José, Avo Makdessian, Does 1-100; Court: Superior Court of California, County of Santa Clara, Court of Appeal, 6th Appellate District; Case No: 1-03-CV-817097, H031583; Amount of Money or Other Relief Sought: Damages according to proof; (31) Licking Enterprises, Inc. v. City, et al; Names of Parties Involved: Licking Enterprises, Inc., City of San José, a Municipal Corporation, San José City Council, Ron Gonzales, Cindy Chavez, Ken Yeager, Chuck Reed, Forrest Williams, Linda J. LeZotte, Nora Campos, George Shirakawa, Jr., David D. Cortese, John DiQuisto, sued in their official capacities; Court: United States District Court, Northern District of California; Case No: C07-00735 RMW (PVT); Amount of Money or Other Relief Sought: Damages according to proof; (32) Smith v. City, et al; Names of Parties Involved: Ted Smith, City of San José, San José Elections Commission, Does 1-20; Court: Superior Court of California, County of Santa Clara; Case No: 1-07-CV-089167; Amount of Money or Other Relief Sought: Damages according to proof; (33) Vietnamese-American Community of Northern California v. City, et al; Names of Parties Involved: Vietnamese-American Community of Northern California, City of San José,

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City Council of San José; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV-107082; Amount of Money or Other Relief Sought: For Declaratory and Injunctive Relief according to proof. (E) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) International Association of Firefighters, Local 230 (IAFF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Association of Firefighters. (2) 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; (3) 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; (4) 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. (5) 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. Web: <http://www.sanjoseca.gov/employeerelations/moa.asp>; Telephone for Employee Relations: 408-535-8150.

By unanimous consent, Council recessed from the Closed Session at 11:17 a.m. and reconvened to Regular Session at 1:31 p.m. in the Council Chambers.

Present: Council Members - Campos, Chirco, Chu, Constant, Herrera, Kalra (1:51 p.m.), Liccardo, Nguyen, Oliverio, Pyle; Reed.

Absent: Council Members - None.

INVOCATION

Band Director Michael Gomez and the thirty six members of the William C. Overfelt High School Royal Band presented “The Overfelt High School Fight Song” and “Oye Como Va”. (District 8)

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the Orders of the Day and the Amended Agenda were approved, and Item 1.7 was deferred to September 28, 2010. (10-0-1. Absent: Kalra.)

CEREMONIAL ITEMS

1.2 Presentation of proclamation declaring September 20-26, 2010 as “Pollution Prevention Week”. (Environmental Services)

Action: Mayor Reed and Director of Environmental Services John Stufflebean recognized September 20 through September 26, 2010 as “Pollution Prevention Week”.

1.3 Presentation of a commendation to Sacred Heart Community Service for their 2010 Pack-a-Back School Supplies Drive. (Nguyen/Liccardo)

Action: Mayor Reed and Council Members Nguyen and Liccardo recognized and commended Sacred Heart Community Service.

1.7 Presentation of a commendation to AchieveKids for their commitment to nurturing and educating children with severe mental and physical disabilities for the past 50 years. (Chu) (Rules Committee referral 9/15/10)

Action: Deferred to September 28, 2010 per Orders of the Day.

1.8 Presentation of a commendation to the Adobe Foundation for its continued support of the arts in San José through a generous donation to the world-renowned Airport Art + Technology Program public art program. (Mayor) (Rules Committee referral 9/15/10)

Action: Mayor Reed recognized and commended the Adobe Foundation for its continued support of the arts in the City of San José.

CONSENT CALENDAR

Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (10-0-1. Absent: Kalra.)

2.1 Approval of Minutes.

Action: There were none.

2.2 Final adoption of ordinances.

Action: There were none.

2.3 Approval of Council Committee Reports.

**(a) Rules and Open Government Committee Report of September 1, 2010.
(Mayor)**

2.3 (b) Neighborhood Services and Education Committee Report of September 9, 2010. (Campos)

Action: Deferred to September 28, 2010 per City Clerk.

(c) Rules and Open Government Committee Report of August 25, 2010. (Mayor)

Action: The Rules and Open Government Committee Report was approved. (10-0-1. Absent: Kalra.)

2.4 Mayor and Council Excused Absence Requests.

Action: There were none.

2.5 City Council Travel Reports.

Action: There were none.

2.6 Report on bids and award of a contract for the construction of Guadalupe Regional Park and Gardens Community Garden Expansion Project to the lowest bidder, Blossom Valley Construction, Inc., to include the base bid and both add alternates in the amount of \$329,832, and approval of a budget contingency of 10% of the contract amount. CEQA: Resolution No. 64667, File No. PP10-019. (Environmental Services)

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean and Director of Public Works Katy Allen, dated August 30, 2010, recommending award of a contract to the low bidder, with related contingency. (2) Letter from Chuck Reed, Chairperson, The Treatment Plant Advisory Committee, dated September 9, 2010, stating concurrence with the Staff recommendations.

Action: The award of a contract for the construction of Guadalupe Regional Park and Gardens Community Garden Expansion Project to the lowest bidder, Blossom Valley Construction, Inc., to include the base bid and both add alternates in the amount of \$329,832, with related 10% contingency, was approved. (10-0-1. Absent: Kalra.)

2.7 Report on bids and award of contract for the SJ-25 Recycled Water San Jose School Extensions – Phase B project to the low bidder, Northern Underground Construction, Inc., in the amount of \$301,322 and approval of a budget contingency of 15% of the contract amount. CEQA: Resolution No. 64667, File No. PP10-018. (Environmental Services)

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean and Director of Public Works Katy Allen, dated August 30, 2010, recommending award of a contract to the low bidder, with related contingency. (2) Letter from Chuck Reed, Chairperson, The Treatment Plant Advisory Committee, dated September 9, 2010, stating concurrence with the Staff recommendations.

2.7 (Cont'd.)

Action: The award of contract for the SJ-25 Recycled Water San Jose School Extensions, Phase B project to the low bidder, Northern Underground Construction, Inc., in the amount of \$301,322, with related 15% contingency, was approved. (10-0-1. Absent: Kalra.)

2.8 Appoint San Jose City Council Members Kansen Chu and Pierluigi Oliverio and City of Santa Clara Mayor Patricia Mahan to serve on the Joint Recycled Water Policy Advisory Committee established in the recent Recycled Water Facilities and Program Integration Agreement between the City of San Jose and the Santa Clara Valley Water District. CEQA: Not a Project, File No. PP10-068, General Procedure & Policy Making Public Project. (Environmental Services)

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean, dated August 23, 2010, recommending the appointment of Council Members Chu and Oliverio and Mayor Patricia Mahan of Santa Clara to serve on the Joint Recycled Water Policy Advisory Committee. (2) Letter from Chuck Reed, Chairperson, The Treatment Plant Advisory Committee, dated September 9, 2010, stating concurrence with the Staff recommendations.

Action: The appointments to Joint Recycled Water Policy Advisory Committee were approved. (10-0-1. Absent: Kalra.)

2.9 Approve an open purchase order with Hi Tech Emergency Vehicle Service, Inc. (Oakdale, CA) for the period September 22, 2010 through August 31, 2011, for emergency repair services for fire apparatus and fleet equipment. CEQA: Not a Project PP10-066(a), Purchase Order. (Finance)

Documents Filed: Memorandum from Director of Finance Scott P. Johnson, dated August 27, 2010, recommending approval of an open purchase order with Hi Tech Emergency Vehicle Service, Inc.

Action: An open purchase order with Hi Tech Emergency Vehicle Service, Inc. (Oakdale, CA) for the period September 22, 2010 through August 31, 2011, for emergency repair services for fire apparatus and fleet equipment, was approved. (10-0-1. Absent: Kalra.)

2.10 As recommended by the Rules and Open Government Committee on September 15, 2010:

- (a) Approve the Youth Job Fair as a City Sponsored Special Event; and**
- (b) Approve and accept in-kind donations from businesses to support the event.**

(City Clerk)

[Rules Committee referral 9/15/10 – Item H(3)]

Documents Filed: Memorandum from City Clerk Lee Price, MMC, dated September 16, 2010, transmitting the recommendations of the Rules and Open Government Committee.

2.10 (Cont'd.)

Action: The Youth Job Fair as a City Sponsored Special Event was approved and acceptance of in-kind donations from businesses to support the event was approved. (10-0-1. Absent: Kalra.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

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

City Manager Debra Figone reported an email was distributed reminding all City employees about campaign activities and restrictions placed on the political activities of public employees.

City Manager Figone added that an information memorandum will be circulated shortly containing information the City has acquired about the PG&E high pressure pipelines located throughout the City of San José.

3.2 (a) Adopt a resolution authorizing the City Manager to:

- (1) **Negotiate and execute an Agreement or Agreements with Kaiser Permanente to provide medical insurance plans and support services to the City for the period from January 1, 2011 through December 31, 2011, and to exercise up to three (3) one-year options to renew the Agreements through December 31, 2014, for premium costs not to exceed \$64,055,957 for calendar year 2011 and with annual cost adjustments for each subsequent year based on annual premiums as determined by Kaiser Permanente, coverage elected by participants, the number of enrollees in the group insurance plans and pursuant to collective bargaining agreements, for a total amount not to exceed \$306,144,431 for a potential four (4) year term, subject to the appropriation of funds by the City Council:**
 - (a) **Medical insurance plans for employees, retirees and dependents and beneficiaries residing within the Northern California, Southern California, Pacific Northwest and Hawaii service areas.**
 - (b) **Medicare coordinating medical insurance plans: Kaiser Permanente Senior Advantage Plan, Medicare Cost Plan and Medicare Out-of-Area Plan for Medicare eligible retirees, dependents and beneficiaries.**
- (2) **Negotiate and approve premium renewal rates, and negotiate and execute any group health plan or policy contract and any ancillary documents, such as Evidence of Coverage (EOC) documents and Business Associate Agreements, with Kaiser Permanente that are necessary to facilitate the medical insurance services Agreements for the period of January 1, 2011 through December 31, 2014.**

- 3.2 (a) (3) In the event that Kaiser Permanente's proposed renewal rates are not acceptable by the City Manager, subject to the terms of City's collective bargaining agreements, authorize the City Manager to terminate the agreement(s) or group plan contract(s).
- (b) Adopt a resolution authorizing the City Manager to:
- (1) Negotiate and execute an Agreement or Agreements with Blue Shield of California to provide medical insurance plans and support services to the City for employees, retirees dependents and beneficiaries for the period from January 1, 2011 through December 31, 2011, and to exercise up to three (3) one-year options to renew the Agreements through December 31, 2014, for premium costs not to exceed \$50,702,625 for calendar year 2011 and with annual cost adjustments for each subsequent year based on the annual premiums as determined by Blue Shield of California, number of enrollees in the group insurance plans, coverage elected by participants, and pursuant to collective bargaining agreements, for a total amount not to exceed \$242,324,475 for a potential four (4) year term, subject to the appropriation of funds by the City Council;
- (2) Negotiate and approve premium renewal rates, and negotiate and execute any group health plan or policy contracts and any ancillary documents, such as Evidence of Coverage documents, Business Associate Agreements, with Blue Shield of California that are necessary to facilitate the medical insurance services Agreements for the period of January 1, 2011 through December 31, 2014; and
- (3) In the event that Blue Shield's proposed renewal rates are not acceptable by the City Manager, subject to the terms of City's collective bargaining agreements, authorize the City Manager to terminate the agreement(s) or group plan contract(s).
- (c) Adopt a resolution authorizing the City Manager to
- (1) Negotiate and execute an Agreement or Agreements with United Healthcare (PacifiCare and Secure Horizons) to provide medical insurance plans to coordinate with Medicare benefits and support services to the City for City's Medicare-eligible retirees and beneficiaries, for the period from January 1, 2011 through December 31, 2011, and to exercise up to three (3) one-year options to renew the Agreements through December 31, 2014, for premium costs not to exceed \$719,201 for calendar year 2011 and with annual cost adjustments for each subsequent year based on annual premiums as determined by United Healthcare, coverage elected by participants, and the number of enrollees in the group insurance plans, for a total amount not to exceed \$3,437,298 for a potential four (4) year term, subject to the appropriation of funds by the City Council.
- (2) Negotiate and approve premium renewal rates, and negotiate and execute plan designs for group medical plan contracts coordinating with Medicare to align with the City's active and early retiree plan designs, including any ancillary documents, such as Evidence of Coverage documents and Business Associate Agreements, with United Healthcare

- 3.2 (c) (2) **(PacifiCare and Secure Horizons) that are necessary to facilitate the medical insurance services Agreements for the period of January 1, 2011 - December 31, 2014.**
- (3) **In the event that United Healthcare’s proposed renewal rates are not acceptable by the City Manager, subject to the terms of City’s collective bargaining agreements, authorize the City Manager to terminate the agreement(s) or group plan contract(s).**

CEQA: Not a Project, File No. PP10-068 (b), Municipal Code, Title 3. (HR)

Documents Filed: (1) Memorandum from Director of Human Resources Mark Danaj, dated September 7, 2010, recommending adoption of a resolutions. (2) Staff presentation dated September 21, 2010 summarizing the Healthcare and Wellness in the City of San José. (3) Letter from Bob Leininger, President, San José Retired Employees Association, dated September 20, 2010, requesting that the City Council direct the Administration to work with the Retiree Associations and the active employee groups and return to Council with a report and program that addresses many areas of concern.

Director of Human Resources Mark Danaj presented the Staff Report on Healthcare and Wellness in the City of San José. Jackie Farren, Benefits Associate, Buck Consultants, shared the 2010 Trend Survey. Deputy Director of Human Resources Heather Ruiz provided a summary of the recommendations.

Council discussion followed.

Public Comments: Speaking in support to the letter from the San José Retired Employees Association which requested that the City Council direct the Administration to work with the Retiree Associations and the active employee groups and return to Council with a report and program that addresses many areas of concern were, Joe Bass and Anita Phagan (San José Retired Employees Association) and Dorothy McGinley.

Action: Upon motion by Council Member Pyle, seconded by Vice Mayor Chirco and carried unanimously, Resolution No. 75560, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement or Agreements, and Any Ancillary Documents Necessary to Facilitate the Agreement(s) with Kaiser Permanente for Medical Insurance Group Plans and Support Services in An Amount Not To Exceed \$306,144,431 for a Potential Four (4) Year Term of January 1, 2011 through December 31, 2014”; Resolution No.75561, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement or Agreements, and Any Ancillary Documents Necessary to Facilitate the Agreement(s) with Blue Shield of California for Medical Insurance Group Plans and Support Services in An Amount Not To Exceed \$242,324,475 for a Potential Four (4) Year Term of January 1, 2011 through December 31, 2014” and Resolution No. 75562, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement or Agreements, and Any Ancillary Documents Necessary to Facilitate the Agreement(s) with United Healthcare for Medical Insurance Group Plans and Support Services in An Amount Not To Exceed \$3,437,298 for a Potential Four (4) Year Term of January 1, 2011 through December 31, 2014”, were adopted. (11-0.)

- 3.3 (a) Adopt a resolution authorizing the City Manager to:**
- (1) Negotiate and execute one or two Agreements with Delta Dental of California to provide the dental insurance group plans listed below for employees, retirees, dependents and beneficiaries and support services for City's dental benefits program, for the period of January 1, 2011 to December 31, 2011, and to exercise up to four (4) one-year options to renew the Agreement or Agreements through December 31, 2015, for total costs for both dental insurance group plans not to exceed \$13,111,950 for the period of January 1 to December 31, 2011 and with annual cost adjustments for each subsequent year based on the number of enrollees in the plans, plan utilization and pursuant to collective bargaining agreements, for a total amount for both dental insurance group plans not to exceed \$68,521,282 for a potential five (5) year term, subject to the appropriation of funds by the City Council:**
- (a) Group Dental Service Contract for DeltaCare USA, a Dental Health Maintenance Organization (DHMO) Program for insurance and service costs not to exceed \$316,250 for the period of January 1 to December 31, 2011 and with annual cost adjustments for each subsequent year based on the number of enrollees in the plan and pursuant to collective bargaining agreements, for a total plan amount not to exceed \$1,652,679 for a potential five (5) year term.**
- (b) Group Administrative Services Only Contract issued by Delta Dental of California for the Delta Dental Preferred Provider Organization (PPO) Program for insurance and service costs not to exceed \$12,795,700 for the period of January 1 to December 31, 2011 and with annual cost adjustments for each subsequent year based on the number of enrollees in the plan, plan utilization and pursuant to collective bargaining agreements, for a total plan amount not to exceed \$66,868,602 for a potential five (5) year term.**
- (b) Negotiate and execute any group plan or policy contracts, EOC documents, Business Associate Agreements, or other ancillary documents necessary to facilitate the above Agreement or Agreements for the period of January 1, 2011 to December 31, 2015.**
- (c) In the event that Delta Dental of California's proposed annual renewal rates are not acceptable by the City Manager, subject to the terms of City's collective bargaining agreements, authorize the City Manager to terminate the agreement(s) or group plan contract(s).**

CEQA: Not a Project, File No. PP10-068 (b), Municipal Code, Title 3. (HR)

Documents Filed: Memorandum from Director of Human Resources Mark Danaj, dated September 7, 2010, recommending adoption of a resolution.

3.3 (Cont'd.)

Action: Upon motion by Vice Mayor Chirco, seconded by Council Member Pyle and carried unanimously, Resolution No. 75563, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement or Agreements, and Any Ancillary Documents Necessary to Facilitate the Agreement(s) with Delta Dental of California for Dental Insurance Group Plans and Support Services in An Amount Not To Exceed \$68,521,282 for a Potential Five (5) Year Term of January 1, 2011 through December 31, 2015", was adopted; to negotiate and execute any group plan or policy contracts, EOC documents, Business Associate Agreements, or other ancillary documents necessary to facilitate the Agreement or Agreements for the period of January 1, 2011 to December 31, 2015 and in the event that Delta Dental of California's proposed annual renewal rates are not acceptable by the City Manager, subject to the terms of City's collective bargaining agreements, authorize the City Manager to terminate the agreement(s) or group plan contract(s), were approved. (11-0.)

COMMUNITY & ECONOMIC DEVELOPMENT

4.1 **Conduct a Public Hearing on the Consolidated Annual Performance Evaluation Report FY 2009-2010, the Analysis of Impediments to Fair Housing Choice and the Citizen Participation Plan and Approval of the Documents. CEQA: Not a Project. File No. PP10-069, Staff Reports, Assessments, Annual Reports, Informational Memos. (Housing)**

Mayor Reed read that the Consolidated Annual Action Plan (CAPER) provides the same information as the Federally-Managed Five-year Consolidated Plan, but covers a single Fiscal Year. He stated that the CAPER, the analysis of impediments to Fair Housing (AI) and the Citizen Participation Plan (CPP) will ensure compliance with the U.S. Department of Housing and Urban Development's reporting requirements. He stated that drafts of these documents have been available for public comment since August 30, 2010.

Mayor Reed opened the public hearing to allow for public comments and added that the Final Public Hearing and approval of the CAPER, AI and CPP will be on September 28, 2010.

Action: The public hearing was opened and continued to September 28, 2010 for action.

4.2 **Adopt a resolution authorizing the City Manager to execute an Amendment to the existing Second Amended and Restated Agreement between the City of San José and the San José Convention & Visitors Bureau until December 31, 2010, with a compensation for the extension period not to exceed \$1,100,000. CEQA: Not a Project, File No. PP10-066(e), agreements/contracts. (Economic Development) (Rules Committee referral 9/15/10)**

Documents Filed: Memorandum from Chief Development Officer Paul Krutko, dated September 14, 2010, recommending adoption of a resolution and requesting a 90 day extension.

4.2 (Cont'd.)

Action: Upon motion by Vice Mayor Chirco, seconded by Council Member Herrera and carried unanimously, Resolution No. 75564, entitled: “A Resolution of the Council of the City of San José Authorizing the City to Execute an Amendment to the Second Amended and Restated Agreement with the San José Convention & Visitors Bureau for Marketing and Sales Services”, was adopted. (10-0-1. Absent: Kalra.)

4.3 **Adopt a resolution allowing the City Manager to negotiate and execute amendments to the two Amended and Restated Option Agreements with Coleman Airport Partners LLC for the former FMC property located at 1125 Coleman Avenue to allow a 90-day extension of the option period. CEQA: EIR Resolution No 71716, File No. PP08-093. (Economic Development) (Rules Committee referral 9/15/10)**

Documents Filed: Memorandum from Chief Development Officer Paul Krutko, dated September 13, 2010, recommending adoption of a resolution and an additional 90-day extension.

Action: Upon motion by Council Member Pyle, seconded by Council Member Liccardo and carried unanimously, Resolution No. 75565, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute Amendments to the Two Amended and Restated Option Agreements with Coleman Airport Partners, LLC for the Former FMC Property Located at 1125 Coleman Avenue to Allow for a 90-Day Extension of the Option Period”, was adopted. (10-0-1. Absent: Kalra.)

ADJOURNMENT

The Council of the City of San José adjourned the afternoon session at 3:08 p.m.

RECESS/RECONVENE

The City Council recessed at 3:08 p.m. from the afternoon Council Session and reconvened at 7:02 p.m. in the Council Chambers, City Hall.

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

Absent: Council Members - Campos. (Excused)

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

CEREMONIAL ITEMS

1.1 Presentation of a commendation recognizing Moreland Little League for their Accessibility Project. (Constant)

Action: Mayor Reed and Council Member Constant recognized and commended Moreland Little League.

1.4 Presentation of a commendation to the District 7 Youth Advisory Commission for winning the 2010 Mayor's Gang Prevention Task Force Crime and Gang Prevention Summit PSA Development Contest with the theme: "Ignorance Isn't Bliss". (Nguyen)

Action: Mayor Reed and Council Member Nguyen recognized and commended the District 7 Youth Advisory Commission for their achievement.

1.5 Presentation of a commendation to the Friends of the San José Rose Garden and park staff for their commitment to making the historic San José Municipal Rose Garden the "Best Rose Garden in America." (Oliverio/Parks, Recreation and Neighborhood Services)

Action: Mayor Reed, Council Member Oliverio and Assistant Director of Parks, Recreation and Neighborhood Services Julie Edmonds-Mares recognized and commended the Friends of the San José Rose Garden and City of San José Park Staff.

1.6 Presentation of a commendation to the Camelot Summer Institute at William C. Overfelt High School for their dedication to prepare students for academic success and instilling the importance to pursue a higher education. (Herrera)

Action: Mayor Reed and Council Member Herrera recognized and commended the Camelot Summer Institute at William C. Overfelt High School.

JOINT COUNCIL/REDEVELOPMENT AGENCY

The Redevelopment Agency Board was convened at 7:24 p.m. to Consider Item 9.1 in a Joint Session.

9.1 It is recommended that the City Council and Redevelopment Agency adopt resolutions:

- (a) Reaffirming the negotiating principles previously established and amended by the City Council.**
- (b) Supporting the efforts of the Oakland Athletics ownership to move the team to San José and the assistance of the Silicon Valley Leadership Group and other local groups in their efforts to bring Major League Baseball to San José.**

(General Counsel/City Attorney)

Documents Filed: Memorandum from General Counsel Richard Doyle, dated September 21, 2010, recommending adoption of resolutions.

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

Public Comments: Speaking in support to bringing Major League Baseball to San José were, Michael Mulcahy, Susan Hammer, Paul Higgins, Michael Pelzel, Daniel De La O, Dave Roberson (Baseball San José) and Kymberli Grady (San José Downtown Association).

Action: On a call for the question, the motion carried unanimously, Resolution No. 75567, entitled: “A Resolution of the Council of the City of San José (A) Reaffirming the Negotiating Principles Previously Established and Amended by the City Council and (B) Supporting the Efforts of the Oakland Athletics Ownership to Move the Team to San José and the Assistance of the Silicon Valley Leadership Group and Other Local Groups in Their Efforts to Bring Major League Baseball to San José” and Redevelopment Agency Board Resolution No. 5985, entitled: “A Resolution of the Board of Directors of the Redevelopment Agency of the City of San José (A) Reaffirming the Negotiating Principles Previously Established and Amended by the Agency Board and (B) Supporting the Efforts of the Oakland Athletics Ownership to Move the Team to San José and the Assistance of the Silicon Valley Leadership Group and Other Local Groups in Their Efforts to Bring Major League Baseball to San José”, were adopted. (10-0-1. Absent: Campos.)

PUBLIC HEARINGS ON CONSENT CALENDAR

- 11.1 (a) **Consideration of an ordinance rezoning the real property located on the south side of Wabash Avenue, approximately 550 feet west of Archer Street from CN Commercial Neighborhood District to R-2 Two-Family Residence District on a 0.21 gross acre site (Bennie & Linda Schulman, Owner). CEQA: Use of the Mitigated Negative Declaration (MND), File No. PDC06-018. C09-034 – District 4**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C09-034, dated August 30, 2010. (2) Proof of Publication of Notice of Public Hearing, executed on August 13, 2010, submitted by the City Clerk.

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 Council Member Herrera, seconded by Vice Mayor Chirco and carried unanimously, the recommendation of the Planning Director was approved, Ordinance No. 28814, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the South Side of Wabash Avenue, Approximately 550 Feet West of Archer Street to R-2 Two-Family Residence Zoning District”, was passed for publication. (10-0-1. Absent Campos.)

- (b) **Consideration of a ordinance pre zoning the real property generally bounded by Central Park Way, Union Avenue, and Camden Avenue from County of Santa Clara to R-1-5 Single Family Residence Zoning District as to approximately 94.75 acres and CN Commercial Neighborhood Zoning District as to approximately 8.24 acres for an approximately 103 gross acre unincorporated County of Santa Clara pocket consisting of approximately 330 parcels (Owners: Multiple). CEQA: San José 2020 General Plan EIR, Resolution No. 65459. (The proposed zoning would not go into effect until the annexation of the existing unincorporated County island (Cambrian No. 36) which will be considered at a separate City Council hearing for which a separate hearing notice will be provided). C10-010 – District 9**

Action: Continued to October 5, 2010 per Administration.

END OF PUBLIC HEARINGS ON CONSENT CALENDAR

PUBLIC HEARINGS

- 11.2 Consideration of an ordinance rezoning the real property located at/on the west side of N. Third Street, 340 feet south of Hensley Street (405 N Third Street) in the Hensley Historic District from the R-M Multiple Residence Zoning District to the A(PD) Planned Development Zoning District to allow up to six residential units within the existing structure(s) on a 0.17 gross acre site (Layne Sharon J, Owner; Bill Priest, Developer). SNI: 13th Street. CEQA: Exempt. Director of Planning, Building and Code Enforcement recommends denial and Planning Commission recommends approval of 4 units only (5-2-0, Do and Jensen opposed). PDC08-033 – District 3**

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, Item 11.2 was continued to October 26, 2010. (10-0-1. Absent Campos.)

- 11.3 Consideration of an ordinance rezoning the real property located on the east side of Senter Road, approximately 610 feet southerly of Tully Road (2500 Senter Road) to allow for the development of a 102-unit affordable multi-family apartment community on a 3.46 gross acre site (County of Santa Clara, Owner/Charities Housing, Applicant). CEQA: Mitigated Negative Declaration. PDC09-033 – District 7**

Documents Filed: (1) The Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC09-033, dated August 17, 2010. (2) Memorandum from Planning Commission Secretary Joe Horwedel, dated August 30, 2010, transmitting the recommendation of the Planning Commission. (3) Proof of Publication of Notice of Public Hearing, executed on August 6, 2010, submitted by the City Clerk.

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

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

Council Member Oliverio expressed his continued concern on a development that does not pay any property taxes to provide services.

Action: On a call for the question, the motion carried, the recommendation of the Planning Director and Planning Commission was approved, Ordinance No. 28815, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the East Side of Senter Road, Approximately 610 Feet Southerly of Tully Road (2500 Senter Road) to A(PD) Planned Development Zoning District”, was passed for publication. (9-1-1. Noes: Oliverio. Absent: Campos.)

**11.4 Conduct an Administrative Hearing and consider an Appeal of the Planning Commission's decision to approve a Conditional Use Permit to allow approximately 3,080 square feet of private educational uses within existing Sunday School classrooms at an existing church on a 2.89 gross acre site in the R-1-8 Residence Zoning District located on the southwest corner of Foxworthy Avenue and Quinto Way (1774 Foxworthy Avenue) (Foxworthy South Baptist Church of LG, Owner/ Cambrian Academy, Developer). CEQA: Exempt.
CP10-026 – District 9**

Documents Filed: (1) Memorandum from Vice Mayor Chirco, dated September 17, 2010, recommending upholding the Planning Commission recommendation with further conditions. (2) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated August 30, 2010, recommending upholding the Planning Commission recommendation to approve the Conditional Use Permit. (3) The Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. CP10-026, dated August 2, 2010. (4) Proof of Publication of Notice of Public Hearing, executed on September 10, 2010, submitted by the City Clerk. (5) Two emails from the public both dated September 21, 2010, expressing comments about the Conditional Use Permit.

Mayor Reed opened the public hearing.

Public Comments: Speaking in support to the Staff recommendations were Michael Amaral and David Delgado, Cambrian International Academy. Jean Dresden disagreed with the 100 foot setback.

Mayor Reed closed the public hearing.

Motion: Vice Mayor Chirco moved approval of her memorandum dated September 17, 2010, upholding the Planning Commission's decision to approve the Conditional Use Permit with conditions as described in "Action". Council Member Pyle seconded the motion.

Vice Mayor Chirco pointed out that the four conditions in her memorandum addressed the concerns of the neighborhood.

Action: On a call for the question, the motion carried unanimously, the recommendation of the Planning Director and Planning Commission was approved, and Resolution No. 75566 was adopted, upholding the appeal. The Conditional Use Permit was approved, as amended, by the memorandum from Vice Mayor Chirco dated September 17, 2010 adding the following conditions: (1) Daily recreational or sports activities, such as recess or physical education classes, shall be prohibited from occurring outdoors on the site in the side and rear parking lots within 100 feet of an adjacent residential property line. (2) A neighborhood liaison shall be identified by the users of the subject site. The neighborhood liaison shall be responsible for ensuring compliance with the hours of operation, drop-off procedures and other nuisance conditions in this permit. The neighborhood liaison shall maintain a schedule of daily activities on the site, including

11.4 (Action Cont'd.)

but not limited to, hours of operation, numbers of attendants and complaints on site activities. The name and phone number of the neighborhood liaison and City File Number CP10-026 shall be displayed on a weatherproof sign posted on the project site and legible from the public right-of-way. (3) The applicant shall be allowed to reverse the direction of the onsite pick-up and drop-off traffic path shown on plan sheet A-1. (4) The applicant shall have 120 days after occupancy to complete Conditional Use Permit condition numbers 19, 24 and 25. (10-0-1. Absent Campos.)

ADJOURNMENT

The Council of the City of San José was adjourned at 7:50 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

smd/09-21-10 MIN

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