

## MINUTES OF THE CITY COUNCIL

**SAN JOSE, CALIFORNIA**

**TUESDAY, JANUARY 11, 2011**

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, Chu, Constant, Herrera, Kalra, Liccardo, Nguyen, Oliverio, Pyle, Rocha; Reed.

Absent: Council Members - All Present.

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: Title: Executive Director, Redevelopment Agency; Name: Harry Mavrogenes. (B) to confer with Legal Counsel regarding potential threat to public services or facilities pursuant to Government Code Section 54957(a): Consultation with Chief of Police. (C) to confer with Legal Counsel pursuant to Government Code subsection (b) of Section 54956.9 with respect to anticipated litigation (Claim Filed) of significant exposure: (1) Claimants: In re Claim of Pavich; City Department: DOT. (D) to confer with Legal Counsel pursuant to Government Code subsection (c) of Section 54956.9 with respect to anticipated litigation in one (1) matter. (E) to confer with Legal Counsel pursuant to Government Code subsection (b) of Section 54956.9 with respect to anticipated litigation of significant exposure (Claim Not Filed) in one (1) matter. (F) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) Association of Building, Mechanical and Electrical Inspectors (ABMEI); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and ABMEI. (2) 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. (3) Association of Legal Professionals of San José (ALP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc. (4) Association of Maintenance Supervisory Personnel (AMSP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AMSP. (5) City Association of Management Personnel Agreement (CAMP); Nature of

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

Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CAMP. (6) Confidential Employees' Organization, AFSCME Local 101 (CEO); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CEO. (7) 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. (8) 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. (9) Municipal Employees' Federation, AFSCME Local 101, AFL-CIO (MEF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and MEF; (10) International Union of Operating Engineers, Local No. 3 (OE#3); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Union of Operating Engineers, Local No. 3. (11) San José Police Officers' Association (SJPOA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association. 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 11:10 a.m. and reconvened to Regular Session at 1:32 p.m. in the Council Chambers.

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

Absent: Council Members - All Present.

## **INVOCATION**

Father Soterios Rousakis from St. Nicholas Greek Orthodox Church presented the Invocation. (District 1)

## **PLEDGE OF ALLEGIANCE**

Mayor Reed and the 3rd Graders from Country Lane Elementary School 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 4.1 was deferred to January 25, 2011. (11-0.)

## **CEREMONIAL ITEMS**

**1.4 Administer Oaths of Office for newly elected Council Members. (City Clerk)  
(Rules Committee referral 1/5/11)**

Action: The Oaths of Office were administered to Mayor Chuck Reed, Vice Mayor Madison Nguyen and Council Members Sam Liccardo, Pete Constant, Xavier Campos and Donald Rocha.

**1.3 Presentation of a proclamation declaring the month of January 2011 as “National Blood Donor Month” in the City of San José. (Mayor)  
(Rules Committee referral 1/5/11)**

Action: Mayor Reed recognized the month of January 2011 as “National Blood Donor Month” in the City of San José.

**1.1 Presentation of a commendation to Martha’s Kitchen in recognition of their 30 years of providing the immeasurable service of feeding hungry men, women and children in the San José area. (Liccardo)  
(Rules Committee referral 1/5/11)**

Action: Mayor Reed and Council Member Liccardo recognized and commended Martha’s Kitchen in recognition of their 30 years of service.

**1.2 Presentation of the environmental Hall of Fame Award to the City of San José for its achievements in clean tech innovation, sustainability, and green mobility through its Green Vision goals. (Mayor)  
(Rules Committee referral 1/5/11)**

Action: Mayor Reed, accepted the environmental Hall of Fame Award, on behalf of the City of San José, from Stephen Tsu, President/CEO, K2 Solar, Inc.

## **CONSENT CALENDAR**

Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (11-0)

## 2.1 Approval of Minutes.

Action: There were none.

## 2.2 Final adoption of ordinances.

- (a) **ORD. NO. 28866** – Rezoning certain real property situated at 405 North Third Street from the R-M Multiple Residence Zoning District to the A(PD) Planned Development Zoning District to allow up to *three* residential units (total) on a 0.17 gross acre site. PDC08-033  
[Deferred from 12/14/10 – Item 2.2(h)]

Action: Deferred to January 25, 2011 per Administration.

- (b) **ORD. NO. 28875** – Amending Title 6 of the San José Municipal Code by adding a new Chapter 6.87 to require Tobacco Retailers to be licensed prior to engaging in the sale of Tobacco Products or Tobacco Paraphernalia.

Documents Filed: Proof of Publication of the Title of Ordinance No. 28875 executed on December 21, 2010, submitted by the City Clerk.

Action: [Ordinance No. 28875](#) was adopted. (11-0. First Reading: 9-2. Noes: Constant, Oliverio.)

- (c) **ORD. NO. 28876** – Rezoning certain real property, situated at the southwest corner of East Brokaw Road and Old Oakland Road, from the IP Industrial Park Zoning District and the HI Heavy Industrial Zoning District to A(PD) Planned Development Zoning District. PDC07-010

Documents Filed: Proof of Publication of the Title of Ordinance No. 28876 executed on December 21, 2010, submitted by the City Clerk.

Action: [Ordinance No. 28876](#) was adopted. (11-0.)

- (d) **ORD. NO. 28877** – Amending Chapter 9.10 of Title 9 of the San José Municipal Code to add a new Part 13 to ban Single-Use Carryout Bags, and prohibit the free distribution of recycled paper bags, by retail establishments, to be effective January 1, 2012.

Documents Filed: Proof of Publication of the Title of Ordinance No. 28877 executed on December 21, 2010, submitted by the City Clerk.

Action: [Ordinance No. 28877](#) was adopted. (11-0. First Reading: 10-1. Noes: Constant.)

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

- (a) Community and Economic Development Committee Report of November 29, 2010. (Pyle)**
- (b) Rules and Open Government Committee Report of December 1, 2010. (Mayor)**
- (e) Neighborhood Services and Education Committee Report of December 9, 2010. (Campos)**
- (g) Public Safety, Finance and Strategic Support Committee Report of December 16, 2010. (Nguyen)**

Documents Filed: (1) The Community and Economic Development Committee Report dated November 29, 2010. (2) The Rules and Open Government Committee dated December 1, 2010. (3) The Neighborhood Services and Education Committee Report dated December 9, 2010. (4) The Public Safety, Finance and Strategic Support Committee Report dated December 16, 2010.

Action: The Council Committee Reports were approved. (11-0.)

- (c) Transportation and Environment Committee Report of December 6, 2010. (Liccardo)**
- (d) Rules and Open Government Committee Report of December 8, 2010.**
- (f) Rules and Open Government Committee Report of December 15, 2010. (Mayor)**

Action: Deferred to January 25, 2010 per City Clerk.

- ### **2.4**
- (a) Request for an excused absence for Council Member Chu from the Special Meeting of the City Council on December 13, 2010 due to a family emergency. (Chu)  
(Rules Committee referral 12/15/10)**
  - (b) Request for excused absences for Council Member Constant from the Regular Meetings of the Rules and Open Government Committee on February 2, 2011, April 20, 2011, June 1, 2011, August 3, 2011, October 5, 2011 and December 7, 2011 due to Authorized City Business: Santa Clara County LAFCO Meetings. (Constant)**
  - (c) Request for excused absences for Council Member Nguyen from the Regular Meeting of the Rules and Open Government Committee on January 5, 2011, due to a prior engagement. (Nguyen)  
(Rules Committee referral 1/5/11)**

Documents Filed: (1) Memorandum from Council Member Chu, dated December 13, 2010, requesting an excused absence due to a family emergency. (2) Memorandum from Council Member Constant, dated December 21, 2010, requesting an excused absence due to authorized City business. (3) Memorandum from Council Member Nguyen, dated December 22, 2010, requesting an excused absence due to a prior engagement.

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

## 2.5 City Council Travel Reports.

Action: There were none.

## 2.6 Adopt a resolution authorizing the Director of Finance to:

- (a) Execute the second amendment to the Agreement with Schindler Elevator Corporation for elevator maintenance and repair services at citywide facilities to reduce monthly service costs by 10%, and exercise five additional one-year options for a total of eight remaining options to renew the Agreement, subject to the appropriation of funds.
- (b) Execute the second amendment to the Agreement with Schindler Elevator Corporation for elevator and escalator maintenance and repair services at the Norman Mineta San José International Airport to reduce monthly service costs by 10% and reduce time and material rates for unscheduled on-call services, and exercise five additional one-year options for a total of six remaining options to renew the Agreement, subject to the appropriation of funds.

**CEQA: Not a Project, File No. PP10-066(a), Agreements and Contracts for Maintenance Service. (Finance)**

Documents Filed: Memorandum from Director of Finance Scott P. Johnson, dated December 6, 2010, recommending adoption of a resolution.

Action: [Resolution No. 75690](#), entitled: “A Resolution of the Council of the City of San José Authorizing the Director of Finance to Execute Amendments to Agreements with Schindler Elevator Corporation for Elevator Maintenance and Repair Services”, were adopted. (11-0.)

## 2.7 Adopt a resolution to amend the Schedule of Parkland Fees and Credits (Council Resolution No. 73587, as amended) authorizing the City Manager to negotiate and execute an amendment to agreements with developers of high-rise multi-family residential projects located in the Downtown Core Area who previously executed a deferment agreement with City to provide up to an additional 12 months for payment of parkland in-lieu fees and accrued interest owed to City. CEQA: Mitigated Negative Declaration, File No. PP07-130. (Parks, Recreation and Neighborhood Services)

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated December 6, 2010, recommending adoption of a resolution.

Action: [Resolution No. 75691](#), entitled: “A Resolution of the Council of the City of San José Amending Exhibit B of Resolution No. 73587, As Amended, To Provide an Additional Extension of Up to Twelve (12) Months for Deferral of the Payment of Parkland Fees Charges Pursuant to Chapters 14.25 and 19.38 of the San José Municipal Code for High Rise Multi Family Residential Projects Located in the Downtown Core Area”, was adopted. (11-0.)

- 2.8 Adopt a resolution amending the Schedule of Parkland Fees and Credits (Resolution No. 73587 as amended) to provide an additional deferment of payment of parkland fees, interest and penalty until January 15, 2012, or the date of issuance of the first building permit for residential construction, whichever occurs earlier, for projects that currently have an approved parcel or final map by the City and have not been issued a building permit by the City for residential construction. CEQA: Statutorily Exempt, File No. PP10-067(a), CEQA Guidelines Section 15273, Rates, Tolls, Fares, and Charges. (Parks, Recreation and Neighborhood Services)**

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated December 6, 2010, recommending adoption of a resolution.

Action: [Resolution No. 75692](#), entitled: “A Resolution of the Council of the City of San José Amending Exhibit B of Resolution No. 73587, As Amended, To Provide for the Retroactive Deferment of the Payment of Parkland Fees and the Interest and Penalty Charged Pursuant to Chapter 19.38 of the San José Municipal Code for Residential Projects With Approved Final Maps and Parcel Maps and For Which Building Permits Have Not Been Issued”, was adopted. (11-0.)

- 2.9 Approve the appointment of Scott Green, Clean Tech and Regional Policy Officer for the City of San José Office of Economic Development, to serve as a public sector representative on the Silicon Valley Workforce Investment Network Board of Directors as required by law. (Mayor)  
(Rules Committee referral 12/15/10)**

Documents Filed: Memorandum from Mayor Reed, dated December 14, 2010, recommending approval of the appointment.

Action: The appointment of Scott Green, Clean Tech and Regional Policy Officer for the City of San José Office of Economic Development, to serve as a public sector representative on the Silicon Valley Workforce Investment Network Board of Directors as required by law was approved. (11-0.)

- 2.10 As recommended by the Rules and Open Government Committee on December 15, 2010:**

- (a) Re-appoint Vanessa Burbach and Clarence Madrilejos to the Human Rights Commission for terms ending December 31, 2013. (Chu)**
  - (b) Re-appoint Michael Fitzgerald and Elaine Coombs to the Advisory Commission on Rents for terms ending December 31, 2013. (Herrera)**
- [Rules Committee referral 12/15/10 – Items G(1)(a) and G(1)(b)]**

Documents Filed: Memorandum from City Clerk Lee Price, MMC, dated December 15, 2010, transmitting the recommendations of the Rules and Open Government Committee.

**2.10 (Cont'd.)**

Action: Vanessa Burbach and Clarence Madrilejos were appointed to the Human Rights Commission for terms ending December 31, 2013, and Michael Fitzgerald and Elaine Coombs were appointed to the Advisory Commission on Rents for terms ending December 31, 2013. (11-0.)

**2.11 As recommended by the Rules and Open Government Committee on December 15, 2010 and pursuant to Charter Section 403, appoint members of the community to the Redistricting Advisory Commission. (Mayor)  
[Rules Committee referral 12/15/10 – Items H(2)]**

Documents Filed: (1) Memorandum from Mayor Reed, dated January 7, 2011, recommending commissioners to be appointed to the Redistricting Advisory Commission. (2) Memorandum from City Clerk Lee Price, MMC, dated December 15, 2010, transmitting the recommendations of the Rules and Open Government Committee.

Mayor Reed summarized his memorandum dated January 7, 2011 and pointed out that the Redistricting Advisory Commission should look at criteria established by the last Advisory Commission and maintain continuity of existing Council Districts to the extent possible.

Motion: Council Member Constant moved approval of the memorandum from Mayor Reed, the recommendations of the Rules and Open Government Committee and including the suggestion that Staff review and consider the guidelines that have been approved by the voters from the two prior voting records. Council Member Herrera seconded the motion.

Action: On a call for the question, the motion carried unanimously, the memorandum from Mayor Reed, dated January 7, 2011 and the recommendations of the Rules and Open Government Committee were approved, including the suggestion that Staff review and consider the guidelines that have been approved by the voters from the two prior voting records. (11-0.)

**2.12 As recommended by the Rules and Open Government Committee on December 15, 2010, adopt a resolution modifying Council Labor Negotiation Guidelines (Council Policy 0-39) to provide for more transparency in the negotiation process. (Mayor)  
[Rules Committee referral 12/15/10 – Items H(3)]**

Action: Deferred to January 25, 2011 per Rules and Open Government Committee.

**2.13 Approve travel by Council Member Campos to Sacramento, California on January 19 – 21, 2011 to attend the League of California Cities New Mayors and Council Members Academy. Source of Funds: Mayor & Council Travel Fund. (Campos)  
(Rules Committee referral 1/5/11)**

## 2.13 (Cont'd.)

Documents Filed: Memorandum from Council Member Campos, dated December 21, 2010, requesting approval of travel.

Action: The travel request for Council Member Campos was approved. (11-0.)

## 2.14 **Approve travel by Council Member Campos to Los Angeles, California on January 21 – 22, 2011 to attend the League of California Cities, Latino Caucus Board Retreat as a potential 2011 Board Member. Source of Funds: Mayor & Council Travel Fund and Council Member to pay for airfare with personal funds. (Campos)**

Documents Filed: Memorandum from Council Member Campos, dated December 21, 2010, requesting approval of travel.

Action: The travel request for Council Member Campos was approved. (11-0.)

## 2.15 (a) **Approve travel by Council Member Constant to Washington, D.C. on March 12 – 16, 2011 to attend the Congressional City Conference as Vice-Chair of the National League of Cities' Public Safety and Crime Prevention Policy and Advocacy Committee. Source of Funds: Mayor & Council Travel Fund. (Constant)**

(b) **Request for excused absences for Council Member Constant from the Closed Session and Regular City Council Meeting on March 15, 2011 and the Regular Meeting of the of the Rules and Open Government Committee on March 16, 2011 due to Authorized City Business: 2011 National League of Cities Congressional City Conference in Washington, D.C. (Constant)**  
**(Rules Committee referral 1/5/11)**

Documents Filed: Memoranda from Council Member Constant, both dated January 5, 2011, requesting approval of travel and an excused absence.

Action: The travel request for Council Member Constant was approved and the absences were excused. (11-0.)

## END OF CONSENT CALENDAR

## STRATEGIC SUPPORT SERVICES

### 3.1 **Report of the City Manager Debra Figone.**

City Manager Debra Figone reported that Manager's Office was currently in the process of the 2011 negotiations with all of the bargaining units, except MEF, CEO and ABMEI. City Manager Figone also provided highlights of Governor Brown's proposal to address the 25.4 Billion dollar deficit for the 2011-2012 State Budget.

- 3.2 (a) **Adopt a resolution continuing the authorization of the issuance of City of San José, San José International Airport Subordinated Commercial Paper Notes in several series in an aggregate amount not to exceed \$600,000,000 outstanding at any one time and superseding Resolution No. 69200, as amended; and authorizing the City's designated officers to establish terms and conditions for the issuance and payment of such commercial paper notes and to take other necessary actions in connection therewith.**
- (b) **Adopt a resolution authorizing the City's designated officers to negotiate, execute and deliver the following agreements related to the City of San José, San José International Airport Subordinated Commercial Paper Notes: (1) letter of credit and reimbursement agreements with each of JPMorgan Chase Bank, N.A., Bank of America, N.A., Citibank, N.A. and Wells Fargo Bank, N.A. and the related fee agreements; (2) a Second Amended and Restated Issuing and Paying Agreement with Deutsche Bank Trust Company Americas; (3) amended and restated dealer agreements with each of Barclays Capital Inc., Citigroup Global Markets Inc., and Morgan Stanley & Co. Incorporated; and authorizing the City's designated officers to take other necessary actions in connection therewith.**

**CEQA: Not a Project, File No. PP10-066, Agreements/Contracts (New or Amended). (Finance)**

Documents Filed: (1) Memorandum from Assistant Director of Finance Julia H. Cooper, dated December 14, 2010, recommending adoption of resolutions. (2) Supplemental memorandum from Assistant Director of Finance Julia H. Cooper, dated January 7, 2011, describing the delegation of authority for selecting a substitute or additional letter of credit or banks, revising the delegation of authority for entering into extensions of the Reimbursement Agreements and associated Fee Letters and providing a summary of the business terms of the Reimbursement Agreements and associated Fee Letters related to the replaced credit facilities for the Airport CP Commercial Pedestrian Zoning District Program. (3) Staff presentation dated January 11, 2011 summarizing the Airport Commercial Paper Program Letter of Credit Extension.

Assistant Director of Finance Julia H. Cooper presented the report on the Airport Commercial Paper Program Letter of Credit Extension and responded to Council questions.

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Herrera and carried unanimously, [Resolution No. 75693](#), entitled: "A Resolution of the Council of the City of San José Continuing the Authorization of the Issuance of Commercial Paper Notes In An Aggregate Amount Not To Exceed \$600,000,000 Outstanding at Any One Time, To Finance and Refinance Project Costs and Capitalized Interest Associated With Implementing the Airport Master Plan at the Norman Y. Mineta San José International Airport and To Refund or To Pay Debt Service on Other Obligations of the City Issued to Pay Such Costs, and Superseding Resolution No. 69200, As Amended, and Delegating to the City Manager and To Other Officers of the City Authorization to Establish Terms and Conditions for the Issuance and Payment of Said Commercial Paper Notes and To Take

### 3.3 (Action Cont'd.)

Other Necessary Actions In Connection Therewith” and [Resolution No. 75694](#), entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager, The Assistant Director of Finance or Their Authorized Designees to Negotiate, Execute and Deliver Letter of Credit and Reimbursement Agreements with Each of JPMorgan Chase Bank, N.A., Bank of America, N.A., CitiBank, N.A., and Wells Fargo Bank, N.A., and the Associated Fee Letters; A seconded Amended and Restated Issuing and Paying Agent Agreement with Deutsche Bank Trust Company Americas; Amended and Restated Dealer Agreements with Each of Barclays Capital Inc., CitiGroup Global Markets Inc., and Morgan Stanley & Co. Incorporated, All Related to the Norman Y. Mineta San José International Airport Commercial Paper Program and To Take Other Necessary Actions In Connection Therewith”, were adopted. (11-0.)

### 3.3 **Accept the report on City Government Performance. CEQA: Not a Project. (City Auditor’s Office)**

Documents Filed: Report on the Service Efforts and Accomplishments Report 2009-2010, Annual Report on City Government Performance from the Office of the City Auditor, dated January 2011.

City Auditor Sharon W. Erickson presented the Service Efforts and Accomplishments Report of 2009-2010 and responded to Council questions.

Action: Upon motion by Council Member Constant, seconded by Vice Mayor Nguyen and carried unanimously, the Service Efforts and Accomplishments Report 2009-2010 Report from the Office of the City Auditor, was accepted. (11-0.)

### 3.4 **Adopt a Statement of Policy and City Council Questions related to the selection of a new Chief of Police as described in this memo, in compliance with City Charter Section 411.1. CEQA: Not a Project, File No. PP10-070(b), Personnel Related Decisions. (City Manager’s Office)**

Documents Filed: (1) Memorandum from Council Member Constant, dated January 11, 2011, transmitting an addition to the suggested list of City Council questions related to the selection of a new Chief of Police. (2) Memorandum from City Manager Debra Figone, dated December 17, 2010, recommending adoption of a Statement of Policy and City Council Related Questions related to the selection of a new Chief of Police. (3) Supplemental memorandum from City Manager Debra Figone, dated January 10, 2011, transmitting a proposed addition to the suggested list of City Council questions.

City Manager Debra Figone pointed out that she added another question to the suggested list of City Council questions in a supplemental memorandum.

Motion: Council Member Constant moved approval of his memorandum dated January 11, 2011, including the supplemental memorandum from City Manager Debra Figone. Vice Mayor Nguyen seconded the motion.

### 3.4 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, the memorandum from Council Member Constant, dated January 11, 2011, the supplemental memorandum from City Manager Debra Figone, dated January 10, 2011, and including the memorandum from City Manager Figone, dated December 17, 2010, were approved, adopting a Statement of Policy and City Council Questions, with two additional questions: (1) Please describe how you would approach your relationship of the Office of the Independent Police Auditor, which is San José's model of police oversight. How will you ensure a proactive working relationship between the Department and the Independent Police Auditor? (2) The San José Police Department has a long tradition of maintaining and supporting a Police Reserve Unit. Please describe your experiences in working with Police Reserve Units. What are the best practices that you are aware of associated with the utilization and deployment of reserve police officers? Staff requested to respond to Council with an information memorandum/email addressing strategic support services and work force development training pertaining to the Statement of Policy. (11-0.)

## COMMUNITY & ECONOMIC DEVELOPMENT

### 4.1 **Adopt the Cultural Connection: San José's Cultural Plan for 2011-2020. CEQA: Not a Project, File No. PP10-066(e), Services that involved no physical changes to the environment. (Economic Development)**

Action: Deferred to January 25, 2011 per Orders of the Day.

### 4.2 **Conduct a Public Hearing and adopt a resolution:**

- (a) **Overruling any and all objections to the 2010-2011 Hazardous Vegetation Commencement Report.**
- (b) **Directing the Santa Clara County Department of Agriculture and Resource Management to abate the seasonal and/or recurrent public nuisances on those properties identified in the Report pursuant to Chapter 9.12 of Title 9 of the San José Municipal Code and the Weed Abatement Agreement between the City of San José and the County of Santa Clara.**

**CEQA: Exempt, File No. PP06-196. (Planning, Building and Code Enforcement)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated December 8, 2010, recommending adoption of a resolution

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

#### 4.2 (Cont'd.)

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Herrera and carried unanimously, [Resolution No. 75695](#), entitled: “A Resolution of the Council of the City of San José Overruling Objections to the 2010-2011 Hazardous Vegetation Commencement Report and Directing the Santa Clara County Department of Agriculture and Resource Management to Abate the Seasonal and/or Recurrent Public Nuisances on Those Properties Identified in the Report Pursuant to Chapter 9.12 of Title 9 of the San José Municipal Code and Weed Abatement Agreement Between the City of San José and the County of Santa Clara”, was adopted. (11-0.)

#### 4.3 **Adopt a resolution of California Environmental Quality Act (CEQA) findings that the Environmental Assessment/Initial Study/Negative Declaration prepared by the County of Santa Clara for the Montague Expressway Improvement project was completed in compliance with CEQA, reflects the City’s independent judgment and analysis, and includes the adoption of a mitigation monitoring and reporting program. CEQA: The environmental impacts of the Montague Expressway Widening Improvement project were addressed by a Negative Declaration approved by the Santa Clara County Board of Supervisors on December 10, 2002. CEQA resolution of findings are recommended for adoption by City Council. Council District 4. (Planning, Building and Code Enforcement)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated December 10, 2010, recommending adoption of a CEQA resolution and transmitting the Approval Final Initial Study (CEQA) Finding of No Significant Impact (NEPA) for the Montague Expressway Improvement Project.

Director of Planning, Building and Code Enforcement Joseph Horwedel responded to Council questions and comments.

Action: Upon motion by Council Member Chu, seconded by Council Member Kalra and carried unanimously, [CEQA Resolution No. 75696](#), entitled: “A Resolution of the Council of the City of San José Making Certain Findings in Accordance with the California Environmental Quality Act for Implementation of the Montague Expressway Widening Improvement Project Along Montague Expressway, For Which An Initial Study/Mitigated Negative Declaration Was Prepared By the County of Santa Clara In Accordance With the California Environmental Quality Act and Adopting a Mitigation Monitoring and Reporting Program”, was adopted. (11-0.)

## **TRANSPORTATION & AVIATION SERVICES**

#### 6.1 (a) **Adopt a resolution authorizing the City Manager, or her designee, to negotiate and execute an agreement for the City to pay the annual Maintenance District 23 assessment, if approved, on land owned by the County of Santa Clara and occupied by the City operated park and community center during the City’s tenancy on the property.**

- 6.1 (b) **Conduct a public hearing regarding the formation of proposed Maintenance District 23 and at the close of the public hearing direct the City Clerk to tabulate the property owner ballots and report the results.**
- (c) **If the majority of the votes tabulated are weighted in favor of the proposal:**
- (1) **Adopt a resolution:**
    - (a) **Declaring the ballot tabulation results;**
    - (b) **Approving the engineer's report, base assessment and annual adjustments and forming Maintenance District 23; and**
    - (c) **Imposing the assessments on those properties within the district as proposed in the engineer's report.**
  - (2) **Establish a new fund in Maintenance District 23 (Berryessa Road from I-680 to Piedmont Road).**

**CEQA: Exempt, File No. PP10-090. Council District 4. (Public Works/Transportation)**

Documents Filed: (1) Memorandum from Director of Public Works Katy Allen and Acting Director of Transportation Hans F. Larsen, dated October 28, 2010, recommending conducting a public hearing and adoption of a resolution, if majority of votes are in favor of the proposal. (2) Supplemental memorandum from Director of Public Works Katy Allen and Acting Director of Transportation Hans F. Larsen, dated December 17, 2010, adding to the recommendation the authorization for the City Manager or her designee, to negotiate and execute an agreement or amendment to the current agreement with the County of Santa Clara. (3) Statement and Declaration of Conflict of Interest Form from Council Member Chu, dated November 16, 2010, disclosing that his residence is within 500 feet of the proposed Maintenance District. (4) Staff presentation dated January 11, 2011 summarizing the Maintenance District 23 Proposal.

Per the advice of the City Attorney, Council Member Chu recused himself from participating in the discussion and action of Maintenance District 23, as he lives within maintenance district area.

Mayor Reed stated that Item 6.1(b) is the continued public hearing and special election on the levy of special assessments within Maintenance District No. 23. He pointed out that the Council held a public meeting on September 28, 2010 regarding the formation of the District and opened the public hearing for the formation of the District on November 16, 2010. He stated that today Council will continue the public hearing and election process on the formation of the District.

Acting Director of Transportation Hans Larsen presented the report on Maintenance District 23. Acting Director of Public Works David Sykes addressed the action for today and pointed out that the County is attesting the Engineer's report.

Mayor Reed opened the public hearing.

## 6.1 (Cont'd.)

Public Comments: Ian Champeny and Katherine Harasz (County of Santa Clara) respectfully disagreed with the Staff recommendations and registered their objections on behalf of the County of Santa Clara. Alan Perry asserted that the Engineering Report was not in conformance with Proposition 218.

Acting Director of Public Works David Sykes responded to the County representatives.

Mayor closed the public hearing and directed the City Clerk's Office to tabulate the ballots received in this special election.

City Attorney Richard Doyle responded to Council questions.

Council discussion ensued.

Action: There was no Council action taken. The majority of property owners voted in opposition to the levy of assessments. The City Council cannot act on this item. Council Member Chu was disqualified from participating.

## OPEN FORUM

Michael McDuffie, resident of the Sleepy Hollow Trailer Park, presented complaints about the Capitol Flea Market on Capitol Expressway. The speaker was referred to Assistant City Manager Ed Shikada.

## ADJOURNMENT

The Council of the City of San José was adjourned at 3:30 p.m. in honor and memory of Jack Salois, retired San José Firefighter, former president of Local 1165 International Association of Firefighters, former staff to San José Council Member John DiQuisto, and a passionate community activist. He has served the community for many decades with passion, dedication and an earnest interest in improving the quality of life for the residents of San José. (Nguyen/Campos)

Minutes Recorded, Prepared and Respectfully Submitted by,

Dennis D. Hawkins, CMC  
City Clerk

smd/01-11-11 MIN

Access the video, the agenda and related reports for this meeting by visiting the City's website at <http://www.sanjoseca.gov/clerk/agenda.asp> or <http://www.sanjoseca.gov/clerk/MeetingArchive.asp>. For information on any ordinance that is not hyperlinked to this document, please contact the Office of the City Clerk at (408) 535-1266.