

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, OCTOBER 19, 2010

The Council of the City of San José convened in regular session at 9:30 a.m. in the Council Chambers at City Hall.

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

Absent: Council Members - All Present.

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 (Claim Not Filed) in one (1) matter. (B) to confer with Legal Counsel pursuant to Government Code subsection (c) of Section 54956.9 with respect to anticipated litigation in one (1) matter. (C) to confer with Legal Counsel pursuant to Government Code subsection (a) of Section 54956.9 with respect to existing litigation: (1) Smith v. City of San José, et al. Names of Parties Involved: Ted Smith, City of San José, San José Elections Commission and 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. (D) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) International Association of Firefighters, Local 230 (IAFF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Association of Firefighters. 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 10:55 a.m. and reconvened to Regular Session at 1:30 p.m. in the Council Chambers.

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

Absent: Council Members - All Present.

INVOCATION

Fresh Lifelines for Youth (FLY) Youth Representatives presented the Invocation.
(District 9)

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Constant, seconded by Council Member Pyle and carried unanimously, the Orders of the Day and the Amended Agenda were approved, with an adjournment in memory to Penelope Pries deferred to November 09, 2010. (11-0.)

CLOSED SESSION REPORT

City Attorney Doyle disclosed the following Closed Session action of October 19, 2010:

A. Authority to Initiate Litigation:

Authority to initiate litigation was given in one (1) 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, Constant, Herrera, Kalra, Liccardo, Nguyen, Oliverio, Pyle; Reed.

Noes: None.

Disqualified: None.

Absent: None.

Vacant: None.

CEREMONIAL ITEMS

1.1 Presentation of a proclamation recognizing the month of October 2010 as “Underground Railroad Awareness Month” in the City of San José. (Kalra)

Action: Mayor Reed and Council Member Kalra recognized the month of October 2010 as “Underground Railroad Awareness Month”

- 1.2 Presentation of a commendation to Sister Miriam Daniel Fahey for her tireless dedication, leadership and invaluable service to improving the quality of life for the residents of the Santee Community in Council District 7. (Nguyen)**

Action: Mayor Reed and Council Member Nguyen recognized and commended Sister Miriam Daniel Fahey.

- 1.3 Presentation of a proclamation declaring the Week of October 17 – 23, 2010 as “National Save for Retirement Week” in the City of San José. (Constant) (Rules Committee referral 10/6/10)**

Action: Mayor Reed and Council Member Constant recognized the week of October 17 through October 23, 2010 as “National Save for Retirement Week”.

- 1.4 Presentation of a proclamation declaring the Week of October 17 – 23, 2010 as “National Protect Your Identity Week” in the City of San José. (Constant) (Rules Committee referral 10/6/10)**

Action: Mayor Reed and Council Member Constant recognized the week of October 17 through October 23, 2010 as “National Protect Your Identity Week”.

- 1.5 Presentation of a commendation to Darren Shaw, 2010 California Association of Community Managers (CACM) Vision Award winner, for his exemplary service to the residents of the Villages. (Herrera) (Rules Committee referral 10/6/10)**

Action: Mayor Reed and Council Member Herrera recognized and commended Darren Shaw.

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. (9-0-2. Absent: Campos, Constant.)

- 2.1 Approval of minutes.**
- (a) Regular Minutes of June 8, 2010.**
 - (b) Special Minutes of June 14, 2010.**
 - (c) Regular Minutes of June 15, 2010.**
 - (d) Special Minutes of June 17, 2010.**
 - (e) Regular Minutes of June 22, 2010.**
 - (f) Joint San José Financing Authority Minutes of June 22, 2010.**
 - (g) Regular Minutes of June 29, 2010.**

Documents Filed: (1) The Regular Minutes dated June 8, 2010, June 15, 2010, June 22, 2010 and June 29, 2010. (2) The Special Minutes dated June 14, 2010 and June 17, 2010. (3) The Joint San José Financing Authority Minutes dated June 22, 2010.

2.1 (Cont'd.)

Action: The City Council Minutes were approved. (9-0-2. Absent: Campos, Constant.)

2.2 Final adoption of ordinances.

- (a) **ORD. NO. 28822** – Prezoning certain real property situated at the north side of Penitencia Creek Road, approximately 300 feet west of Noble Avenue, from County of Santa Clara to A Agricultural Zoning District. C10-012

Documents Filed: Proof of Publication of the Title of Ordinance No. 28822 executed on October 12, 2010, submitted by the City Clerk.

Action: Ordinance No. 28822 was adopted. (9-0-2. Absent: Campos, Constant.)

- (b) **ORD. NO. 28823** – Prezoning certain real property situated at the west side of Noble Avenue, approximately 100 feet north of Penitencia Creek Road, from County of Santa Clara to R-1-8 Single Family Residence Zoning District. C10-012

Documents Filed: Proof of Publication of the Title of Ordinance No. 28823 executed on October 12, 2010, submitted by the City Clerk.

Action: Ordinance No. 28823 was adopted. (9-0-2. Absent: Campos, Constant.)

- (c) **ORD. NO. 28824** – Prezoning certain real property generally bounded by Patt Avenue, McKee Road, North White road, and a line 150 feet westerly of Francis Drive from County of Santa Clara to R-1-8 Single Family Residence Zoning District. C10-013

Documents Filed: Proof of Publication of the Title of Ordinance No. 28824 executed on October 12, 2010, submitted by the City Clerk.

Action: Ordinance No. 28824 was adopted. (9-0-2. Absent: Campos, Constant.)

- (d) **ORD. NO. 28825** – Prezoning certain real property generally bounded by Gay, North Capitol and Alum Rock Avenues, and a line approximately 950 feet southwesterly of North White Road from County of Santa Clara to R-1-8 Single Family Residence Zoning District. C10-014

Documents Filed: Proof of Publication of the Title of Ordinance No. 28825 executed on October 12, 2010, submitted by the City Clerk.

Action: Ordinance No. 28825 was adopted. (9-0-2. Absent: Campos, Constant.)

- (e) **ORD. NO. 28826** – Prezoning certain real property generally bounded by Florence Avenue, South White Road, Story Road, Lower Silver Creek, and South Capitol Avenue from County of Santa Clara to R-1-8 Single Family Residence Zoning District. C10-015

2.2 (e) (Cont'd.)

Documents Filed: Proof of Publication of the Title of Ordinance No. 28826 executed on October 12, 2010, submitted by the City Clerk.

Action: Ordinance No. 28826 was adopted. (9-0-2. Absent: Campos, Constant.)

- (f) **ORD. NO. 28827 – Rezoning certain real property located at the southwest side of South White Road, approximately 130 feet south of Westboro Drive, from County of Santa Clara to CN Commercial Neighborhood Zoning District. C10-015**

Documents Filed: Proof of Publication of the Title of Ordinance No. 28827 executed on October 12, 2010, submitted by the City Clerk.

Action: Ordinance No. 28827 was adopted. (9-0-2. Absent: Campos, Constant.)

- (g) **ORD. NO. 28828 – Amending Title 20 of the San José Municipal Code to amend Chapter 20.50 to add a new Part 4 clarifying setback regulations for the Industrial Districts, to amend Sections 20.100.110 and 20.100.1210 of Chapter 20.100 to allow Utility Providers to sign Development Permit Applications for utility work occurring entirely within public services easements or public utility easements, to amend Section 20.200.700 of Chapter 20.200 to clarify the definition of front lot line and making other related, technical and nonsubstantive conforming amendments to Title 20.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 28828 executed on October 12, 2010, submitted by the City Clerk.

Action: Ordinance No. 28828 was adopted. (9-0-2. Absent: Campos, Constant.)

2.3 **Approval of Council Committee Reports.**

- (a) **Rules and Open Government Committee Report of September 22, 2010. (Mayor)**
- (b) **Community and Economic Development Committee Report of September 27, 2010. (Pyle)**
- (c) **Rules and Open Government Committee Report of September 29, 2010. (Mayor)**
- (d) **Transportation and Environment Committee Report of October 4, 2010. (Liccardo)**

Documents Filed: (1) The Rules and Open Government Committee Reports dated September 22, 2010 and September 29, 2010. (2) The Community and Economic Development Committee Report dated September 27, 2010. (3) The Transportation and Environment Committee Report dated October 4, 2010.

Action: The Committee Reports were approved. (9-0-2. Absent: Campos, Constant.)

2.4 Mayor and Council Excused Absence Requests.

Action: There were none.

2.5 City Council Travel Reports.

Action: There were none.

2.6 Approve settlement and authorize the City Attorney to execute Settlement Agreements with Michael Colvin and Mary Beth Majors, and their attorneys in the amount of \$70,000, and to USAA in the amount of \$18,361.01. CEQA: Not a Project, File No. PP10-066(h), Settlement Agreements. (City Attorney's Office)

Documents Filed: Memorandum from City Attorney Richard Doyle, dated October 7, 2010, recommending approval of the settlement and authorization for the City Attorney.

Action: The settlement was approved. The City Attorney was authorized to execute Settlement Agreements with Michael Colvin and Mary Beth Majors, and their attorneys in the amount of \$70,000, and to USAA in the amount of \$18,361.01. (9-0-2. Absent: Campos, Constant.)

2.7 (a) Approval of the Second Addendum to the Amended and Restated San Jose Arena Management Agreement between the City and San Jose Arena Management LLC, consenting to the Naming Rights Agreement between SJAM and Citrix Systems for the naming of the suites at the HP Pavilion, and providing for the sharing of revenues, in the amount of \$75,000 per year to the City, in FY 2010-11 through FY 2012-13, with a two year option to extend at Citrix Systems' discretion.

- (b) Approval of an amended Advertising Plan for the HP Pavilion to:**
- (1) Add the Citrix Suites branding to the penthouse and concourse suites, walls, information desks, directional signs and suite line signage; and**
 - (2) Add two brand name/trade name signs above the remodeled north entrance concession stand.**

CEQA: Not a Project, File No. PP10-066 (e), Services that involve no physical changes to the environment. (City Manager's Office)

Documents Filed: Memorandum from Assistant City Manager Edward K. Shikada, dated October 7, 2010, recommending approval of the staff recommendations.

Public Comments: Don Gralnek, San José Arena Management, spoke in support to the Staff recommendations.

2.7 (Cont'd.)

Action: Upon motion by Council Member Liccardo, seconded by Council Member Pyle and carried unanimously, the Second Addendum to the Amended and Restated San Jose Arena Management Agreement between the City and San Jose Arena Management LLC, consenting to the Naming Rights Agreement between SJAM and Citrix Systems for the naming of the suites at the HP Pavilion, and providing for the sharing of revenues, in the amount of \$75,000 per year to the City, in FY 2010-11 through FY 2012-13, with a two year option to extend at Citrix Systems' discretion and an amended Advertising Plan for the HP Pavilion, were approved. (10-0-1. Absent: Constant.)

2.8 Adopt the following resolutions to:

- (a) **Amend the 2010-2011 Schedule of Fees and Charges (Resolution No. 72737, as amended) to clarify the City's existing Landfill AB939 Fee.**
- (b) **Amend the Franchise Fee Resolution No. 74907 to establish a franchise fee for franchises issued based on geographic collection districts.**

CEQA: Statutorily Exempt, File No. PP10-067 (a), CEQA Guidelines Section 15273, Rates Tolls, Fares, and Charges. (Environmental Services/City Manager's Office)

Documents Filed: Memorandum from Director of Environmental Services John Stufflebean and Budget Director Jennifer Maguire, dated September 27, 2010, recommending adoption of resolutions.

Action: Resolution No. 75600, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 72737 as Previously Amended by Resolution Numbers 73019, 73056, 73242, 73637, 73831, 73879, 73881, 74035, 74047, 74452, 74839, 74841, 74981, 75135, 75334, 75338, 75442, 75502 and 75509 To Clarify the Existing Disposal Facility Operator Integrated Waste Management Fee" and Resolution No. 75601, entitled: "A Resolution of the Council of the City of San José Setting Commercial Solid Waste Collection Franchise Fees", were adopted. (9-0-2. Absent: Campos, Constant.)

2.9 Adopt a resolution authorizing the Director of Finance to:

- (a) **Execute the second amendment to the Elevator Maintenance Agreement with Kone, Inc. to reduce the amount of annual compensation by 30% for elevator maintenance services for the City Hall and Employee Garage elevators.**
- (b) **Exercise a total of eight additional one-year options to renew the Agreement for a total of thirteen option years with a maximum term through May 21, 2021, subject to the appropriation of funds.**

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

Documents Filed: Memorandum from Director of Finance Scott P. Johnson, dated September 27, 2010, recommending adoption of a resolution.

Action: Resolution No. 75602, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Finance to Execute a Second Amendment to the Agreement with Kone, Inc. for Elevator Maintenance at City Hall and the Employee Parking Garage", was adopted. (9-0-2. Absent: Campos, Constant.)

2.10 Adopt a resolution:

- (a) **Authorizing the Director of Environmental Services to award the contract for the McCarthy House Demolition Project to the lowest responsive and responsible bidder in an amount not to exceed \$126,200, and approve a construction contingency with a maximum value of \$46,680.**
- (b) **To decide any timely bid protest(s), to make the City's final determination as to lowest responsive and responsible bidder, or to reject all bids and re-bid the project.**

CEQA: Exempt, File No. PP09-154. (Public Works/Environmental Services)

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean and Director of Public Works Katy Allen, dated September 27, 2010, recommending adoption of a resolution. (2) Letter from Chuck Reed, Chairperson, The Treatment Plant Advisory Committee, dated October 14, 2010, stating concurrence with the Staff recommendations.

Action: Resolution No. 75603, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Environmental Services to Award the Contract for the McCarthy House Demolition Project", was adopted. (9-0-2. Absent: Campos, Constant.)

2.11 (a) Award the construction contract for the Handrail Phase 3 Project at the San José/Santa Clara Water Pollution Control Plant to the low bidder, Bugler Construction, Inc., in the amount of \$289,000.

- (b) **Approve a 15% contingency in the amount of \$43,350.**

CEQA: Exempt, File No. PP10-126. (Public Works/Environmental Services)

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean and Director of Public Works Katy Allen, dated October 1, 2010, recommending approval of the award of the contract to the low bidder, with related contingency. (2) Letter from Chuck Reed, Chairperson, The Treatment Plant Advisory Committee, dated October 14, 2010, stating concurrence with the Staff recommendations.

Action: The construction contract for the Handrail Phase 3 Project at the San José/Santa Clara Water Pollution Control Plant to the low bidder, Bugler Construction, Inc., in the amount of \$289,000T, with related contingency, was approved. (9-0-2. Absent: Campos, Constant.)

2.12 (a) Award the construction contract for the Waste Heat Recovery Silencer EG-1 Replacement Project at the San José/Santa Clara Water Pollution Control Plant to the low bidder, Environmental Systems Inc., in the amount of \$252,000.

- (b) **Approve a 10% contingency in the amount of \$25,200.**

CEQA: Exempt, File No. PP10-153. (Public Works/Environmental Services)

2.12 (Cont'd.)

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean and Director of Public Works Katy Allen, dated October 1, 2010, recommending approval of the award of the contract to the low bidder, with related contingency. (2) Letter from Chuck Reed, Chairperson, The Treatment Plant Advisory Committee, dated October 14, 2010, stating concurrence with the Staff recommendations.

Action: The construction contract for the Waste Heat Recovery Silencer EG-1 Replacement Project at the San José/Santa Clara Water Pollution Control Plant to the low bidder, Environmental Systems Inc., in the amount of \$252,000, with related contingency, was approved. (9-0-2. Absent: Campos, Constant.)

2.13 As referred by the Community and Economic Development Committee on September 27, 2010, approve a Year 4 Work Plan for the City and Redevelopment Agency to advance the “Small Wonders” component of the Downtown Vision promoted by 1stACT. (Economic Development)

Documents Filed: Memorandum from City Clerk Lee Price, MMC, dated October 5, 2010, transmitting the recommendations of the Community and Economic Development Committee.

Action: The Year 4 Work Plan for the City and Redevelopment Agency to advance the “Small Wonders” component of the Downtown Vision promoted by 1stACT, was approved. (9-0-2. Absent: Campos, Constant.)

2.14 As recommended by the Rules and Open Government Committee on October 13, 2010:

- (a) Approve the District 4 North San José Business Appreciation Luncheon as a City and Redevelopment Agency sponsored Special Event.**
- (b) Approve and accept donations from various individuals, businesses, or community groups to support the event.**

(City Clerk)

[Rules Committee referral 10/13/10 – Item H(5)]

Documents Filed: Memorandum from City Clerk Lee Price, MMC, dated October 14, 2010, transmitting the recommendations of the Rules and Open Government Committee.

Action: The District 4 North San José Business Appreciation Luncheon as a City and Redevelopment Agency 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: Campos, Constant.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

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

Assistant City Manager Edward Shikada presented highlights on the 96th Annual International City/County Management Association Conference being held at the San José McEnery Convention Center.

- 3.2 (a) **Accept the 2009-2010 City Manager’s Annual Report of the Finances of the City of San José in compliance with City Charter Section 701 (F).**
- (b) **Adopt Appropriation Ordinance and Funding Sources Resolution amendments in various operating and capital funds to implement the 2009-2010 Annual Report recommendations, including appropriate technical adjustments, as detailed in Section III (Recommended Budget Adjustments and Clean-Up Actions).**

CEQA: Not a Project, File No. PP10-067 (b): Appropriation Ordinance. (City Manager’s Office)

Documents Filed: (1) The 2009-2010 Annual Report from the Office of the City Manager dated September 2010. (2) Staff presentation dated October 19, 2010 summarizing the 2009-2010 Annual Report.

Budget Director Jennifer Maguire provided the staff report and responded to Council questions.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Herrera and carried unanimously, the 2009-2010 City Manager’s Annual Report of the Finances of the City of San José in compliance with City Charter Section 701 (F) was accepted; Ordinance No. 28829, entitled: “An Ordinance of the City of San José Amending Ordinance No. 28765 to Appropriate Monies in Various Funds to Implement 2009-2010 Annual Report Recommendations and Make Appropriate Technical Adjustments; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption” and Resolution No. 75604, 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 Various Operating Funds”, were adopted. (11-0.)

- 3.3 (a) **Adopt the following 2010-2011 Appropriation Ordinance amendments in the Airport Maintenance and Operation Fund (Fund 523):**
- (1) **Decrease Personal Services by \$225,000**
 - (2) **Decrease Non-Personal/Equipment by \$25,000**
 - (3) **Increase the Operating Contingency by \$250,000**
- (b) **Authorization for the addition of three (3.0) FTE Senior Airport Operations Specialist positions to support a new Airport Operations Center.**
- (c) **Authorization for the elimination of nine (9.0) FTE Communications Services Operator positions.**

CEQA: Not a Project, File No. PP10-067(b), Appropriation Ordinance. (Airport/City Manager’s Office)

3.3 (Cont'd.)

Director of Aviation William Sherry provided comments and responded to Council questions.

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

Public Comments: Linda Dittes, AFSCME/MEF 101, argued that the position eliminations are not proportional and urged the Council to defer this item one week to enable the unions and Airport Staff to meet once more in order to give final input on the eliminations.

Director of Aviation William Sherry respectfully disagreed with the speaker, stating he had been communicating and working with the unions. He pointed out that the downsizing of the organization has been very proportional.

Council Member Campos requested to amend the motion to defer one week. The amendment was accepted by Council Members Liccardo and Herrera.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried, Item 3.3 was deferred to October 26, 2010. (10-1. Noes: Oliverio.)

- 3.4 (a) **Accept the staff response to the Civil Grand Jury Report: “Should the City Council Continue to Subsidize Team San José’s Increasing Losses?”**
(b) **Direct staff to forward results of City’s caused audits of Team San José to the Santa Clara County Civil Grand Jury when they are completed.**

CEQA: Not a Project, File No. PP10-069(a), Staff Reports/Assessments/Annual Reports/Information Memoranda. (Economic Development)
(Deferred from 8/24/10 – Item 3.2, et al, 10/5/10 – Item 3.2)

Documents Filed: (1) Replacement memorandum from Chief Development Officer Paul Krutko, dated September 27, 2010, updating the Council and Grand Jury on recent events regarding Team San José. (2) Staff presentation dated October 19, 2010 outlining the Response to the Civil Grand Jury Report.

Chief Development Officer Paul Krutko presented the report and Director of Finance Scott Johnson provided comments. City Auditor Sharon Erickson stated that the Auditor’s report will be heard at the Public Safety, Finance and Strategic Support Committee on November 22, 2010.

City Attorney Richard Doyle responded to Council questions and concerns.

Extensive Council discussion followed.

3.4 (Cont'd.)

Motion: Council Member Pyle moved approval of being more fully informed by the two audits pending before submitting a final response to the Grand Jury and to direct the City Attorney to send a correspondence to the Grand Jury indicating that the recommendations in the Grand Jury Report require further analyses in light of expected audit results and to request an extension of time pursuant to State law to respond to the Grand Jury Report. Council Member Nguyen seconded the motion.

Chief Development Officer Paul Krutko, City Auditor Sharon W. Erickson and Director of Finance Scott P. Johnson responded to Council questions.

Public Comments: Rob Thomas, General Manager, Marriott San José, spoke in support to restructuring the team and committed to improving the results. Mike Fox Jr., Team San José Board of Director, stated the Board is working closely with the City regarding budget concerns and looks forward to the continued mutual success with Team San José.

Council Member Constant provided meeting disclosures.

Action: On a call for the question, the motion carried unanimously, the City Council expressed interest in being more fully informed by two audits pending before submitting a final response to the Grand Jury. The City Attorney was directed to send a correspondence to the Grand Jury indicating that the recommendations in the Grand Jury Report require further analyses in light of expected audit results and request an extension of time pursuant to State law to respond to the Grand Jury Report. (10-0-1. Absent: Kalra.)

- 3.5 (a) **Approve an ordinance amending Section 3.36.020.3 of Chapter 3.36 of Title 3 of the San José Municipal Code to clarify the definition of compensation to be used for the calculation of Police and Fire Department Retirement Plan pension contributions and benefits.**
- (b) **Approve an ordinance amending Section 3.36.020.5 of Chapter 3.36 of Title 3 of the San José Municipal Code to correct the definition of final compensation to be used for the calculation of Police and Fire Department Retirement Plan pension benefits.**

CEQA: Not a Project, File No. PP10-068(b), Municipal Code or Policy (new or revised) (City Attorney's Office)

Documents Filed: Memoranda from City Attorney Richard Doyle, both dated October 7, 2010, recommending approval of ordinances.

Motion: Council Member Constant moved approval of the staff recommendations. Council Member Herrera seconded the motion.

City Attorney Richard Doyle and Director of Employee Relations Alex Gurza responded to Council questions. Discussion ensued.

3.5 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, Ordinance No. 28830, entitled: “An Ordinance of the City of San José Amending Section 3.36.020.3 of Part 1 of Chapter 3.36 of the San José Municipal Code to Clarify the Definition of Compensation To Be Used for the Calculation of Police and Fire Department Retirement Plan Pension Contributions and Benefits” and Ordinance No. 28831, entitled: “An Ordinance of the City of San José Amending Section 3.36.020.5 of Part 1 of the San José Municipal Code to Correct the Definition of Final Compensation To Be Used for the Calculation of Police and Fire Department Retirement Plan Pension Benefits”, were passed for publication. (10-0-1. Absent: Chirco.)

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.1 (a) **Approve an ordinance amending Chapter 6.60 of the San José Municipal Code to amend the definition of public entertainment to limit the application of the ordinance to venues with occupancy greater than 100, limit the discretion of the Chief of Police in approving applications for permits and licenses and in setting conditions on permits and licenses, more clearly outline the application process for permits and licenses, specify time lines by when an application for a permit or license must be acted upon, adjust requirements for security, extend the term of permits, create a renewal process for permits and licenses, provide for managers to move between public entertainment venues without being required to re-apply for a new license, and clarify various provisions to ensure consistency throughout the Code.**
- (b) **Adopt a resolution to amend the 2010-2011 Schedule of Fees and Charges (Resolution No. 72737, as amended), to:**
- (1) **Change the Public Entertainment Business Permit Fee from \$1,145 per 2 years to \$1,321 per 4 years.**
 - (2) **Add a Public Entertainment Business Permit Renewal Fee and establish the fee at \$744 per 4 years.**
 - (3) **Change the Public Entertainment Ownership License Fee from \$1,145 per 2 years to \$674 per 4 years.**
 - (4) **Add a Public Entertainment Ownership License Renewal Fee and establish the fee at \$374 per 4 years.**
 - (5) **Change the Public Entertainment Management License Fee from \$1,145 per 2 years to \$674 per 2 years.**
 - (6) **Add a Public Entertainment Management License Renewal Fee and establish the fee at \$374 per 2 years.**
 - (7) **Add a Public Entertainment Management License Change of Venue Fee for Managers only and establish the fee at \$162 per venue change.**
 - (8) **Add a Public Entertainment Identification Card Fee and establish the fee at \$48 per 2 years.**

CEQA: Not a Project, File No. PP10-068(b), General Procedure & Policy Making. (Economic Development/City Manager’s Office)

Action: Deferred to October 26, 2010 per City Attorney’s Office.

- 4.2 (a) **Adopt a resolution approving Associate Membership in the California Enterprise Development Authority and the execution and delivery of an Associate Membership Agreement relating to Associate Membership in the California Enterprise Development Authority.**
- (b) **Adopt a resolution approving Recovery Zone facility bond financing not to exceed \$30,000,000 to be issued by the California Enterprise Development Authority to benefit SunPower Corporation and/or a related entity.**
- CEQA: Not a Project, PP10-068a, General Policy Making. (Economic Development)**

Documents Filed: (1) Memorandum from Chief Development Officer Paul Krutko, dated October 5, 2010, recommending adoption of resolutions. (2) Memorandum from City Manager Debra Figone, dated October 18, 2010, regarding actions related to SunPower Corporation and Recovery Zone Facility Bond Financing issued by California Enterprise Development Authority. (3) Proof of Publication of Notice of Public Hearing, executed on October 8, 2010, submitted by the City Clerk.

Public Comments: Kari Smith, SunPower, concurred with the Staff recommendations.

Action: Upon motion by Council Member Chu, seconded by Council Member Oliverio and carried unanimously, Resolution No. 75605, entitled: “A Resolution of the Council of the City of San José Approving Associate Membership by the City of San José in the California Enterprise Development Authority and the Execution and Delivery of an Associate Membership Agreement Relating to Associate Membership of the City in the Authority” and Resolution No. 75606, entitled: “A Resolution of the Council of the City of San José Approving the Issuance by the California Enterprise Development Authority of Not To Exceed \$30,000,000 Aggregate Principal Amount of the Authority’s Revenue Bonds for the Purpose of Financing the Cost of Construction, Installation and Equipping of Facilities for the Benefit of SunPower Corporation and/or A Related Entity and Providing for Other Matters Relating Thereto Herein Specified”, were adopted. (9-0-2. Absent: Constant, Nguyen.)

- 4.4 **Conduct a public hearing and consider an ordinance rezoning the real property located on the northwest side of Saratoga Avenue, 900 feet northeasterly of Graves Avenue (1471 Saratoga Avenue), from the A(PD) Planned Development Zoning District to the CO(PD) Planned Development Zoning District to allow medical office uses in an existing office building on a 2.36 gross acre site (Jack F. and Wilburta E. Taylor Trustee, Owner). CEQA: Mitigated Negative Declaration prepared for previously approved Planned Development Zoning (File No. PDC85-019). PDC10-011 – District 1**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC10-011, dated September 13, 2010. (2) Proof of Publication of Notice of Public Hearing, executed on September 17, 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.

4.4 (Cont'd.)

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, Ordinance No. 28832, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated at the Northwest Side of Saratoga Avenue, 900 Feet Northeasterly of Graves Avenue, From A(PD) Planned Development Zoning District to CO(PD) Planned Development Zoning District”, was passed for publication. (9-0-2. Absent: Constant, Nguyen.)

- 4.3 (a) **Accept the work of the Envision Task Force, the community and other stakeholders to date in the development of the Draft Envision San Jose 2040 General Plan (Draft Plan) document and Land Use/Transportation Diagram.**
- (b) **Accept the process for the review and consideration of:**
- (1) **Pending General Plan amendments that would become part of the Envision Preferred Scenario;**
 - (2) **Pending General Plan amendments that would be considered by Council either in December 2010 or June 2011.**
 - (3) **Additional General Plan Amendment applications filed by November 15, 2010 to be considered by the Council in June 2011.**

CEQA: Not a Project, File No. PP10-069(a), Assessments of Work Done. The proposed action will allow staff and the consultants to proceed with the analysis of potential environmental impacts of the proposed General Plan Update as required by CEQA. (Planning, Building and Code Enforcement)

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated October 7, 2010, recommending as described above in 4.3(a)(b). (2) Supplemental memorandum from Director Horwedel, dated October 15, 2010, clarifying the proposed approach for one pending General Plan Amendment application for the property generally known as Sun Garden located near Monterey Road and Alma Avenue. (3) Staff presentation dated October 19, 2010 summarizing the Envision San José 2040 General Plan Update.

Principal Planner Susan D. Walton presented the report.

Director Joseph Horwedel and Deputy Director Laurel Prevetti responded to Council questions.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Liccardo and carried unanimously, the work of the Envision Task Force, the community and other stakeholders to date in the development of the Draft Envision San Jose 2040 General Plan (Draft Plan) document and Land Use/Transportation Diagram was accepted and the process for the review and consideration of: (1) Pending General Plan amendments that would become part of the Envision Preferred Scenario; (2) Pending General Plan amendments that would be considered by Council either in December 2010 or June 2011 and (3) Additional General Plan Amendment applications filed by November 15, 2010 to be considered by the Council in June 2011 were accepted. (10-0-1. Absent: Campos.)

TRANSPORTATION & AVIATION SERVICES

- 6.1 Adopt a resolution authorizing the Director of Finance to execute the fourth amendment to the agreement with Ampco System Parking, Inc. for Airport Parking Facilities Management to extend the term of the agreement for an additional twelve months ending on October 31, 2011; provide for total compensation not to exceed \$4,530,000 for the new extension term, and increase compensation for the current extension term (ending on October 31, 2010) by an amount not to exceed \$470,000 for reimbursement of unanticipated staffing costs due to delays in implementation of the Airport's new Parking Access and Revenue Control System. CEQA: Not a Project, File No. PP10-066(e), Amendment to agreement for facility management. (Finance)**

Documents Filed: Memorandum from Director of Finance Scott P. Johnson, dated September 27, 2010, recommending adoption of a resolution.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Pyle and carried unanimously, Resolution No. 75607, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Finance to Execute a Fourth Amendment to the with Ampco System Parking, Inc. for Parking Management Services at the Norman Y. Mineta San José International Airport", was adopted. (10-0-1. Absent: Campos.)

- 6.2 (a) Approve a Master Cooperative Agreement with the California High Speed Rail Authority addressing a collaborative process for the development and design approval for the High Speed Train project and including the architectural design of an aerial trackway in the Downtown San Jose area.**
- (b) Adopt the following Appropriation Ordinance amendments in the Building and Structure Construction Tax Fund:**
- (1) Increase the appropriation to the Department of Transportation for the High Speed Rail project in the amount of \$100,000.**
 - (2) Decrease the Ending Fund Balance by \$100,000.**

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)

Action: Deferred to November 16, 2010 per Administration.

ENVIRONMENTAL & UTILITY SERVICES

- 7.1 Accept the report on the Request for Proposals for a Power Purchase and Site Lease Agreement for Fuel Cell System Power Production and adopt a resolution authorizing the Director of Finance to negotiate and execute a Power Purchase Agreement, Site Lease and other necessary documents, with UTS SJ-1, LLC (UTS) (Encinitas, CA) to purchase fuel cell energy at the San Jose/Santa Clara Water Pollution Control Plant for a 20 year term. CEQA: Exempt, File No. PP10-112. (Environmental Services)**

7.1 (Cont'd.)

Documents Filed: (1) Replacement memorandum from Director of Environmental Services John Stufflebean, dated October 12, 2010, noting that the alternatives analysis section has been revised and recommending adoption of a resolution. (2) Staff presentation dated October 19, 2010 summarizing the Fuel Cell Power Purchase Agreement. (3) Letter from Chuck Reed, Chairperson, The Treatment Plant Advisory Committee, dated October 14, 2010, stating concurrence with the Staff recommendations.

Deputy Director of Environmental Services Dale Ihrke presented the report and responded to Council questions.

Action: Upon motion by Vice Mayor Chirco, seconded by Council Member Pyle and carried unanimously, Resolution No. 75608, entitled: “A Resolution of the Council of the City of San José Authorizing the Director of Finance to Negotiate and Execute a Power Purchase Agreement, Site Lease and Other Necessary Documents, with UTS San José-1, LLC (UTS) (Encinitas, CA) to Purchase Fuel Cell Energy at the San José/Santa Clara Water Pollution Control Plant for a 20 Year Term”, was adopted, as amended. (9-0-2. Absent: Constant, Oliverio.)

PUBLIC SAFETY SERVICES

8.1 **Accept the 2009 Independent Police Auditor’s Year End Report. (Independent Police Auditor)**

Documents Filed: (1) The 2009 Independent Police Auditor’s Year End Report. (2) Staff presentation dated October 19, 2010 summarizing the 2009 Independent Police Auditor’s Year End Report dated January – December 2009.

Acting Independent Police Auditor Shivaun Nurre presented the report. Independent Police Auditor LaDoris Cordell provided comments.

Council discussion ensued.

Action: Upon motion by Council Member Campos, seconded by Vice Mayor Chirco and carried unanimously, the 2009 Independent Police Auditor’s Year End Report was accepted. (10-0-1. Absent: Constant.)

8.2 **Accept the San José Police Department’s Internal Affairs Unit report on Department-Initiated Investigations (DII) for CY 2009. CEQA: Not a Project, File No. PP10-069(a), Annual Reports. (Police)**

Documents Filed: (1) Memorandum from Police Chief Robert L. Davis, dated October 6, 2010, recommending acceptance of the report. (2) Staff presentation dated October 19, 2010 outlining the 2009 San José Police Department Internal Affairs Department Initiated Investigations.

8.2 (Cont'd.)

Lieutenant Rick Weger, Internal Affairs Unit Commander presented the report. Police Chief Robert L. Davis provided comments.

City Attorney Richard Doyle and Police Chief Robert L. Davis responded to Council questions and concerns.

Action: Upon motion by Council Member Campos, seconded by Vice Mayor Chirco and carried unanimously, the San José Police Department's Internal Affairs Unit report on Department-Initiated Investigations (DII) for CY 2009 was accepted. (10-0-1. Absent: Constant.)

NOTICE OF CITY ENGINEER'S PENDING DECISION ON FINAL MAPS

In accordance with Sec. 19.16.140d of the San José Municipal Code, this is notice of the City Engineer's receipt of the following Final Maps for review:

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>		<u>Lots/Units</u>	<u>Type</u>
10062	1345 Foxworthy Avenue	9	Hawkstone LLC	Foxworthy	5 Lots / 5 Units	SFDR

OPEN FORUM

Documents Filed: Letter from Roland Lebrun to the Mayor and City Council, dated October 19, 2010, commenting on the High Speed Rail project.

Ronald Lebrun provided comments on the High Speed Rail project and spoke in favor of an underground alignment.

ADJOURNMENT

The Council of the City of San José was adjourned at 5:29 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

smd/10-19-10 MIN

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