

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, FEBRUARY 1, 2011

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

Absent: Council Members - All Present.

Upon motion unanimously adopted, Council recessed at 9:34 a.m. to a Closed Session in Room W133 (A) Public Employment/Public Employee Appointment Pursuant to Government code Section 54957: Department or Agency: Police Department; Title: Police Chief; (B) to confer with Legal Counsel pursuant to Government Code subsection (a) of Section 54956.9 with respect to existing litigation: (1) In re Compania Mexicana De Aviacion, S.A de C.V., Debtor in a Foreign Proceeding; Names of Parties Involved: In re Compania Mexicana De Aviacion, S.A de C.V., Debtor in a Foreign Proceeding and City of San José, Creditor; Court: United States Bankruptcy Court, Southern District of New York; Case No: 10-14182(MG); Amount of Money or Other Relief Sought: Damages according to proof; (C)) 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. How to obtain a copy of existing contract or MOA: web: http://www.sanjoseca.gov/employee_relations/moa.asp; Telephone for Employee Relations: 408-535-8150.

By unanimous consent, Council recessed from the Closed Session at 10:40 a.m. and reconvened to Regular Session at 1:35 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 Jon Pedigo of St. Julie Billiart Parish provided the Invocation.

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance accompanied by students of deVargas Elementary School. (District 1)

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, with Item 8.2 dropped. (11-0.)

CLOSED SESSION REPORT

The City Attorney reported Council's concurrence with the City Manager's selection of Chris Moore as the new Police Chief of the City of San José.

STRATEGIC SUPPORT SERVICES

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

City Manager Figone formally introduced the new Police Chief, Chris Moore.

Documents Filed: (1) Memorandum from El Observador Publisher Hilbert Morales, dated January 31, 2011, offering support of the new Chief of Police. (2) Letter from Sacred Heart's Community Action Leaders, dated January 31, 2011, expressing support for ongoing improvements to the San José Police Department.

CEREMONIAL ITEMS

1.1 Presentation of a proclamation declaring the month of February 2011 as "American Heart Month" in the City of San José. (Mayor/Council) (Rules Committee referral 01/19/11)

Action: Mayor Reed and Council Members Kalra and Pyle recognized the month of February 2011 as "American Heart Month" in the City of San José.

CONSENT CALENDAR

2.1 Approval of minutes.

- (a) **Regular Minutes of October 5, 2010.**
- (b) **Pavement Maintenance Study Session Minutes of October 12, 2010.**
- (c) **Joint City/County Minutes of October 15, 2010.**
- (d) **Regular Minutes of October 19, 2010.**
- (e) **Regular Minutes of October 26, 2010.**

Documents Filed: (1) Regular Minutes dated October 5, 19 and 26, 2010; (2) Pavement Maintenance Study Session Minutes, dated October 12, 2010; (3) Joint City/County Minutes, dated October 15, 2010.

Action: The minutes were approved. (11-0.)

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 January 12, 2011.
(Mayor)**
- (b) **Rules and Open Government Committee Report of January 5, 2011.
(Mayor)**
[Deferred from 1/25/11 – Item 2.3(d)]

Documents Filed: (1) The Rules and Open Government Committee Reports dated January 5 and 12, 2011.

Public Comments: David Wall encouraged the City's participation in a "Let's Move" campaign and community gardening.

Action: The reports were approved. (11-0.)

2.4 Mayor and Council Excused Absence Requests.

Action: There were none.

2.5 City Council Travel Reports.

Council Member Constant reported on his trip to the League of California Cities Public Safety Committee Meeting.

- 2.6 (a) **Approve the proposed 2010-2012 Spending Plan for the Supplemental Law Enforcement Services (SLES) Fund for \$1,230,297 and authorize the Chief of Police to amend the spending plan in conformity to the budget priorities set out in this memorandum in the event that State SLES Grant payments are less than expected.**
- (b) **Adopt the following 2010-2012 Appropriation Ordinance and Funding Sources Resolution Amendments in the Supplemental Law Enforcement Services Fund (Fund 414):**
- (1) **Increase the Earned Revenue by \$126,732; and**
 - (2) **Establish a SLES Grant 2010-2012 appropriation for the Police Department in the amount of \$126,732.**

CEQA: Not a Project, File No.PP10-067(b). (Police/City Manager's Office)

Documents Filed: Joint memorandum from Chief of Police Chris Moore and Budget Director Jennifer Maguire, dated January 10, 2011, recommending approval of the spending plan and approval of appropriation ordinance and funding sources resolution amendments.

Action: The proposed 2010-2012 Spending Plan for the Supplemental Law Enforcement Services (SLES) Fund for \$1,230,297 and authorize the Chief of Police to amend the spending plan accordingly, was accepted; and Ordinance No. 28884, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28765 to Appropriate Monies in the Supplemental Law Enforcement Services (SLES) Fund for the SLES Grant 2010-2012; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption"; and Resolution No. 75716, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 75447 Setting forth the Estimated Sources of Funds for the Fiscal Year 2010-2011 to Adjust Revenues in the Supplemental Law Enforcement Services (SLES) Fund", were adopted. (11-0.)

- 2.7 **As recommended by the Public Safety, Finance and Strategic Support Committee on December 16, 2010, accept the reports on the activities of the Hayes Mansion for the fiscal year ended June 30, 2010. The reports include:**

- (a) **The Independent Auditor's Report and Financial Statements;**
- (b) **The Independent Accountant's Report on applying Agreed-Upon Procedures; and**
- (c) **The Public Safety, Finance and Strategic Support Committee Report (Management Letter).**

(Finance)

[Public Safety, Finance and Strategic Support Committee referral 12/16/10 – Item D(5)]

(Deferred from 1/25/11 – Item 2.16)

Documents Filed: Memorandum from City Clerk Dennis Hawkins, dated January 1, 2011, transmitting the recommendations of the Public Safety, Finance and Strategic Support Committee.

2.7 Cont'd.)

Action: The reports on the activities of the Hayes Mansion for the fiscal year ended June 30, 2010, were accepted. (11-0.)

**2.8 As recommended by the Rules and Open Government Committee on January 26, 2011, appoint Bob Dhillon to the Project Diversity Screening Committee for a term expiring December 31, 2012. (Herrera)
[Rules Committee referral 1/26/11 – Item G(1)(a)]**

Documents Filed: Memorandum from City Clerk Dennis Hawkins, dated January 27, 2011, transmitting the recommendations of the Rules and Open Government Committee.

Action: The appointment of Bob Dhillon to the Project Diversity Screening Committee for a term expiring December 31, 2012 was approved. (11-0.)

**2.9 As recommended by the Rules and Open Government Committee on January 26, 2011, adopt a resolution demonstrating the City Council's support for and participation in the National *Let's Move!* Campaign. (Liccardo)
[Rules Committee referral 1/26/11 – Item H(2)]**

Documents Filed: Memorandum from City Clerk Dennis Hawkins, dated January 27, 2011, transmitting the recommendations of the Rules and Open Government Committee.

Action: Resolution No. 75717, entitled: "A Resolution of the Council of the City of San José Demonstrating the City Council's Support for and Participation in the National *Let's Move!* Campaign", was adopted. (11-0.)

2.10 As recommended by the Rules and Open Government Committee on January 26, 2011:

- (a) **Approve the District 7 Vice Mayor Oath of Office as a City Council sponsored Special Event;**
- (b) **Approve and accept donations from various individuals, businesses, or community groups to support the event.**

(City Clerk)

[Rules Committee referral 1/26/11 – Item H(4)]

Documents Filed: Memorandum from City Clerk Dennis Hawkins, dated January 27, 2011, transmitting the recommendations of the Rules and Open Government Committee.

Action: The District 7 Vice Mayor Oath of Office as a City Council Sponsored Special Event was approved and authorization to accept donations from various individuals, businesses or community groups to support the event, was approved. (11-0.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

3.4 Interview applicants and consider an appointment to the Appeals Hearing Board filling an unexpired term ending December 31, 2011. (City Clerk) (Rules Committee referral 01/19/11)

Documents Filed: (1) Memorandum from City Attorney Richard Doyle, dated November 17, 2010, providing potential conflicts of interest of Appeals Hearing Board Applicants; (2) Replacement memorandum from City Clerk Dennis Hawkins, dated January 20, 2011, recommending two Appeals Hearing Board applicants; (3) Memorandum from Deputy Director of Planning, Building and Code Enforcement Mike Hannon, dated January 21, 2011, transmitting response to request for the Appeals Hearing Board applicant code review; (4) Ballots from each Council Member, designating their choice for the Appeals Hearing Board, February 1, 2011.

Action: Two applicants, David Parker and Cynthia Cobb were interviewed by the Mayor and Council. David Parker was appointed to fill one unexpired term on the Appeals Hearing Board ending December 31, 2011.

- 3.2 (a) Acknowledge receipt of the following:**
- (1) Certification by the City Clerk of results of elections conducted among the retired members of the Police and Fire Department Retirement Plan; and**
 - (2) Recommendation from the panel convened to interview candidates for the Retiree Representative on the Police and Fire Retirement Board.**
- (b) At the City Council's discretion:**
- (1) Appoint one retiree member to the Board of Administration of the Police and Fire Department Retirement Plan to a term expiring November 30, 2014; or**
 - (2) If an appointment is not made, direct the City Clerk to conduct a new process to recommend the appointment of a retired member as necessary.**

CEQA: Not a Project. (City Clerk)

Action: Deferred to February 8, 2011 per City Clerk.

3.6 Accept Labor Negotiations Update. (City Manager's Office) (Rules Committee referral 01/26/11)

Director of Employee Relations Alex Gurza provided a verbal update on labor negotiations.

Public Comments: Nancy Ostrowski (IFPTE Local 21/AEA/CAMP) asserted the bargaining units' effectiveness without ground rules.

Council Member Rocha posed questions to Ms. Ostrowski, and Director of Employee Relations Alex Gurza responded to questions from Council.

- 3.3 As recommended by the Public Safety, Finance and Strategic Support Committee on December 16, 2010, accept the audit of Police Department Staffing. (City Auditor)
[Public Safety, Finance and Strategic Support Committee referral 12/16/10 – Item D(7)]
(Deferred from 1/25/11 – Item 3.5)**

Documents Filed: Memorandum from City Clerk Dennis Hawkins, dated January 10, 2011, transmitting the recommendations of the Public Safety, Finance and Strategic Support Committee.

City Auditor Sharon Winslow-Erickson presented the Police Department Staffing Report, and Assistant Police Chief Diane Urban responded to questions from Council.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Constant and carried unanimously, the audit of the Police Department Staffing was accepted. (11-0.)

- 3.5 (a) Approve an ordinance amending Chapter 3.28 of Title 3 of the San José Municipal Code to incorporate provisions related to primary purpose of the Federated City Employees Retirement Plan, use of retirement plan assets, prohibited retirement plan transactions, pension benefit vesting, pension benefit and contribution limits, required benefit payments, permissive purchases of service credit, rollover of employee contributions into other tax qualified plans and accounts, permissive retirement plan investment vehicles, qualified domestic relations orders and contributions, benefits, service credit for qualified military service, date of establishment of medical benefits account, and to make other technical amendments related to Internal Revenue Code provisions for qualified governmental retirement plans.**
- (b) Approve an ordinance amending Chapter 3.36 of Title 3 of the San José Municipal Code to incorporate provisions related to primary purpose of the Police and Fire Department Retirement Plan, use of retirement plan assets, prohibited retirement plan transactions, pension benefit vesting, pension benefit and contribution limits, required benefit payments, permissive purchases of service credit, rollover of employee contributions into other tax qualified plans and accounts, permissive retirement plan investment vehicles, qualified domestic relations orders and contributions, benefits, service credit for qualified military service, date of establishment of medical benefits account, and to make other technical amendments related to Internal Revenue Code provisions for qualified governmental retirement plans.**

CEQA: Not a Project; File No. PP10-068(b), Municipal Code or Policy. (City Attorney's Office) (Deferred from 1/25/11 – Item 3.3)

3.5 (Cont'd.)

Documents Filed: Memorandum from City Attorney Richard Doyle, dated January 13, 2011, recommending approval of ordinances amending Title 3 of the San José Municipal Code.

Mayor Reed proposed additional language in both the Federated plan and Police and Fire plans as outlined below in “Action”, and City Attorney Richard Doyle offered further clarification.

Motion: Council Member Constant moved approval of the Staff recommendations with the additional language provided by Mayor Reed. Council Member Herrera seconded the motion.

Action: On a call for the question, the motion carried unanimously, and Ordinance No. 28885, entitled: “An Ordinance of the City of San José Amending Chapter 3.28 of Title 3 of the San José Municipal Code to Incorporate Provisions Related to Primary Purpose of the Federated City Employees Retirement Plan, Use of Retirement Plan Assets, Prohibited Retirement Plan Transactions, Pension Benefit Vesting, Pension Benefit and Contribution Limits, Required Benefit Payments, Permissive Purchases of Service Credit, Rollover of Employee Contributions Into Other Tax Qualified Plans and Accounts, Permissive Retirement Plan Investment Vehicles, Qualified Domestic Relations Orders and Contributions, Benefits, Service Credit for Qualified Military Service, Date of Establishment of Medical Benefits Accounts, and To Make Other Technical Amendments Related to Internal Revenue Code Provisions for Qualified Governmental Retirement Plans”; and Ordinance No. 28886, entitled: “An Ordinance of the City of San José Amending Chapter 3.28 of Title 3 of the San José Municipal Code to Incorporate Provisions Related to Primary Purpose of the Police and Fire Department Retirement Plan, Use of Retirement Plan Assets, Prohibited Retirement Plan Transactions, Pension Benefit Vesting, Pension Benefit and Contribution Limits, Required Benefit Payments, Permissive Purchases of Service Credit, Rollover of Employee Contributions Into Other Tax Qualified Plans and Accounts, Permissive Retirement Plan Investment Vehicles, Qualified Domestic Relations Orders and Contributions, Benefits, Service Credit for Qualified Military Service, Date of Establishment of Medical Benefits Accounts, and To Make Other Technical Amendments Related to Internal Revenue Code Provisions for Qualified Governmental Retirement Plans”, were passed for publication, with language added in the Federated City Employees Retirement Plan and Police and Fire Department Retirement Plan under the section “Vesting”, as follows: “Nothing contained in this section shall be construed or interpreted to limit modifications of benefits to the extent that such modification is otherwise allowed under Federal and State law”. (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) (Deferred from 1/11/10 – Item 4.1 and 1/25/10 – Item 4.1)

Documents Filed: (1) Joint memorandum from Mayor Reed, Vice Mayor Nguyen, and Council Members Herrera and Liccardo, dated January 28, 2011, approving the Guiding Principles and the Goals of the Cultural Connection with direction to Staff; (2) Memorandum from Director of Economic Development/Chief Strategist Kim Walesh, dated December 6, 2010 recommending adoption of Cultural Connection: San José's Cultural Plan for 2011-2020; (3) "Cultural Connection: Participate: Create: Connect: San José's Cultural Plan for 2011-2020" draft, dated December 2010.

Director of Economic Development/Chief Strategist Kim Walesh and Director of Cultural Affairs Kerry Adams-Hapner presented San José's Cultural Plan for 2011-2020.

Public Comments: Speaking in support of adoption of San José's Cultural Plan for 2011-2020 and efforts of the City and its partners to advance the cultural development of San José, were: Nick Nichols (San José Repertory Theater); Josh Russell and Connie Martinez (1st Act Silicon Valley); Anjee Helstrup-Alvarez (MACLA), Brad Erickson (Theatre Bay Area) and Judith Kleinberg (John S. & James L. Knight Foundation).

Motion: Council Member Liccardo moved approval of the Staff recommendations with direction as outlined below in "Action". Council Member Herrera seconded the motion.

Action: On a call for the question, the motion carried unanimously, the Cultural Connection: San José's Cultural Plan for 2011-2020 was adopted, with direction to Staff to: (a) Develop a priority list of Top 10 short-term recommendations and actions to be implemented in 2011-2013, in consultation with the Arts Commission and other key stakeholders; and (b) Return to City Council to obtain approval of the priority list, associated work plans and resources needed. (10-0-1. Absent: Constant.)

ENVIRONMENTAL & UTILITY SERVICES

7.1 Conduct a public hearing and adopt a resolution approving the Ninth Amendment to the Countywide Nondisposal Facility Element to identify the following nondisposal facilities in San José: the Recology Silicon Valley Processing and Transfer Facility, 1675 Rogers Avenue; Zero Waste Energy Development Company Anaerobic Digestion Facility, 2100 Los Esteros Road; Green Earth Management LLC Kings Row Recycling Facility, 650 Kings Row; Environmental Resource Recovery Inc. (Valley Recycling) Medium Volume Construction Demolition Debris Facility, 1615 B South 7th Street; and Smurfit-Stone Recycling San Jose Facility, 205 East Alma Avenue. CEQA: Statutorily Exempt, CEQA Guidelines Section 15262, Other Statutory Exemptions. (Environmental Services)

7.1 (Cont'd.)

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean, dated January 10, 2011, recommending a public hearing and approval of a resolution; (2) Proof of Publication of Notice of Public Hearing, executed on January 28, 2011, submitted by the City Clerk.

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

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Herrera and carried unanimously, Resolution No. 75718, entitled: "A Resolution of the Council of the City of San José Approving and Adopting the Ninth Amendment to the Countywide Nondisposal Facility Element ("NDFE") to Identify the Following Nondisposal Facilities in San José: the Recology Silicon Valley Processing and Transfer Facility, 1675 Rogers Avenue; Zero Waste Energy Development Company Anaerobic Digestion Facility, 2100 Los Esteros Road; Green Earth Management LLC Kings Row Recycling Facility, 650 Kings Row; Environmental Resource Recovery Inc. (Valley Recycling) Medium Volume Construction Demolition Debris Facility, 1615 B South 7th Street; and Smurfit-Stone Recycling San Jose Facility, 205 East Alma Avenue", was adopted. (10-0-1. Absent: Constant.)

OPEN FORUM

Shirley Vargas expressed support of the Governor's suggested elimination of the Redevelopment Agency to allow enhanced funding of education, social programs and public safety.

ADJOURNMENT

The Council of the City of San José adjourned at 4:46 p.m. in memory of Cynthia Filarca, a committed teacher in the Evergreen Elementary School District for over thirty years and longtime resident of San José, who was dedicated to serving beyond the classroom through her volunteer work in the community. (Herrera)

Minutes Recorded, Prepared and Respectfully Submitted by,

Dennis Hawkins, CMC
City Clerk

rmk/2-1-11MIN

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.

JOINT REDEVELOPMENT AGENCY ITEMS

The Joint Redevelopment Agency Board convened at 4:11 p.m. to consider Items 8.1 and 8.2 in a Joint Session.

8.1 (a) Acceptance of the Agency's Financial Progress Report

Documents Filed: (1) Memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes, dated January 21, 2011, submitting the Agency's monthly Financial Progress Report.

Redevelopment Agency Executive Director Harry S. Mavrogenes presented the Redevelopment Agency's Financial Progress Report.

Action: Upon motion by Council Member Herrera, seconded by Vice Mayor Nguyen and carried unanimously, the Agency's Financial Progress Report was accepted. (10-0-1. Absent: Constant.)

(b) Discussion of proposed State budget actions and impacts to Redevelopment Agency and City of San Jose budgets; and,

(c) Direction to Agency and City Administrations.

CEQA: Not a project. [MERGED] (Deferred from 1/25/11, Item 8.1)

Documents Filed: Joint memorandum from City Manager Debra Figone and Redevelopment Agency Executive Director Harry S. Mavrogenes, dated January 31, 2011, regarding proposed State budget actions and its impacts to the Redevelopment Agency.

Redevelopment Agency Executive Director Harry S. Mavrogenes discussed State budget proposals, its impacts to the Redevelopment Agency and City's programs and debt obligations in the event agencies are eliminated. Director of Finance Scott P. Johnson responded to questions from the Board.

Mayor Reed reported on his meeting with the Governor and key points from the "Big Ten" Mayor's trip. The Mayor and the Redevelopment Agency Executive Director Harry S. Mavrogenes discussed the Governor's budget proposal to eliminate the redevelopment agencies in the State.

Motion: Council Member Liccardo moved approval of the Staff recommendations as outlined in City Manager Debra Figone and Redevelopment Agency Executive Director Harry S. Mavrogene's joint memorandum of January 31, 2011. Council Member Herrera seconded the motion.

8.1 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, the proposed State budget actions and impacts to Redevelopment Agency and City of San Jose budgets with direction to Agency and City Administrations, were accepted: (1) Take a firm position against the Governor's budget proposal to eliminate redevelopment agencies in the State; (2) Direct the City Manager and Agency Executive Director to continue to develop advocacy principles for the protection of redevelopment agencies, affordable housing and economic development programs; and (3) Direct the City Manager and Agency Executive Director to continue to assess potential impacts on the Agency's and City's programs and debt obligations in the event redevelopment agencies are eliminated and report back to the City Council and Redevelopment Agency Board on February 8, 2011. (10-0-1. Absent: Constant.)

8.2 **Adoption of resolutions by the Agency Board and City Council authorizing the Executive Director and City Manager to negotiate and execute a Cooperation Agreement between the City of San Jose and the San Jose Redevelopment Agency relating to funding certain Redevelopment Agency capital improvements, public improvements and obligations located within currently designated redevelopment project areas. CEQA: Not a project. [MERGED] (Deferred from 1/19/11 and 1/25/11, Item 8.4(b))**

Action: Dropped per Orders of the Day.

The Joint meeting of the Council of the City of San José and Redevelopment Agency Board was adjourned at 4:43 p.m.