

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, MARCH 29, 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, Kalra, Nguyen, Pyle, Rocha; Reed.

Absent: Council Members - Herrera, Liccardo, Oliverio.

STRATEGIC SUPPORT SERVICES

3.2 Accept Labor Negotiations Update.

Mayor Reed provided opening comments, and Director of Employee Relations Alex Gurza offered the Labor Negotiations Update.

Public Comments: The following bargaining unit representatives offered comments: Nancy Ostrowski (IFPTE Local 21 for AEA and CAMP, and Brian Doyle (ALP).

Action: No action was taken.

CLOSED SESSION

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

Absent: Council Members - All Present.

CLOSED SESSION (Cont'd.)

Upon motion unanimously adopted, Council recessed at 9:06 a.m. to a Closed Session in Room W133 (A) Public Employment/Public Employee Appointment Pursuant to Government Code Section 54957: Department or Agency: Department of Transportation; Title: Director of Transportation; (B) 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. (C) 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 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; (4) City Association of Management Personnel Agreement (CAMP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CAMP; (5) 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; (6) 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; 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; (8) 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; (9) 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; (10) 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; (11) Association of Legal Professionals of San José (ALP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; 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

CLOSED SESSION (Cont'd.)

By unanimous consent, Council recessed from the Closed Session at 11:35 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 (DISTRICT 3)

Reverend Dana Bainbridge of First Christian Church provided the Invocation.

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Herrera, seconded by Council Member Pyle and carried unanimously, the Orders of the Day and the Amended Agenda were approved. (11-0.)

CLOSED SESSION REPORT

City Manager Debra Figone announced the appointment of Hans Larsen as the Director of Transportation for the City of San José.

CEREMONIAL ITEMS

- 1.1 Presentation of a commendation to the Chavez Family Vision in recognition of their work to ensure the continuation of Cesar Chavez's legacy for the generations. (Campos)**

Action: Mayor Reed and Council Members Campos, Chu, Kalra, Liccardo and Rocha commended the Chavez Family Vision.

- 1.2 Presentation of a proclamation declaring March 25, 2011 as "Greek Independence Day" in the City of San José. (Constant)**
(Deferred from 3/22/11 – Item 1.1)

Action: Deferred to April 5, 2011 per District 1.

**1.3 Presentation of a proclamation recognizing the Iranian New Year “Nowruz” in the City of San José. (Nguyen/Pyle)
(Rules Committee referral 3/23/11)**

Action: Mayor Reed, Vice Mayor Nguyen and Council Members Herrera and Pyle recognized the Iranian New Year “Nowruz” in the City of San José.

**1.4 Presentation of a proclamation recognizing the Assyrian New Year “Akitu” in the City of San José. (Nguyen/Pyle)
(Rules Committee referral 3/23/11)**

Action: Mayor Reed, Vice Mayor Nguyen and Council Members Herrera and Pyle recognized the Assyrian New Year “Akitu” in the City of San José.

CONSENT CALENDAR

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

2.2 Final adoption of ordinances.

- (a) **ORD. NO. 28898 – Rezoning certain real property situated on the east side of South Bascom Avenue, approximately 450 feet northerly of Fruitdale Avenue, to the CN Commercial Neighborhood Zoning District. C10-024**

Documents Filed: Proof of Publication of the Title of Ordinance No. 28898 executed on March 22, 2011, submitted by the City Clerk.

Action: Ordinance No. 28898 was adopted. (11-0.)

2.3 Approval of Council Committee Reports.

- (a) **Rules and Open Government Committee Report of March 9, 2011. (Mayor)**
(b) **Public Safety, Finance and Strategic Support Committee Report of March 17, 2011. (Constant)**

Documents Filed: (1) The Rules and Open Government Committee Report dated March 9, 2011. (2) Public Safety, Finance and Strategic Support Committee Report dated March 17, 2011.

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

- 2.4 (a) Request for an excused absence for Council Member Constant from the Regular Meeting of the Rules and Open Government Committee on March 23, 2011. (Constant)
(Rules Committee referral 03/23/11)**

Documents Filed: (1) Memorandum from Council Member Constant, dated March 22, 2011, requesting excused absences due to attendance at a funeral.

Action: The absence for Council Member Constant was excused. (11-0.)

- 2.6 Report from the Council Liaison to the Retirement Boards.**

Council Member Constant provided a verbal report.

Action: No action was taken.

- 2.7 Adopt a resolution authorizing the City Manager to execute an agreement with Couch Guy Incorporated, a California corporation, for the lease of real property located at 108 Paseo de San Antonio for purposes of operating a retail store, for total rental revenue to City as follows: Year 1 \$17,856; Year 2 \$18,972; Year 3 \$20,646; Year 4 \$22,381.38; Year 5 \$23,019.34; Year 6 \$23,676.44 for total compensation to City of \$126,551.16. Council District 3. CEQA: Exempt, File No. PP10-066(f), lease of existing space for same use. (Economic Development)**

Action: Deferred to May 3, 2011 per Administration.

- 2.8 Adopt a resolution authorizing the Director of Finance:**

(a) To execute the Second Amendment to the Agreement with AmeriPride Services, Inc. (Petaluma, CA) for Uniform Rental and Laundry Services to add a fifth one-year option to renew the Agreement for a total cost not to exceed \$250,000;

(b) To exercise the fifth one-year option to renew.

CEQA: Not a Project, File No. PP10-066(c), Services that involve no physical changes to the environment. (Finance)

Documents Filed: City Council Action Request for an Amendment to extend the AmeriPride Uniform Service Agreement for one year prepared by Director of Finance Scott P. Johnson, dated March 29, 2011.

Action: Resolution No. 75763, 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 AmeriPride Services, Inc., for Uniform Rental and Laundry Services", was adopted. (11-0.)

- 2.9 As recommended by the Public Safety, Finance and Strategic Support Committee on March 17, 2011, accept the Semi-Annual Recommendation Follow-up Report on all outstanding audit recommendations for the six months ended December 31, 2010. (City Auditor)
[Public Safety, Finance and Strategic Support Committee referral 3/17/11 – Item D(1)]**

Documents Filed: Memorandum from City Clerk Dennis Hawkins, dated March 17, 2011, transmitting the recommendations of the Public Safety, Finance and Strategic Support Committee.

Mayor Reed pulled item 2.9 to question Staff regarding outstanding audit recommendations, and Assistant City Attorney Ed Moran clarified issues regarding Title 16 changes.

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Herrera and carried unanimously, the Semi-Annual Recommendation Follow-up Report on all outstanding audit recommendations for the six months ended December 31, 2010, as recommended by the Public Safety, Finance and Strategic Support Committee, was accepted. (11-0.)

- 2.10 (a) Reject all bids received for the San José Environmental Innovation Center Project; and
(b) Authorize the Director of Public Works to re-advertise and re-bid the project.
CEQA: Negative Declaration, File No. PP09-138. Council District 3. (Public Works)
(Rules Committee referral 03/23/11)**

Documents Filed: Memorandum from Assistant Director Public Works David Sykes, dated March 24, 2011, recommending approval to re-advertise and re-bid the Environmental Innovation Center Project, Phase II project.

Public Comments: David Wall suggested better use of the City's funds.

Action: Upon motion by Council Member Pyle, seconded by Vice Mayor Nguyen and carried unanimously, authorization to reject all bids received for the San José Environmental Innovation Center Project and authorization for the Director of Public Works to re-advertise and re-bid the project was approved. (11-0.)

- 2.11 As recommended by the Rules and Open Government Committee on March 23, 2011:
(a) Approve the Great American Litter Pickup Event as a City Council sponsored Special Event; and
(b) Approve and Accept donations from various individuals, businesses or community groups to support the event.
CEQA: Not a Project. (City Clerk)
[Rules Committee referral 03/23/11 – Item H(2)]**

2.11 (Cont'd.)

Documents Filed: Memorandum from City Clerk Dennis Hawkins, dated March 23, 2011, transmitting the recommendations of the Rules and Open Government Committee.

Action: The Great American Litter Pickup Event 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.)

2.12 As recommended by the Public Safety, Finance and Strategic Support Committee on March 17, 2011, accept the Cities Association of Santa Clara County Expenditure Review: Fiscal Years Ending June 30, 2010 & 2009. (City Auditor) [Public Safety, Finance and Strategic Support Committee referral 3/17/11 – Item D(3)]

Documents Filed: Memorandum from City Clerk Dennis Hawkins, dated March 17, 2011, transmitting the recommendations of the Public Safety, Finance and Strategic Support Committee.

Action: The Cities Association of Santa Clara County Expenditure Review: Fiscal Years Ending June 30, 2010 & 2009, as recommended by the Public Safety, Finance and Strategic Support Committee, was accepted. (11-0.)

STRATEGIC SUPPORT SERVICES

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

The City Manager provided an update on the Convention Center expansion bond and Director of Parks, Recreation and Neighborhood Services Albert Balagso was congratulated upon his retirement and honored for this 35 years of service to the City of San José.

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.1 (a) Approve a first amendment to the Amended and Restated Lease and Management Agreement to provide \$2,000,000 from the Ice Center Revenue Fund to Silicon Valley Sports and Entertainment, Inc., on behalf of San Jose Arena Management, Manager of the Ice Centre of San Jose, for the purchase and installation of a fuel cell based Energy Saver System for the Ice Centre.**
- (b) Adopt the following Appropriation Ordinance amendments in the Ice Centre Revenue Fund (Fund 432):**
- (1) Establish an appropriation to the Finance Department in the amount of \$2,000,000 for Fuel Cell Equipment, and**
 - (2) Decrease the Ending Fund Balance by \$2,000,000.**

CEQA: Exempt, File No. PP11-031. Council District 7. (Economic Development/City Manager's Office)

4.1 (Cont'd.)

Documents Filed: Joint memorandum from Director of Economic Development/Chief Strategist Kim Walesh and Budget Director Jennifer Maguire, dated March 23, 2011, recommending approval of a first amendment and adoption of an appropriation ordinance amendment.

Public Comments: Don Gralnek thanked Staff for their support and expressed congratulations to Director of Transportation Hans Larsen.

Economic Development Deputy Director Nanci Klein provided an introduction to fuel cell technology at “Sharks Ice”, and Bloom Energy Vice President of Sales, John Rooter offered a presentation on the proposed fuel cell based Energy Saver System.

Mayor Reed provided meeting disclosures, and several Council members offered their enthusiasm for the project.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, a first amendment to the Amended and Restated Lease and Management Agreement to provide \$2,000,000 from the Ice Center Revenue Fund to Silicon Valley Sports and Entertainment, Inc., on behalf of San Jose Arena Management, for the purchase and installation of a fuel cell based Energy Saver System for the Ice Centre was approved, and Ordinance No. 28902, entitled: “An Ordinance of the City of San José Amending Ordinance No. 28765 to Appropriate Monies in the Ice Centre Revenue Fund for the Fuel Cell Equipment; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”, was adopted. (11-0.)

- 4.2 (a) **Hold a Tax Equity and Fiscal Responsibility Act (“TEFRA”) public hearing for the issuance of up to \$23,000,000 of tax-exempt private-activity bonds by the California Municipal Finance Authority (“CMFA”) for the acquisition, rehabilitation and improvement of the 168-unit Elena Gardens Apartments affordable housing project, located at 1900 Lakewood Drive, San José, CA (the “Project”).**
- (b) **Adopt a resolution approving the issuance of Tax-Exempt Revenue Bonds by CMFA in an aggregate principal amount not to exceed \$23,000,000 to be used to finance the Project and pay certain expenses incurred in connection with the issuance of the bonds.**

CEQA: Categorically Exempt, File No. PP11-038. (Housing/Finance)

Documents Filed: (1) Joint memorandum from Director of Finance Scott P. Johnson and Director of Housing Leslye Corsiglia, dated March 7, 2011, recommending holding a public hearing and adoption of a resolution. (2) Proof of Publication of Notice of Public Hearing, executed on March 11, 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.

4.2 (Cont'd.)

Action: Upon motion by Council Member Herrera, seconded by Council Member Pyle and carried unanimously, Resolution No. 75764, entitled: “A Resolution of the Council of the City of San José Approving the Issuance by the California Municipal Finance Authority of Tax-Exempt Revenue Bonds for the Elena Gardens Apartments”, was adopted. (11-0.)

4.3 Hold a public hearing and adopt a resolution:

- (a) **Accepting the Summary 33433 Report pursuant to the California Health and Safety Code Section 33433 for the groundleasing and development of the 3.06 acre City-owned property located at the north side of Ford Road approximately 550 feet east of Monterey Road (the “Site”) for the Ford Road and Monterey Special Needs Apartments and Family Apartments (the “Project”), under the terms and conditions of the proposed Disposition and Development Agreement (“DDA”);**
- (b) **Approving a DDA between the City of San Jose and Eden Housing, Inc., or its affiliate, along with a 75-year Groundlease with Eden Housing, Inc., or its affiliate, of the Site for the Project, and authorizing the Director of Housing to execute the DDA, the Groundlease, and any other documents regarding the leasehold disposition of the property;**
- (c) **Authorizing the Director of Housing to negotiate and execute an amended consortium agreement with The Housing Trust of Santa Clara County (“HTSCC”) under the Neighborhood Stabilization Program 2 (“NSP2”) in an amount up to \$3,000,000 for construction of the 20-unit Ford and Monterey Special Needs Apartments (“Project” or “Phase I”);**
- (d) **Approving a funding commitment to Eden Housing, Inc., or its designated affiliate (“Eden”) for up to \$3,000,000 for a Project construction/permanent loan funded from NSP2 (Fund 448);**

CEQA: Mitigated Negative Declaration, File No. PDC09-022. (Housing/Finance)

Documents Filed: (1) Memorandum from Director of Housing Leslye Corsiglia, dated March 10, 2011, recommending holding a public hearing and adoption of a resolution. (2) Proof of Publication of Notice of Public Hearing, executed on March 1, 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 Council Member Herrera, seconded by Council Member Pyle and carried, Resolution No. 75765, entitled: “A Resolution of the Council of the City of San José Approving a Disposition and Development Agreement for the Ground Leasing of City-Owned Property and Funding Commitments and Related Documents for the Ford and Monterey Special Needs Apartments and Family Apartments”, was adopted. (10-1. Noes: Oliverio).

NEIGHBORHOOD SERVICES

5.1 Accept staff report and recommend that the City Council:

- (a) Approve the work plan for new signage, striping and mileage markers to be installed along City trails for directional, information and safety guidance as described in the staff memorandum.
- (b) Approve an ordinance amending Section 7.40.040 of Chapter 7.40 of Title 7 of the San José Municipal Code to require that dogs on City trails be maintained on a leash not to exceed six feet, and that any dogs on trails with a marked centerline be maintained to the right of the centerline.

CEQA: Not a Project, File No. PP10-068, General Policy Making. (Parks, Recreation and Neighborhood Services)

Documents Filed: (1) Joint memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso and Assistant Director Public Works David Sykes, dated March 14, 2011, recommending approval of a work plan and an ordinance for trail safety enhancements. (2) Letter from Martin Delson, dated March 23, 2011, recommending inclusions of trail safety issues to Staff's recommendations.

Council Member Pyle recommended that Staff work with the community in creating a memorial for Beverly Head, who had been involved in a tragic accident along the Los Alamitos Creek Trail.

Public Comments: Bob Head expressed thanks to Council Member Pyle for her efforts on this project, and noted he had been misquoted in a Mercury News article published this morning, adding that the Mercury would be printing a retraction. Martin Delson offered additional safety precautionary ideas regarding trail safety enhancements.

Trail Program Manager Yves Zsutty responded to questions from Council.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, Ordinance No. 28903, entitled: "An Ordinance of the City of San José Amending Section 7.40.040 of Chapter 7.40 of Title 7 of the San José Municipal Code to Require that Dogs on City Trails be Maintained on a Leash Not to Exceed Six Feet; and that Any Dogs on Trails with a Marked Centerline be Maintained to the Right of the Centerline", was passed for publication. (11-0.)

ENVIRONMENTAL & UTILITY SERVICES

7.1 Approve sending Proposition 218 notices for proposed customer rate changes for Recycle Plus, Storm Sewer Service, and Municipal Water beginning 2011-2012, as described in the staff memorandum. CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment. (ESD).

Documents Filed: Memorandum from Director of Environmental Services John Stufflebean, dated March 16, 2011, recommending sending Proposition 218 rate noticing process for utility rate changes.

7.1 (Cont'.d)

Public Comments: Martha O'Connell (Mobile Home Advisory Commission) asked that mobile home residents receive notices of any future rate changes.

Assistant City Attorney Ed Moran responded to Ms. O'Connell's comments regarding a 'property related fee', and Director of Environmental Services John Stufflebean responded to Council's questions regarding going beyond the standard Proposition 218 noticing requirements.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, completion of the Proposition 218 noticing process for proposed customer rate changes for Recycle Plus, Storm Sewer Service, and Municipal Water beginning 2011-2012, as described in the staff memorandum was approved, with Staff directed to review and report back with noticing policies for mobile home residents. (11-0.)

7.2 **Adopt a resolution approving the Tier 2 Drought Implementation Plan for allocating water among wholesale water customers of San Francisco Public Utilities Commission during water supply shortages of up to 20%. CEQA: Resolution 74998, File No. PP11-010. (Environmental Services)**

Documents Filed: Memorandum from Director of Environmental Services John Stufflebean, dated March 7, 2011, recommending adoption of a resolution.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, Resolution No. 75766, entitled: "A Resolution of the Council of the City of San José, approving Tier 2 Drought Implementation Plan Pursuant to Section 3.11.C of the Water Supply Agreement with the City and County of San Francisco", was adopted. (11-0.)

OPEN FORUM

- (1) Michael McDuffie complained of excessive noise from maintenance equipment at a strip mall at Senter and Monterey Roads. Mayor Reed referred Mr. McDuffie to Assistant City Manager Ed Shikada.
- (2) Martha O'Connell expressed that as long as Mobile Home residents are paying utility fees, they should be able to protest utility rate hikes.

ADJOURNMENT

The Council of the City of San José adjourned at 3:13 p.m. in memory of Betty Howard, a life long dedicated community activist, whose positive impact on the East San José community will always be remembered. (Campos)

Minutes Recorded, Prepared and Respectfully Submitted by,

Dennis Hawkins, CMC
City Clerk

rmk/3-29-11MIN

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.