

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, APRIL 19, 2011

The Council of the City of San José convened in Regular Session at 9:03 a.m. in the Council Chambers at City Hall.

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

Absent: Council Members - Kalra, Oliverio. (Excused)

STRATEGIC SUPPORT SERVICES

3.2 (a) Accept Labor Negotiations Update.

Documents Filed: (1) City of San José Negotiations Package: (a) 2011 ABME Package Proposal dated April 18, 2011. (b) Letter to Office of Employee Relations Manager Gina Donnelly from William Clark, President, Association of Legal Professionals, dated April 14, 2011, regarding ALP's package Proposal B. (c) MEF/CEO Joint Bargaining Contract Negotiations 2011 Package Proposal B. (d) Letter for Director of Employee Relations Alex Gurza from Jeff Welch, President, IAFF Local 230, dated April 14, 2011, noting that Local 230 was prepared to begin discussions as per the Retirement Reform Side Letter at any time that is convenient. (2) Letter to City Manager Debra Figone from the San José Silicon Valley Chamber of Commerce, dated April 8, 2011, providing alternatives and proposals that other cities are considering.

Office of Employee Relations Manager Gina Donnelly offered a brief Update on Labor Negotiations.

Public Comments: Brian Doyle, Association of Legal Professionals of San José (ALP), urged the Council to consider accepting ALP's offer of package Proposal B. Vera Todorov, ALP, expressed concern about losing more employees.

CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:09 a.m. to a Closed Session in Room W133 (A) to confer with Legal Counsel pursuant to Government Code subsection (c) of Section 54956.9 with respect to anticipated litigation in two (2) matters. (B) to confer with Legal Counsel (Claim Not Failed) pursuant to Government Code subsection (b) of Section 54956.9 with respect to anticipated litigation in one (1) matter. (C) to confer with Legal Counsel pursuant to Government Code Section 54956.9 subsection (a) with respect to existing litigation: Ho v. City, et al; Names of Parties Involved: Phuong Quang Ho, City of San José, Chief Robert Davis, Sergeant Jeffrey Martin, Officer Steven Payne, Jr., Officer Gabriel Reyes, Officer Kenneth Siegel, Officer Jerome Smith; Court: United States District Court, Northern District of California; Case No: CV-10-01825 HRL; Amount of Money or Other Relief Sought: 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) 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. (7) 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. Web: <http://www.sanjoseca.gov/employeerelations/moa.asp>; Telephone for Employee Relations: 408-535-8150.

CLOSED SESSION (Cont'd.)

By unanimous consent, Council recessed from the Closed Session at 11:50 a.m. and reconvened to Regular Session at 1:30 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

Filipino American Veterans Rondalla Group presented the Invocation. (District 4)

PLEDGE OF ALLEGIANCE

Mayor Reed, accompanied by the Third Graders from Lynnhaven Elementary School, 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 Attorney Doyle disclosed the following Closed Session actions of April 19, 2011:

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

Noes: None.
Abstention: None.
Absent: None.

CEREMONIAL ITEMS

1.1 Presentation of a commendation to the Piedmont Hills High School Football Team for the Division 1 CCS Football Championship. (Chu)

Action: Deferred to May 17, 2011 in the evening per District 4.

1.2 Presentation of a commendation to Friends Helping Friends with Special Needs for their dedication to helping children with special needs and their families through integrated community involvement. (Chu)

Action: Deferred to May 17, 2011 in the evening per District 4.

1.3 Presentation of a commendation to the Grace Community Center in recognition of their 40 Year Anniversary. (Constant/Liccardo)

Action: Mayor Reed and Council Members Constant and Liccardo recognized and commended the Grace Community Center.

1.4 Presentation of awards to the Early Care and Education Commission Outstanding Contributors. (Pyle)

Action: Mayor Reed and Council Member Pyle recognized and commended the Early Care and Education Commission Outstanding Contributors.

1.5 Presentation of a proclamation in celebration of Songkran in the City of San José. (Chu)

Action: Mayor Reed and Council Members Chu and Kalra recognized the celebration of Songkran in the City of San José.

CONSENT CALENDAR

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

2.1 Approval of minutes.

- (a) Regular Minutes of January 11, 2011.**
- (b) Special Minutes of the Joint Council/Redevelopment Agency/San José Financing Authority of January 19, 2011.**
- (c) Regular Minutes of January 25, 2011.**

Documents Filed: (1) The Regular Minutes dated January 11, 2011 and January 25, 2011. (2) The Special Minutes of the Joint Council/Redevelopment Agency/San José Financing Authority dated January 19, 2011.

2.1 (Cont'd.)

Action: The Council 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 March 30, 2011.**

(c) **Rules and Open Government Committee Report of March 23, 2011.**

(d) **Rules and Open Government Committee Report of March 16, 2011.**

(e) **Rules and Open Government Committee Report of March 9, 2011.**

(Mayor)

Action: Deferred to April 26, 2011 per City Clerk.

(b) **Transportation and Environment Committee Report of April 4, 2011.
(Liccardo)**

Documents Filed: The Transportation and Environment Committee Report dated April 4, 2011.

Public Comments: David Wall expressed comments about the Council Committee reports.

Action: The Transportation and Environment Committee Report was approved. (11-0.)

2.4 Mayor and Council Excused Absence Requests.

Action: There were none.

2.5 City Council Travel Reports.

Mayor Reed and Council Member Herrera participated in the Silicon Valley Leadership Group's Sacramento Advocacy Trip and provided highlights about the trip including, discussions on pension reform, encouraging economic development and a willingness to talk about the Redevelopment Agencies.

2.6 Report from the Council Liaison to the Retirement Boards.

Action: There were none.

- 2.7 Adopt a resolution authorizing the City Manager to negotiate and execute an agreement with the Santa Clara Valley Water District (District) for cost sharing of water conservation and wastewater flow reduction programs, for the period of January 1, 2011 through December 31, 2011, under which the City will pay the District an amount not to exceed \$500,000 and the City will receive an amount not to exceed \$180,000. CEQA: Not a Project, File No.PP10-066 (e), Services that involve no physical changes to the environment. (Environmental Services)**

Documents Filed: (1) City Council Action Request from Director of Environmental Services John Stufflebean, dated April 9, 2011, recommending adoption of a resolution. (2) Letter from Chuck Reed, Chairperson, The Treatment Plant Advisory Committee, dated April 6, 2011, expressing concurrence with the Staff recommendations.

Public Comments: David Wall voiced opposition to the Staff recommendations. Ann provided comments on the cost sharing agreement.

Action: Upon motion by Council Member Pyle, seconded by Council Member Constant and carried unanimously, Resolution No. 75775, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with the Santa Clara Valley Water District for Cost Sharing of Water Conservation and Wastewater Flow Reduction Programs, For the Period of January 1, 2011 Through December 31, 2011, Under Which the City Will Pay the District in An Amount Not To Exceed \$500,000 and the City Will Receive An Amount Not To Exceed \$180,000", was adopted. (11-0.)

- 2.8 Adopt a resolution authorizing the Director of Finance to execute the Fifth Amendment to the Parking Management Agreement for Norman Y. Mineta San José International Airport (Airport) with Ampco System Parking, Inc. to expand the scope of services to include in-lot shuttle services for the Airport parking lots scheduled to open beginning in early June 2011 and increase the amount of maximum compensation for the current extension term, ending October 31, 2011, by an amount not to exceed \$400,000, for a total maximum compensation not to exceed \$4,930,000 for parking management and shuttle services for the current extension term. 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 March 28, 2011, recommending adoption of a resolution.

Action: Resolution No. 75776, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Finance to Execute a Fifth Amendment to the Agreement with AMPCO Systems Parking, Inc. for Norman Y. Mineta San José International Airport Parking Facilities Management Services", was adopted. (11-0.)

- 2.9 (a) Approve travel by Mayor Reed to Sacramento, CA on April 13, 2011 to participate in the Silicon Valley Leadership Group's Sacramento Advocacy Trip as one of the City's designated representatives. Source of Funds: Mayor/Council Travel Fund.**

- 2.9 (b) Request for an excused absence for Mayor Reed from the Regular Meeting of the Rules and Open Government Committee on April 13, 2011 due to Authorized City Business.**

(Mayor)

Documents Filed: Memorandum from Mayor Reed, dated April 13, 2011, requesting approval of travel and an excused absence.

Action: The travel for Mayor Reed was approved and the absence was excused. (11-0.)

- 2.10 (a) Approve the West Valley Senior Walk sponsored by Council Districts 1 and 6 as a City Council sponsored Special Event.**
(b) Approve and accept donations from various individuals, businesses or community groups to support the event.

CEQA: Not a Project. (City Clerk)

Documents Filed: Memorandum from City Clerk Dennis D. Hawkins, CMC, dated April 12, 2011, recommending approval of the West Valley Senior Walk and acceptance of donations to support the event.

Action: The West Valley Senior Walk sponsored by Council Districts 1 and 6 as a City Council sponsored Special Event was approved and acceptance of donations from various individuals, businesses or community groups to support the event was authorized. (11-0.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

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

City Manager Debra Figone reported that the proposed 2011-2012 budget will be released on Monday, May 2, 2011 and added that next week Staff will be notifying employees who are subject to layoff or bumping.

3.3 Adopt a resolution:

- (a) Approving the terms of a collective bargaining agreement for the period of July 1, 2011, through June 30, 2013, between the City and the Association of Engineers and Architects, International Federation of Professional and Technical Engineers, Local 21, Units 041 and 042.**
- (b) Approving the terms of a collective bargaining agreement for the period of July 1, 2011, through June 30, 2013, between the City and the Association of Engineers and Architects, International Federation of Professional and Technical Engineers, Local 21, Unit 043.**

CEQA: Not a Project, File No. PP10-069(b), Personnel Related Decisions. (City Manager's Office)

3.3 (Cont'd.)

Documents Filed: Memorandum from Director of Employee Relations Alex Gurza, dated April 5, 2011, recommending adoption of a resolution.

Mayor Reed and City Manager Debra Figone provided introductory remarks. Office of Employee Relations Senior Executive Analyst Aracely Rodriquez presented the report.

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

Council Member Liccardo expressed continued concerns about not addressing the retirement benefits at the front end of the negotiations.

Public Comments: Speaking in support to the Staff recommendations were Jeff Welch, San José Firefighters, Local 230, Nancy Ostrowski, AEA/CAMP, Cay Denise McKenzie, CAMP and Roger Storz, AEA, Local 21. Mark Trout spoke off topic.

Action: On a call for the question, the motion carried unanimously, Resolution No. 75777, entitled: "A Resolution of the Council of the City of San José Approving Agreements with the Association of Engineers and Architects, International Federation of Professional and Technical Engineers, Local 21, Units 041/042 and Unit 043, With Terms of July 1, 2011 through June 30, 2013", was adopted. (10-1. Noes: Liccardo.)

3.4 **Adopt a resolution approving the terms of a collective bargaining agreement for the period of July 1, 2011, through June 30, 2013, between the City and the Association of Maintenance Supervisory Personnel (AMSP). CEQA: Not a Project, File No. PP10-069(b), Personnel Related Decisions. (City Manager's Office)**

Documents Filed: Memorandum from Director of Employee Relations Alex Gurza, dated April 5, 2011, recommending adoption of a resolution.

Action: Upon motion by Council Member Herrera, seconded by Council Member Constant and carried unanimously, Resolution No. 75778, entitled: "A Resolution of the Council of the City of San José Approving an Agreement Between the City of San José and the Association of Maintenance Supervisory Personnel, With a Term of July 1, 2011 through June 30, 2013", was adopted. (10-1. Noes: Liccardo.)

3.5 **Adopt a resolution approving the terms of a collective bargaining agreement for the period of July 1, 2011, through June 30, 2013, between the City and the City Association of Management Personnel, International Federation of Professional and Technical Engineers, Local 21, (CAMP). CEQA: Not a Project, File No. PP10-069(b), Personnel Related Decisions. (City Manager's Office)**

Documents Filed: Memorandum from Director of Employee Relations Alex Gurza, dated April 5, 2011, recommending adoption of a resolution.

3.5 (Cont'd.)

Action: Upon motion by Council Member Herrera, seconded by Council Member Constant and carried unanimously, Resolution No. 75779, entitled: "A Resolution of the Council of the City of San José Approving an Agreement Between the City of San José and the City Association of Management Personnel, International Federation of Professional and Technical Engineers, Local 21, With a Term of July 1, 2011 through June 30, 2013", was adopted. (10-1. Noes: Liccardo.)

3.6 Adopt a resolution approving compensation and benefit changes for executive management and professional employees in Unit 99, including the City Manager, and other unrepresented employees, effective June 26, 2011. CEQA: Not a Project, File No. PP10-069(b), Personnel Related Decisions. (City Manager's Office)

Documents Filed: Memorandum from City Manager Debra Figone, dated April 5, 2011, recommending adoption of a resolution.

City Manager Debra Figone presented the report.

Public Comments: David Wall expressed opposition to the Staff recommendations and suggested that the City Attorney and City Auditor take another look at the overall budget.

Action: Upon motion by Council Member Constant, seconded by Council Member Herrera and carried unanimously, Resolution No. 75780, entitled: "A Resolution of the Council of the City of San José Approving Compensation and Benefit Changes for Executive Management and Professional Employees In Unit 99 and Other Unrepresented Employees (Units 81 and 82) and the City Manager, Effective June 26, 2011", was adopted. (10-1. Noes: Liccardo.)

- 3.7**
- (a) Consider the appointment of Andrew Lanza to the Board of Administration of the Police and Fire Department Retirement Plan as recommended by the Board.**
 - (b) At the Council's discretion, appoint Andrew Lanza to the Board of Administration of the Police and Fire Department Retirement Plan for a term of office expiring April 30, 2015.**
 - (c) If the Council does not appoint Andrew Lanza, staff recommends that Council request that the Police and Fire Retirement Board provide additional recommendation(s) for Council consideration from the remaining applicants, or provide alternative direction to staff concerning a procedure for filling the fifth public member seat on the Police and Fire Retirement Board.**
- (City Clerk)**

Documents Filed: Memorandum from City Clerk Dennis D. Hawkins, CMC, dated April 13, 2011, recommending interviewing and appointing Mr. Lanza to the Board of Administration of the Police and Fire Department Retirement Plan.

3.7 (Cont'd.)

Action: Upon motion by Council Member Constant, seconded by Council Member Herrera and carried unanimously, Andrew Lanza was appointed to the Board of Administration of the Police and Fire Department Retirement Plan for a term of office expiring April 30, 2015. (11-0.)

TRANSPORTATION & AVIATION SERVICES

- 6.1 (a) **Adopt a resolution to provide for the preparation and issuance by the Airport of an Annual Airport Noise Report and to discontinue the current Airport practice of preparing and issuing a Monthly Noise Report.**
- (b) **Approve an ordinance amending Section 25.04.570 of Chapter 25.04 of Title 25 of the San José Municipal Code to provide that Airport engine run-up reports will be included in the Monthly Noise Summary on the Airport web site and the Annual Airport Noise Report.**

CEQA: Not a Project, File No. PP10-069(a), Staff Reports/Assessments/Annual Reports/Information Memos. (Airport)
(Deferred from 4/5/11 – Item 6.1)

Documents Filed: (1) Memorandum from Council Member Liccardo, dated April 18, 2011, recommending approval of the Staff recommendations with modifications. (2) Memorandum from Director of Aviation William Sherry, dated March 10, 2011, recommending adoption of a resolution and approval of an ordinance.

Motion: Council Member Liccardo moved approval of his memorandum dated April 18, 2011, accepting the Staff recommendations with modifications and substituting “complaint” in (1)(b) to “intrusions” in his memorandum. Council Member Pyle seconded the motion.

Public Comments: David Wall spoke in opposition to the Staff recommendations and urged a creative use of funding for the airport to address the noise issues.

Action: On a call for the question, the motion carried unanimously, Resolution No. 75781, entitled: “A Resolution of the Council of the City of San José Modifying Procedures for the Norman Y. Mineta San José International Airport Noise Abatement Office”, was adopted and Ordinance No. 28907, entitled: “An Ordinance of the City of San José Amending Section 25.04.570 of Chapter 25.04 of Title 25 of the San José Municipal Code to Include Engine Run-Up Reports in the Annual Norman Y. Mineta San José International Airport Noise Report”, was passed for publication and the revised memorandum from Council Member Liccardo, dated April 18, 2011, was approved, accepting the Staff recommendations with the following modifications: (1) Include within the monthly noise summaries: (a) The number of complaints and not just intrusions. (b) The hour of the day of the intrusions, in summary format (such as in a bar chart). (c) The number of complaints/intrusions attributable to general versus commercial aviation. (2) In addition to the monthly noise summary, more descriptive quarterly reports will remain available on the Airport's web site. (11-0.)

ENVIRONMENTAL & UTILITY SERVICES

7.1 Reports on bids and award of contract for the Fuel Cell Foundation Platform and Utility Interconnections Design Build Project to the low bidder, Anderson Pacific Construction Inc., in the amount of \$1,545,000, and approval of a contingency of 15% of the contract amount of \$231,750. CEQA: Exempt, File No. PP11-030. (Environmental Services/Public Works)

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean and Acting Director of Public Works David Sykes, dated March 30, 2011, recommending adoption of a resolution. (2) Supplemental memorandum from Director of Environmental Services John Stufflebean and Acting Director of Public Works David Sykes, dated April 6, 2011, transmitting the results of the bid received and changing the recommendation to the previous memorandum. (3) Letter from Chuck Reed, Chairperson, The Treatment Plant Advisory Committee, dated April 6, 2011, expressing concurrence with the Staff recommendations. (4) Sheet from the U.S. Environmental Protection Agency 2005 Facts and Figures Executive Summary submitted by a member of the public dated April 19, 2011.

Motion: Vice Mayor Nguyen moved approval of the Staff recommendations. Council Member Pyle seconded the motion.

Public Comments: David Wall and Ann presented observations and suggestions.

Action: On a call for the question, the motion carried unanimously, the award of contract for the Fuel Cell Foundation Platform and Utility Interconnections Design Build Project to the low bidder, Anderson Pacific Construction Inc., in the amount of \$1,545,000, with related contingency, was approved. (8-0-3. Absent: Constant, Kalra, Oliverio.)

7.2 Adopt a resolution authorizing the City Manager to negotiate and execute:

- (a) **An agreement with the California Energy Commission to provide grant funding in an amount up to \$1,900,000 for the initial feasibility study, and potential demonstration of a biomass-to-energy technology facility at the San José/Santa Clara Water Pollution Control Plant from April 20, 2011 through December 31, 2014 consistent with the business terms specified in the Council memorandum.**
- (b) **An agreement with Harvest Power Inc. to prepare an initial feasibility study, and potential demonstration of a biomass-to-energy technology facility at the San José/Santa Clara Water Pollution Control Plant from April 20, 2011 through December 31, 2014 consistent with the business terms specified herein; and for an in-kind match to the California Energy Commission grant for an estimated value of \$4,095,530.**

CEQA: Categorical Exemption, File No. PP10-130, CEQA Guidelines Section 15303(d), New Construction and Conversion of Small Structures. (Environmental Services)

7.2 (Cont'd.)

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean, dated March 28, 2011, recommending adoption of a resolution. (2) Letter from Chuck Reed, Chairperson, The Treatment Plant Advisory Committee, dated April 6, 2011, expressing concurrence with the Staff recommendations.

Director of Environmental Services John Stufflebean offered comments.

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

Public Comments: David Wall and Ann voiced comments and suggestions.

Action: On a call for the question, the motion carried unanimously, Resolution No. 75782, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute Agreements with the California Energy Commission and Harvest Power, Inc. DBA Harvest Organics Inc., for the Initial Feasibility Study and Potential Demonstration of a Biomass-To-Energy Technology Facility at the San José/Santa Clara Water Pollution Control Plant", was adopted. (9-0-2. Absent: Constant, Oliverio.)

7.3 **Accept the Final Report on the "Feasibility Assessment for the Creation of a South San Francisco Bay Emergency Port Access," to be submitted to the Department of Commerce, Economic Development Administration by the San José Silicon Valley Chamber of Commerce before the April 29, 2011 deadline. CEQA: Not a Project, File No. PP10-069 (a) Staff Reports. (Environmental Services)**

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean, dated March 28, 2011, recommending acceptance of the enclosed final report and approval to be submitted to the Department of Commerce. (2) Letter from Chuck Reed, Chairperson, The Treatment Plant Advisory Committee, dated April 6, 2011, expressing concurrence with the Staff recommendations.

Director of Environmental Services John Stufflebean presented introductory remarks.

Patricia E. Sausedo, San José Silicon Valley Chamber of Commerce offered a brief presentation

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

Public Comments: David Wall and Ann offered comments and suggestions.

7.3 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, the Feasibility Assessment for the Creation of a South San Francisco Bay Emergency Port Access was accepted and submittal to the Department of Commerce, Economic Development Administration by the San José Silicon Valley Chamber of Commerce before the April 29, 2011 deadline was authorized. (11-0.)

7.4 As recommended by the Transportation and Environment Committee on April 4, 2011:

- (a) **Provide direction to proceed with the preparation of an Environmental Impact Report (EIR) and development of the final documents for the San José/Santa Clara Water Pollution Control Plant Master Plan (Plant Master Plan) Recommended Preferred Alternative consisting of long-term wastewater treatment capital projects, including odor control projects and changes to the Plant's biosolids drying, filtration and disinfection processes; and changes in use of the Plant lands to add a mix of recreational, environmental, and economic development uses.**
- (b) **Approve option to extend the term of Agreement with Environmental Science Associates and Jones & Stokes Associates, Inc. (ESA + J&S) for Plant Master Plan environmental documentation to December 31, 2013 and to increase the maximum amount of compensation by \$1,400,000, from \$600,000 to \$2,000,000.**
- (c) **Direct staff to provide an update to Council on the following efforts in May 2011:**
 - (1) **Status of efforts to prioritize the identification of sources and potential solutions for elimination of odors coming from the Plant.**
 - (2) **Study to evaluate timing, cost, and delivery options for capital projects relating to biosolids dewatering and drying.**

CEQA: Not a Project, File No. PP10-069(a), Staff Reports. (Environmental Services/ Planning, Building and Code Enforcement)

Documents Filed: (1) Memorandum from Mayor Reed, Vice Mayor Nguyen and Council Members Chu, Rocha and Liccardo, recommending approval of the Staff recommendations with modifications as described in "Action". (2) Memorandum from City Clerk Dennis D. Hawkins, CMC, dated April 4, 2011, transmitting the recommendations of the Transportation and Environment Committee. (3) Letter from Chuck Reed, Chairperson, The Treatment Plant Advisory Committee, dated April 6, 2011, expressing concurrence with the Staff recommendations. (4) Information memorandum from Director of Environmental Services John Stufflebean, dated April 14, 2011, providing information about the projected Treatment Plant budget and rate impacts. (5) Petition of one hundred sixty four signatures against commercial development at Zanker Road and Highway 237 dated April 19, 2011. (6) Proposal from the Zero Emissions Recreational Organization, Inc. dated April 19, 2011 to the City of San José.

Director of Environmental Services John Stufflebean presented the report on the Plant Master Plan and responded to Council questions.

7.4 (Cont'd.)

Motion: Council Member Rocha moved approval of the memorandum he cosigned with Mayor Reed, Vice Mayor Nguyen and Council Members Chu and Liccardo, dated April 15, 2011, approving the Staff recommendations with modifications as described in "Action". Council Member Herrera seconded the motion.

Discussion ensued.

Public Comments: The following speakers spoke in support to the joint memorandum, complained and expressed concerns about the odor problems, provided suggestions for odor mitigation, expressed concerns about development and economic issues, complained about increased traffic issues, voiced concerns about developing more land, voiced opposition to more retail, losing businesses and residents because of odors, requested an environmental alternative for saving creatures i.e. burrowing owls, voiced concerns about sea level rise and expressed opposition to building a road through the area were: Stephanie Miller, The Irvine Company, Joey McCarthy, McCarthy Ranch, Patricia E. Sausedo, San José Silicon Valley Chamber of Commerce, Carol Kassab, Milpitas Chamber of Commerce, Dean Stanford, David Cook, Bob Power, Shani Kleinhaus, Santa Clara Valley Audubon Society, Selma Herrera, Robert W. Gross, PhD, Tony Santos, Alviso Water Task Force, Richard Santos, Ann, David Wall, Brian Schmidt, Committee for Green Foothills, Ada Marquez, Berryessa Neighborhood and Eileen McLaughlin, Citizens Committee to Complete the Refuge.

Action: On a call for the question, the motion carried unanimously, the memorandum from Mayor Reed, Vice Mayor Nguyen and Council Members Chu, Liccardo and Rocha, dated April 15, 2011, accepting the Staff recommendations was approved, with the following modifications: (1) During the May 2011 Council update, provide an analysis of the feasibility of implementing odor mitigation work in three to seven years. (2) Staff directed to return to the Transportation and Environment Committee with regular project status reports. (10-0-1. Absent: Constant.)

STRATEGIC SUPPORT SERVICES

- 3.8 (a) **Adopt a resolution to initiate amendments to Title 20 of the San José Municipal Code (the Zoning Code) to establish land use regulations pertaining to Medical Marijuana Collectives and to establish a Zoning Verification Certificate process, to forward these proposed Title 20 amendments to the Planning Commission for its report and recommendation and to set a public hearing date on these proposed amendments to Title 20 before the City Council.**

3.8 (Cont'd.)

Documents Filed: (1) Memorandum from Vice Mayor Nguyen, dated April 15, 2011, recommending approval of the Staff recommendations with modifications as described in “Action”. (2) Memorandum from Council Members Oliverio, Rocha and Kalra, dated April 15, 2011, recommending approval of the Staff recommendations with modifications. (3) Memorandum from Council Member Chu, dated April 14, 2011, recommending halting further discussion on the policy issues, forward to the Board of Supervisors and adopt an ordinance to ban all businesses involving cultivation, dispensation, distribution or sale of marijuana in the City of San José until a recommendation from the Santa Clara County Supervisors is reached. (4) Memorandum from Council Member Pyle, dated April 14, 2011, recommending if the Mayor and City Council cannot agree upon a regulatory framework for medical marijuana, that the City immediately adopt an ordinance to ban all businesses involving cultivation, dispensation, distribution or sale of marijuana in the City of San José. (5) Memorandum from Mayor Reed, dated April 11, 2011, recommending amendments to Title 20. (6) Memorandum from City Attorney Richard Doyle, dated April 15, 2011, providing background on Title 6 Regulations pertaining to medical marijuana. (7) Memorandum from Deputy City Manager Deanna J. Santana, Chief of Police Christopher Moore, Director of Planning, Building and Code Enforcement Joseph Horwedel and Budget Director Jennifer Maguire, dated April 1, 2011, recommending adoption of a resolution, approval of an ordinance and direction to Staff. (8) Supplemental memorandum from Deputy City Manager Deanna J. Santana and Budget Director Jennifer Maguire, dated April 6, 2011, recommending adoption of a resolution. (9) Supplemental memorandum from Deputy City Manager Deanna J. Santana, dated April 8, 2011, transmitting two maps that will be referenced during the Staff presentation on Medical Marijuana. (10) Staff presentation dated April 19, 2011 providing an overview of Medical Marijuana. (11) Medical Marijuana Prosecution Protocol from the Office of the District Attorney dated April 19, 2011. (12) Seven hundred ninety one signatures opposed to running a lottery to determine which collectives will stay open and which collectives will be forced to close, dated April 19, 2011. (13) Letter from Retired California State Senator John Vasconellos, dated April 12, 2011, regarding the discussion of medical marijuana uses. (14) Letter from Dan Rush, Chair, Silicon Valley Cannabis Coalition, dated April 12, 2011, regarding the discussion of medical marijuana uses.

City Manager Debra Figone offered introductory remarks. Deputy City Manager Deanna J. Santana outlined the report, City Attorney Richard Doyle provided background comments and Chief of Police Christopher Moore presented the Police Chief’s Perspective on Enforcement, Resources and Observations.

Motion: Council Member Oliverio moved approval of the memorandum he cosigned with Council Members Rocha and Kalra. Council Member Kalra seconded the motion.

Substitute Motion: Vice Mayor Nguyen moved her memorandum with modifications as described in “Action”. Council Member Liccardo seconded the motion.

Discussion ensued on the substitute motion.

3.8 (Cont'd.)

Council Member Liccardo requested to amend the substitute motion to specify no more than two collectives in each district and no ground floor establishments in pedestrian areas such as Downtown or in areas intended to have high pedestrian traffic, including but not limited to major shopping malls. Vice Mayor Nguyen accepted the amendment.

Council Member Constant requested to amend the substitute motion to add a Resolution to the California Governor and State Legislature, U.S. Attorney General and Congress of the United States that their failure to create a sensible approach to the regulation of medicinal marijuana has placed an undue burden on cities like San Jose. The amendment was accepted by Vice Mayor Nguyen and Council Member Liccardo.

Council Member Herrera requested to amend the substitute motion to remove off-site cultivation from the motion and to include the draft from the City Attorney. The amendment was accepted by Vice Mayor Nguyen and Council Member Liccardo.

Public Comments: Presenting comments and suggestions to establishing land use regulations pertaining to Medical Marijuana Collectives were: Brad Hayden, Robert Sandoval, Matt Lucero, Buddy's Cannabis, Wade Atteberry, Carla Nespole, Van Hovey, Doug Chloupek, Medmar Healing Center, Victor Meras, Dave Hodges, A2C2, Alexa Leigh, John Messina and Donald W. Irving.

Action: *Note: Item 3.8(a) was heard on April 12, 2011: Resolution No. 75774, entitled: "A Resolution of the Council of the City of San José Initiating, Pursuant to Section 20.120.010 of Chapter 20.120 of Title 20 of the San José Municipal Code, Proceedings to Consider an Ordinance of the City of San José Amending Title 1 of the San José Municipal Code by Amending Section 1.13.050 of Chapter 1.13 to Exempt a Lawful Medical Marijuana Collective From the Definition of a Public Nuisance and Amending Title 20 of the San José Municipal Code by Amending Section 20.10.040 of Chapter 20.10, Amending Section 20.40.100 of Chapter 20.40; Amending Section 20.50.100 of Chapter 20.50, Amending Section 20.70.100 of Chapter 20.70, Adding a New Part 9.5 to Chapter 20.80, Adding a New Part 13 to Chapter 20.100 and Amending Section 20.100.200 of Chapter 20.100, All to Establish Land Use Regulations Pertaining to Medical Marijuana Collectives and To Establish a Related Zoning Verification Certificate Process",* was adopted on April 12, 2011, as amended on April 19, 2011: On a call for the question, the substitute motion carried, (1) The memorandum from Mayor Reed, dated April 11, 2011, was approved: (a) Limit the location of Medical Marijuana collectives to parcels zoned Commercial General, Downtown Primary Commercial, Combined Industrial Commercial and Light Industrial. (b) Comply with AB2650 distance requirements for schools and require the same distance requirements as are currently required for liquor stores and for all other sensitive uses. Specifically: 600 feet from Public and Private Schools. 500 feet from child daycare, church with child daycare, community/recreation center, park, library, substance abuse rehabilitation center or another Collective and 150 feet from residential use. No ground floor establishments in

3.8 (Action Cont'd.)

pedestrian areas such as Downtown or in areas intended to have high pedestrian traffic, including but not limited to major shopping malls (i.e. The Plant, Oakridge, Eastridge, etc.). (2) Additional criteria to protect the Light Industrial District to be added at the discretion of the Director of Planning. (3) Zoning verification as the land use mechanism. (4) No offsite cultivation (to be consistent with Title 6). (5) A maximum of ten (10) Collectives, no more than two (2) per Council District (to be consistent with Title 6). (6-5. Noes: Campos, Chu, Kalra, Oliverio, Rocha.)

- (b) **Approve an ordinance of the City of San Jose amending Title 6, Business Licenses and Regulations, of the San Jose Municipal Code to add Parts 1, 2 and 3 of a new Chapter 6.88 to establish a registration process pertaining to Medical Marijuana Collectives.**
- (c) **Approve an ordinance of the City of San Jose amending Title 6, Business Licenses and Regulations, of the San Jose Municipal Code to add Parts 4 through 9 of a new Chapter 6.88 to establish regulations pertaining to Medical Marijuana Collectives and to the individual cultivation and use of medical marijuana.**

Action: On a call for the question, the substitute motion carried, Ordinance No. 28908, entitled: “An Ordinance of the City of San José Amending Title 6 of the San José Municipal Code to Add a New Chapter 6.88 to Establish Regulations Pertaining to Medical Marijuana Collectives and to the Individual Cultivation and Use of Medical Marijuana”, was passed for publication, as amended. The revised memorandum from Vice Mayor Nguyen, dated April 15, 2011, was approved, including: (1) *A cap of ten (10) medical marijuana collectives, with no more than two (2) collectives in each district.* (2) Award permits to those whom are eligible based on a *rigorous registration* “first come, first served” approach. The application must be submitted to the City Clerk, by a deadline set by Staff and the order for consideration of the applications will be based on each application’s time stamp. (3) Initiate a 30 day submittal period to establish the acceptance of applications of the operation and establishment of medical marijuana collective. Police and Code Enforcement Staff directed to shut down all remaining collectives who have not filed an application upon the submittal period’s deadline. (4) *No allowance for the offsite cultivation of marijuana. Require 24 hour security for onsite cultivation. Require that onsite cultivators growing medical marijuana pass a background check and not have a prior felony or misdemeanor conviction (prohibit people engaged directly or indirectly in the management of a collective who have had a conviction within the past ten years of any misdemeanor or felony involving the use of violence, force, fear, fraud, or deception; unlawful possession, sale, distribution, or transportation of a controlled substance; or use of money to engage in criminal activity.)* (5) Expand the category of allowed medical marijuana uses to extend to edibles, ointments and other non-smoke based medical marijuana products, but all distribution of food must comply with Santa Clara County’s health regulations and permits; and: (6) Restrictions on ground floor uses for sensitive areas: focus on retail at pedestrian level, such as Valley Fair, Oakridge Mall, Eastridge Mall, The Plant and other locations as determined by Staff. (7) Adopt a Resolution to the

3.8 (Action Cont'd.)

California Governor and State Legislature, U.S. Attorney General and Congress of the United States that their failure to create a sensible approach to the regulation of medicinal marijuana has placed an undue burden on cities like San Jose when we lack adequate resources to address those burdens and that the City continue to work with the Cities Association, League of Cities and others seeking changes to the to federal schedule and that the Food and Drug Administration take responsibility for the process, or some other resolution for the orderly implementation of compassionate use of medical marijuana which will treat marijuana like other drugs that have medicinal purposes. (8) The supplemental memorandum from City Attorney Richard Doyle, dated April 15, 2011, was approved. (6-5. Noes: Campos, Chu, Kalra, Oliverio, Rocha.)

- (d) **Direct staff to issue a Manager's Budget Addendum (MBA) to establish an appropriate FY 2011-2012 staffing plan, amendments to the Schedule of Fees and Charges to include an Annual Operating Fee, amendments to the Schedule of Fines, to be considered as part of the Mayor's June Budget Message.**

Action: On a call for the question, the substitute motion carried, Staff was directed to issue a Manager's Budget Addendum (MBA) to establish an appropriate FY 2011-2012 staffing plan, amendments to the Schedule of Fees and Charges to include an Annual Operating Fee, amendments to the Schedule of Fines, to be considered as part of the Mayor's June Budget Message. Staff was requested to circulate an information memorandum on the process and the schedule. (6-5. Noes: Campos, Chu, Kalra, Oliverio, Rocha.)

- (e) **Adopt a resolution to amend the Adopted 2010-2011 Schedule of Fees and Charges Resolution (Resolution 72737 as amended) to add a Medical Marijuana Collective Application Processing Fee at \$4,975 per Collective and to add a Medical Marijuana Investigation Hourly Fee at \$167 per hour.**
(City Manager's Office/Planning, Building and Code Enforcement/Police)

Action: On a call for the question, the substitute motion carried, Resolution No. 75783, 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, 75509, 75610, 75639, 75641, 75684 and 75725 To Establish a Medical Marijuana Collective Registration Application Processing Fee and To Establish a Medical Marijuana Investigation Hourly Fee, To Be Effective April 19, 2011", was adopted. (6-5. Noes: Campos, Chu, Kalra, Oliverio, Rocha.)

ADJOURNMENT

The Council of the City of San José was adjourned at 6:19 p.m. in memory of Pat Kramer and Diane Navarro, employees of the Department of Public Works who recently lost their lives in unrelated automobile accidents. Pat was a dispatcher with Animal Care and Services for almost ten years. Diane worked in administration and was a 25 year City employee. Pat and Diane made significant contributions to the City and will be greatly missed.

Minutes Recorded, Prepared and Respectfully Submitted by,

Dennis D. Hawkins, CMC
City Clerk

smd/04-19-11 MIN

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

PUBLIC HEARINGS

- 11.2 Consider an ordinance rezoning the real property located on the southwest corner of Tully Road and S. King Road (1698 Tully Road) from the CP Commercial Pedestrian Zoning District to the CP(PD) Planned Development Zoning District to allow the demolition and reconstruction of an existing gas station including the relocation of the fuel pumps, canopy and the construction of a new convenience store and automatic car wash on a 0.5 gross acre site (Au Energy LLC, Owner/Developer). SNI: West Evergreen. CEQA: Exempt. The Planning Commission voted 4-0-3 (Commissioners Abelite, Bit-Badal and Jensen absent) to recommend City Council approval.
PDC10-020 – District 7**

Action: Continued to April 26, 2011 in the Afternoon.