

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, APRIL 26, 2011

The Council of the City of San José convened in Regular Session at 9:02 a.m. in the Council Chambers at City Hall.

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

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

STRATEGIC SUPPORT SERVICES

3.2 Accept Labor Negotiations Update.

Director of Employee Relations Alex Gurza and Employee Relations Manager Gina Donnelly offered the Labor Negotiations Update.

CLOSED SESSION

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 9:07 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 (Claim Not Filed) in one (1) matter; (B) to confer with Legal Counsel pursuant to Government Code subsection (a) of Section 54956.9 with respect to existing litigation: (1) In re: Demers; Amount of Money or Other Relief Sought: Administrative Appeal; (2) Elliott v. City; Greg Elliott, City of San José, Does 1 through 20; Court: Superior Court of California, County of Santa Clara; Case No.: 1-10-CV172738; Amount of Money or Other Relief Sought: Damages according to proof; (3) City v. Santa Clara County Airport Land Use Commission; City of San José, Santa Clara County Airport Land Use Commission, Does 1 through 20; Court: Superior Court of California, County of Santa Clara; Case No., 1-10-CV188801;

CLOSED SESSION (Cont'd.)

Amount of Money or Other Relief Sought: Petition for Writ; (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; (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; 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 11:30 a.m. and reconvened to Regular Session at 1:31 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

The Morrill Middle School Orchestra performed “Sound Without Words” by Gustav Holst for the Invocation. (District 4)

PLEDGE OF ALLEGIANCE

Mayor Reed and students from Morrill Middle School led the Pledge of Allegiance.

ORDERS OF THE DAY

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

CLOSED SESSION REPORT

City Attorney Doyle disclosed the following Closed Session actions of April 26, 2011:

A. Authority to Enter Litigation Case as Amicus Curiae:

Case Name: Pack, et al. v. Superior Court

Substance of Litigation: Challenge to City of Long Beach Medical Marijuana Ordinance

Council Vote: Ayes: Campos, Chu, Constant, Herrera, Kalra, Liccardo, Nguyen, Oliverio, Pyle, Rocha; Reed.

Noes: None.
Disqualified: None.
Absent: None.
Vacant: None.

CEREMONIAL ITEMS

1.1 Presentation of a commendation to the March of Dimes South Bay Division in recognition of their efforts to support premature babies and their families through the March for Babies on April 30. (Mayor/Nguyen/Pyle/Rocha)

Action: Mayor Reed, Vice Mayor Nguyen and Council Members Constant, Pyle and Rocha commended the March of Dimes South Bay Division.

1.2 Presentation of a proclamation to the American Cancer Society declaring May 1, 2011 as “Show Us Your Hope Day” in the City of San José.

Action: Mayor Reed and Council Member Oliverio honored the American Cancer Society declaring May 1, 2011 as “Show Us Your Hope Day” in the City of San José.

**1.3 Presentation of a proclamation recognizing the week of May 1 - 7, 2011 as “Municipal Clerks Week” in the City of San José. (Mayor/City Clerk)
(Rules Committee referral 04/20/11)**

Action: Mayor Reed and City Clerk Dennis Hawkins recognized the week of May 1 – 7, 2011 as “Municipal Clerks Week” in the City of San José.

**1.4 Presentation of a proclamation declaring April 30, 2011 as “Mormon Helping Hands Day” in the City of San José. (Pyle/Campos)
(Rules Committee referral 04/20/11)**

Action: Mayor Reed and Council Members Herrera, Campos and Pyle recognized April 30, 2011 as “Mormon Helping Hands Day” in the City of San José.

CONSENT CALENDAR

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

2.1 Approval of minutes.

Action: There were none.

2.2 Final adoption of ordinances.

- (a) **ORD. NO. 28905 – Amending various Sections of Chapter 11.48 of Title 11 of the San José Municipal Code relating to Residential Permit Parking Areas to: (1) establish the Century-Winchester Permit Parking Area; (2) expand the Arena-St. Leo’s, South University Neighborhood, College Park, and Cahill Park Residential Parking Permit Areas; (3) authorize the Director of Transportation to issue more than three Residential Parking Permits to each group residence in the Horace Mann and South University Permit Parking Areas; (4) authorize the Director to charge an administrative fee for Permit Parking Citation Dismissal; and (5) make administrative corrections.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 28905 executed on April 19, 2011, submitted by the City Clerk.

Action: Ordinance No. 28905 was adopted. (11-0.)

2.3 Approval of Council Committee Reports.

- (a) **Ad Hoc Committee on Airport Competitiveness Report of February 24, 2011. (Mayor)**
- (b) **Rules and Open Government Committee Report of April 6, 2011. (Mayor)**
- (c) **Neighborhood Services and Education Committee Report of April 14, 2011. (Pyle)**

Documents Filed: (1) The Ad Hoc Committee on Airport Competitiveness Report dated February 24, 2011. (2) The Rules and Open Government Committee Report dated April 6, 2011. (3) The Neighborhood Services and Education Committee Report dated April 14, 2011.

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

- (d) **Rules and Open Government Committee Report of March 30, 2011. (Mayor)**
[Deferred from 4/19/11 – Item 2.3(a)]
- (e) **Rules and Open Government Committee Report of March 23, 2011. (Mayor)**
[Deferred from 4/12/11 – Item 2.3(a) and 4/19/11 – Item 2.3(c)]
- (f) **Rules and Open Government Committee Report of March 16, 2011. (Mayor)**
[Deferred from 4/5/11 – Item 2.3(a), 4/12/11 – Item 2.3(c) and 4/19/11 Item 2.3(d)]
- (g) **Rules and Open Government Committee Report of March 9, 2011. (Mayor)**
[Deferred from 3/29/11 – Item 2.3(a), et al, and 4/19/11 – Item 2.3(e)]

Action: Deferred to May 3, 2011 per the City Clerk.

2.4 Mayor and Council Excused Absence Requests.

Action: There were none.

2.5 City Council Travel Reports.

Action: There were none.

2.6 Report from the Council Liaison to the Retirement Boards.

Action: There were none.

2.7 Approve the seventh amendment to the Agreement for Consultant Services between the City of San José and R3 Consulting Group, Inc. to provide solid waste consulting and rate modeling services to the Environmental Services Department, extending the term through June 30, 2012. No additional funding is requested for the contract amount not to exceed \$730,000. CEQA: Not a Project, File No. PP10-066. (Environmental Services)

2.7 (Cont'd.)

Documents Filed: Action Request for an Agreement with R3 Consulting Group, from Director of Environmental Services John Stufflebean, dated April 26, 2011.

Action: The seventh amendment to the Agreement for Consultant Services between the City of San José and R3 Consulting Group, Inc. to provide solid waste consulting and rate modeling services to the Environmental Services Department, extending the term through June 30, 2012, was approved. (11-0.)

- 2.8 (a) Amend the Classification Plan, also known as the City of San José Pay Plan effective April 26, 2011 to create the following classifications:**
- (1) Principal Engineer/Architect (3816)**
 - (2) Radio Communications Manager (8523)**
- (b) Amend the Classification Plan, also known as the City of San José Pay Plan effective April 26, 2011 to delete job classifications no longer in use:**
- (1) Assistant City Attorney SII (2197)**
 - (2) Chief Deputy City Attorney (SII) (2137)**
 - (3) Communications Services Operator (1176)**
 - (4) Communications Services Operator PT (1177)**
 - (5) Emergency Preparedness Director U (2341)**
 - (6) Horticulturalist (3424)**
 - (7) Parks Development Officer (3450)**
 - (8) Public Communications Manager (1675)**
 - (9) Redevelopment Program Manager (4232)**

CEQA: Not a Project, File No. PP10-068(b), Municipal Code, Title 3. (Human Resources)

Action: Deferred to May 3, 2011 per Administration.

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

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

The City Manager reported on pending labor and budget issues.

- 3.3 Adopt a resolution authorizing the City’s designated officers to negotiate, execute and deliver an amendment to, or an amendment and restatement of, the Letter of Credit and Reimbursement Agreement by and between the City and Lloyds TSB Bank plc, acting through its New York Branch, related to the City of San José, San José International Airport Subordinated Commercial Paper Notes, Series D-F, to extend the term of this agreement and make certain other modifications thereto, and authorizing the City’s designated officers to take other necessary actions in connection therewith. CEQA: Not a Project, File No. PP10-066, Agreements/Contracts (New or Amended). (Finance)**

Documents Filed: (1) Memorandum from Assistant Director of Finance Julia H. Cooper, dated April 4, 2011, recommending adoption of a resolution. (2) Supplemental memorandum from Assistant Director of Finance Julia H. Cooper, dated April 18, 2011 summarizing provisions of the Amended and Restated Letter of Credit and Reimbursement Agreement.

Finance Division Manager Arn Andrews responded to questions from Council regarding a breakdown of financial analysis data.

Public Comments: David Wall expressed concern regarding the amount of the interest payment and the City’s inability to pay for it.

Action: Upon motion by Council Member Herrera, seconded by Council Member Pyle and carried unanimously, Resolution No. 75784, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager, the Assistant Director of Finance or Their Authorized Designees to Negotiate, Execute and Deliver an Amended and Restated Letter of Credit and Reimbursement Agreement with Lloyds TSB Bank plc, Acting through its New York Branch, and the Associated Fee Letter Related to the Norman Y. Mineta San José International Airport Commercial Paper Program and to Take Other Necessary Actions in Connection Therewith”, was adopted, with Staff to provide an information memo providing the financial analysis in a spreadsheet format. (11-0.)

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.1 Conduct a Public Hearing and 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

(Continued from 4/19/11 – Item 11.2)

4.1 (Cont'd.)

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC10-020, dated February 24, 2011, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated March 28, 2011, transmitting the Planning Commission recommendation.

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

Assistant Director of Planning and Code Enforcement Laurel Prevetti responded to questions from Council.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, and Ordinance No. 28909, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated at the Southwest Corner of Tully Road and South King Road From CP Commercial Pedestrian to CP(PD) Planned Development Zoning District", was passed for publication. (11-0.)

TRANSPORTATION & AVIATION SERVICES

6.1 **Approval of the proposed Fiscal Year 2010/11- 2015/16 Workplan for the Rule 20A and Rule 20B (In-Lieu Fee) Underground Utility Program. CEQA: Exempt, File No. PP10-069. (Public Works)**

Documents Filed: Memorandum from Acting Director of Public Works David Sykes, dated April 4, 2011, recommending approval of the proposed In-Lieu Fee Underground Utility Program and 2010/11- 2015/16 Workplan.

Acting Director of Public Works David Sykes provided a brief presentation on the utility underground program.

Action: Upon motion by Council Member Herrera, seconded by Council Member Pyle and carried unanimously, the proposed Fiscal Year 2010/11- 2015/16 Workplan for the Rule 20A and Rule 20B Underground Utility Program was approved. (11-0.)

6.2 (a) **Adopt a resolution authorizing the Director of Public Works to determine the lowest responsive and responsible bidder for the Taxiway W Extension J-L Project at the Norman Y. Mineta San José International Airport and to either:**

6.2 (Cont'd.)

- (1) Award the contract to the lowest responsive and responsible bidder in an amount not to exceed \$11,500,000, contingent upon award and execution of an Airport Improvement Program (AIP) Grant from the Federal Aviation Administration (FAA); or
 - (2) Reject all bids and re-bid the Project.
- (b) Approve a contingency equal to fifteen percent of the award amount.
CEQA: Resolution Nos. 67380 and 71451, File No. PP11-037. (Public Works/Airport)

Documents Filed: Joint memorandum from Acting Director of Public Works David Sykes and Director of Aviation William F. Sherry, dated April 4, 2011, recommending adoption of a resolution and approval of a contingency.

Public Comments: David Wall applauded the innovation of the project and suggested that unused grant money be returned to the federal government.

Acting Director of Public Works David Sykes responded to questions from Council regarding consultant's fees and project overhead.

Action: Upon motion by Council Member Rocha, seconded by Council Member Herrera and carried unanimously, Resolution No. 75785, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Public Works to Award a Construction Contract for the Norman Y. Mineta San José International Airport Taxiway W Extension J-L Project to the Lowest Responsive and Responsible Bidder in an Amount not to Exceed \$11,500,000, Plus a Contingency Equal to 15% of the Award Amount, Contingent Upon Award and Execution of an Airport Improvement Program Grant from the Federal Aviation Administration", was adopted. (11-0.)

ENVIRONMENTAL & UTILITY SERVICES

- 7.1 **Accept the Annual Status Report on cooperative efforts in 2010 between the City of San José and the Santa Clara Valley Water District relating to flood protection, water supply, watershed protection, and policy/planning initiatives. CEQA: Not a Project, File No. PP10-069(a), Annual Reports. (City Manager's Office/Santa Clara Valley Water District)**

Documents Filed: Memorandum from City Manager Debra Figone and Chief Executive Officer, Santa Clara Valley Water District, Beau Goldie, dated April 4, 2011, providing a Status Report on Cooperative Efforts Between the City of San José and the Santa Clara Valley Water District.

7.1 (Cont'd.)

Public Comments: David Wall spoke offered criticism of the Water's District's management of the reclaimed water project.

Director of Environmental Services John Stufflebean provided a report of the project and responded to questions from Council. Environmental Program Manager Elaine Marshall responded to questions regarding the storm drain project, and Yves Zsutty, Trail Network Manager responded to questions regarding trail construction.

Action: Upon motion by Council Member Herrera, seconded by Council Member Pyle and carried unanimously, the Annual Status Report on cooperative efforts in 2010 between the City of San José and the Santa Clara Valley Water District relating to flood protection, water supply, watershed protection, and policy/planning initiatives, was approved. (10-0-1. Absent: Constant.)

NOTICE OF CITY ENGINEER'S PENDING DECISION ON FINAL MAPS

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

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/Units</u>	<u>Type</u>
10078	E/S Almaden Ex. 200 S/O Fleetwood Drive	10	HH Almaden LLC	16 Lots/ 16 Units	SFDR

OPEN FORUM

- (1) David Wall thanked Tamara Davis of the City Clerk's Office for outstanding note taking of the Airport Commission Meeting, and criticized the City's funding of the Mexican Heritage Plaza art program.
- (2) Shirley Vargas expressed concerns over the City's high taxes and it's impact on low-income residents.

ADJOURNMENT

The Council of the City of San José adjourned at 3:10 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Dennis Hawkins, CMC
City Clerk

rmk/4-26-11MIN

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.