

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, MAY 3, 2011

The Council of the City of San José convened in Regular Session at 9:06 a.m. in the Council Chambers at City Hall.

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

Absent: Council Members - All Present.

STRATEGIC SUPPORT SERVICES

3.2 Accept Labor Negotiations Update.

City Manager Debra Figone provided opening remarks, and the Director of Employee Relations Alex Gurza offered the Labor Negotiations Update.

Documents Filed: City of San José and Association of Building, Mechanical and Electrical Inspectors Tentative Agreement, dated April 29, 2011.

Public Comments: George Beattie (SJPOA) discussed the Police Officer's Association proposal, and John Tennant (SJPOA) addressed the "Me Too" Clause.

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 9:27 a.m. to a Closed Session in Room W133 (A) to confer with Legal Counsel pursuant to Government Code subsection (a) of Section 54956.9 with respect to existing litigation: (1) Licking Enterprises, Inc. v. City, et al., Licking Enterprises, Inc., City of San José, a Municipal Corporation; San José

CLOSED SESSION (Cont'd.)

City Council; Ron Gonzales, Cindy Chavez, Pat Dando, Ken Yeager, Chuck Reed, Forrest Williams, Linda J. Lezotte, Nora Compos, George Shirakawa, Jr., David D. Cortese, John Diquisto, sued in their official capacities; Court: United States District Court, Northern District of California; Case No.: C07-00735 RMW (PVT); Amount of Money or Other Relief Sought: Damages according to proof; (B) 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

CLOSED SESSION (Cont'd.)

By unanimous consent, Council recessed from the Closed Session at 11:30 a.m. and reconvened to Regular Session at 1:34 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

Jon Zamora read from his children's book "The Story of Pepe L. Mariachi and Los Amigos". (District 5)

PLEDGE OF ALLEGIANCE

Mayor Reed 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, with Item 2.8 deferred to May 10, 2011. (11-0.)

CEREMONIAL ITEMS

1.1 Presentation of a commendation to Baseball Buddies Foundation for their dedication with providing children with proper baseball gear. (Chu)

Action: Deferred to May 10, 2011 per District 4.

1.2 Presentation of a proclamation celebrating the month of May 2011 as "Asian Pacific American Heritage Month" in the City of San José. (Chu)

Action: Mayor Reed, Vice Mayor Nguyen and Council Members Chu and Kalra recognized the month of May 2011 as "Asian Pacific American Heritage Month" in the City of San José.

1.3 Presentation of proclamation declaring May 2-6, 2011 as "Teacher Appreciation Week" in the City of San José. (Constant)

Action: Mayor Reed and Council Member Constant recognized May 2-6, 2011 as "Teacher Appreciation Week" in the City of San José.

1.4 Presentation of a proclamation declaring Sunday, May 8, 2011 as “Paint Your Town Purple Day” in the City of San José. (Pyle)

Action: Mayor Reed and Council Member Pyle recognized Sunday, May 8, 2011 as “Paint Your Town Purple Day” in the City of San José.

**1.5 Presentation of a proclamation declaring the Month of May 2011 as “Safe Teen Driving Month” in the City of San José. (Kalra)
(Rules Committee referral 04/27/11)**

Action: Mayor Reed, Council Members Chu and Kalra and Chief of Police Chris Moore recognized the Month of May 2011 as “Safe Teen Driving Month” 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.

- (a) **Regular Minutes of February 1, 2011.**
- (b) **Joint City/San José Financing Authority Minutes of February 1, 2011.**
- (c) **Regular Minutes of February 8, 2011.**
- (d) **Regular Minutes of February 15, 2011.**
- (e) **Minutes of the Disaster Policy Seminar of February 1, 2011.**

Documents Filed: (1) Regular Minutes dated February 1, 8 and 15, 2011. (2) Joint City Council/San José Financing Authority Minutes dated February 23, 2010. (3) Special Disaster Policy Seminar Minutes of February 1, 2011.

Public Comments: David Wall provided comments regarding the Disaster Policy Seminar and recommended that the communications position be eliminated.

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

2.2 Final adoption of ordinances.

- (a) **ORD. NO. 28907 – 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 Airport Noise Report.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 28907 executed on April 26, 2011, submitted by the City Clerk.

Action: Ordinance No. 28907 was adopted. (11-0.)

2.3 Approval of Council Committee Reports.

- (c) **Rules and Open Government Committee Report of March 30, 2011. (Mayor)**
[Deferred from 4/19/11 – Item 2.3(a) and 4/26/11 – Item 2.3(d)]

Documents Filed: (1) The Rules and Open Government Committee Report dated March 30, 2011.

Action: The Rules and Open Government Committee Report was approved. (11-0.)

- (a) **Rules and Open Government Committee Report of April 13, 2011. (Mayor)**
(b) **Public Safety, Finance and Strategic Support Committee Report of April 21, 2011. (Constant)**
(d) **Rules and Open Government Committee Report of March 23, 2011. (Mayor)**
[Deferred from 4/12/11 – Item 2.3(a), 4/19/11 – Item 2.3(c) and 4/26/11 – Item 2.3(e)]
(e) **Rules and Open Government Committee Report of March 16, 2011. (Mayor)**
[Deferred from 4/5/11 – Item 2.3(a), et al, and 4/26/11 – Item 2.3(f)]
(f) **Rules and Open Government Committee Report of March 9, 2011. (Mayor)**
[Deferred from 3/29/11 – Item 2.3(a), et al, and 4/26/11 – Item 2.3(g)]

Action: Deferred to May 10, 2011 per 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 Adopt a resolution authorizing the City Manager to execute an agreement with Robert Gary Schmelzer 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) (Deferred from 3/29/11 – Item 2.7)**

Documents Filed: Replacement memorandum from Director of Economic Development/Chief Strategist Kim Walesh, dated April 20, 2011, recommending adoption of a resolution.

2.7 Action: Resolution No. 75787, entitled: “A Resolution of the Council of the City of San José, Authorizing the City Manager to Execute an Agreement with Robert Gary Schmelzer, an Individual, (“Circle A”) for the Lease of Real Property Located at 108 Paseo De San Antonio for Purposes of Operating a Retail Store for an Initial Term of Three Years with One Three-Year Option Period, for Total Lease Revenue to the City of San José in the Amount of \$126,551.16”, was adopted. (11-0.)

2.8 **Approve a second amendment to the agreement with Pelican Communications, Inc., to mutually agree to an additional five-year term retroactively commencing on May 13, 2010, in the annual, ongoing amount of \$12,480, with additional one time charges of \$250 for each new pay-telephone installed to provide for installation and maintenance of pay-telephones at the Airport at no cost to the City, and installation, removal and maintenance of pay-telephones on other City-owned properties. CEQA: Exempt, File No. PP05-053. (Economic Development)**

Action: Deferred to May 10, 2011 per Orders of the Day.

2.9 (a) **Authorizing an alternative competitive process for the sale of the property;**
(b) **Approving an agreement between the City and Z&C Investment LLC, for sale of the property in the amount of \$235,000; and**
(c) **Authorizing the Director of Economic Development or designee to execute all sales documents and the deed necessary to complete the transaction, and ratifying any disclosures or certifications made by the Director or designee regarding the property as required by law.**
CEQA: Exempt, File No. PP10-016. Council District 7. SNI: K.O.N.A. (Economic Development)

Documents Filed: Memorandum from Director of Economic Development/Chief Strategist Kim Welsh, dated April 11, 2011, recommending adoption of a resolution.

Action: Resolution No. 75788 entitled: “A Resolution of the Council of the City of San José Authorizing an Alternative Competitive Process for the Sale of Real Property at 1807 Sarasota Way, Approving an Agreement to Sell, and Authorizing the Director of Economic Development to Execute all Documents Necessary to Complete the Transaction”, was adopted. (11-0.)

2.10 **Approve the Confidentiality and Nondisclosure Agreement between San Jose Water Company and the City of San Jose to allow the City to obtain water usage data from San Jose Water Company for the purpose of calculating Sewer Service and Use Charges for non-residential users. CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment. (Environmental Services)**

Documents Filed: Memorandum from Director of Environmental Services John Stufflebean, dated April 15, 2011.

2.10 (Cont'd.)

Action: The Confidentiality and Nondisclosure Agreement between San José Water Company and the City of San José to allow the City to obtain water usage data from San José Water Company for the purpose of calculating Sewer Service and Use Charges for non-residential users was approved. (11-0.)

- 2.11 Adopt a resolution initiating proceedings and setting May 24, 2011 at 1:30 p.m. for a public hearing on the reorganization of territory designated as Downer No. 11 which involves the annexation to the City of San José of approximately 8.6 gross acres of land generally located west at the northwest corner of Blossom Hill Road and Southcrest Way, and the detachment of the same from the appropriate special districts including Central Fire Protection and Area No. 01 (Library Services) County Service. CEQA: The environmental impacts of this project were addressed by an Initial Study (IS) and Mitigated Negative Declaration (MND) that were prepared by the Director of Planning, Building, and Code Enforcement for both the approved General Plan Amendment (File No. GP10-01-01) and the Planned Development Rezoning/Rezoning (File No. PDC10-007). The documents were circulated for public review between October 14, 2010 and November 3, 2010, and the City Council approved the IS/MND on December 7, 2010. Council District 10. (Planning, Building and Code Enforcement)**

Documents Filed: (1) Memorandum from Director, Planning, Building and Code Enforcement Joseph Horwedel, dated April 11, 2011, recommending adoption of a resolution. (2) Proof of Publication of Notice of Public Hearing, executed on April 29, 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: Resolution No. 75789, entitled: "A Resolution of the Council of the City of San José Initiating Reorganization Proceedings for the Annexation and Detachment of Certain Uninhabited Territory Designated as Downer No. 11, Described More Particularly Herein, and Setting the Date, Time and Place for Consideration of Such Reorganization", was adopted. (11-0.)

- 2.12 Approval of the first amendment to extend the term of the original agreement from June 30, 2011 to June 30, 2013 with IBI Group for architectural design and construction administration services for the Transportation Incident Management Center Project. CEQA: Not a Project, File No. PP10-066(d) Consultant Services. Council District 3. (Public Works)**

Action: Deferred to May 10, 2011 per Administration.

2.13 Approve the State Highway Route 101 Freeway Agreement, from Route 280/680 to Yerba Buena Road, between the City of San José and the State of California. CEQA: Mitigated Negative Declaration, File No. OA05-010. Council Districts 5, 7 and 8. SNI: K.O.N.A.; Tully/Senter; West Evergreen. (Transportation)

Documents Filed: City Council Action Request dated April 11, 2011, regarding approval of Route 101 Freeway Agreement, submitted by Director of Transportation Hans Larsen.

Action: The State Highway Route 101 Freeway Agreement, from Route 280/680 to Yerba Buena Road, between the City of San José and the State of California was approved. (11-0.)

2.14 Approve an amendment to the bylaws of the Caltrain Centralized Equipment Maintenance & Operations Facility Monitoring Committee reducing the minimum number of meetings from quarterly to annually and the reporting from quarterly to periodic. CEQA: Not a Project, File No. PP10-068, general procedure and policy making. (Transportation)

Documents Filed: City Council Action Request, dated April 11, 2011, regarding approval of Monitoring Committee By-Laws for the Caltrain Maintenance Facility, approved by Director of Transportation Hans Larsen.

Action: An amendment to the bylaws of the Caltrain Centralized Equipment Maintenance & Operations Facility Monitoring Committee reducing the minimum number of meetings from quarterly to annually and the reporting from quarterly to periodic, was approved. (11-0.)

- 2.15 (a) Accept invitation from The Climate Group and the China Solid State Lighting Alliance to participate in a global summit on LED lighting, including streetlighting, in Shanghai, China from May 9 to May 13, 2011.**
- (b) Approve travel to China for Amy Olay, Senior Engineer in the Department of Transportation as the City's official staff representative at the summit meeting.**

Source of Funds: The Climate Group. CEQA: Not a Project, File No. PP10-069, Administrative Activities. (Transportation)

Documents Filed: Memorandum from Director of Transportation Hans Larsen, dated April 18, 2011, requesting participation in a global summit on LED lighting and approval of travel.

Action: An invitation from The Climate Group and the China Solid State Lighting Alliance to participate in a global summit on LED lighting in Shanghai, China from May 9 to May 13, 2011 was accepted, and travel to China for Amy Olay, Senior Engineer in the Department of Transportation as the City's official staff representative at the summit meeting, was approved. (11-0.)

- 2.16 (a) Amend the City of San Jose Pay Plan effective May 3, 2011 to create the following classifications:**

- (1) **Radio Communications Manager (8523)**
- (b) **Amend the City of San Jose Pay Plan effective May 3, 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)

(Deferred from 4/26/11 – Item 2.8)

Documents Filed: Replacement memorandum from Acting Director of Human Resources Kay Winer, dated April 21, 2011, recommending adoption of a resolution.

Action: Resolution No. 75790, entitled: “A Resolution of the Council of the City of San José Amending the City of San José Pay Plan for Various Job Classifications”, was adopted. (11-0.)

- 2.17 (a) **Approve travel by Councilmember Constant to Waco, TX on May 24-29, 2011 to represent the City of San José as a member and Vice-Chair of the National League of Cities’ (NLC) Public Safety and Crime Prevention (PSCP) Steering Committee. Source of Funds: Mayor & Council Travel Fund & Office Budget. (Constant)**
- (b) **Request for an excused absence for Councilmember Constant from the Regular Meeting of the Rules and Open Government Committee on May 25, 2011 and the Family/Domestic Violence Advisory Board Meeting on May 25, 2011 due to Authorized City Business: National League of Cities’ (NLC) Public Safety and Crime Prevention (PSCP) Steering Committee. (Constant)**
(Rules Committee referral 04/27/11)

Documents Filed: Memoranda from Council Member Constant, dated April 22 and April 27, 2011, requesting excused absences and authorization to travel due to authorized City business.

Action: The travel request was approved, and absences from Council Member Constant were excused. (11-0.)

- 2.18 (a) **Setting June 7, 2011 at 1:30 p.m. as the date and time for the public meeting to consider adoption of a resolution of intention to levy increased assessments in the Downtown Business Improvement District for Fiscal Year 2011-2012;**
- (b) **Setting June 21, 2011 at 1:30 p.m. as the date and time for the public hearing on the levy of increased assessments for FY 2011-2012; and**
- (c) **Directing the City Clerk to publish the required notice of the public meeting and public hearing.**

**CEQA: Exempt, File No. PP03-05-165. Council District 3. SNI: St. James Square; University; Delmas; Burbank/DelMonte. (Economic Development)
(Rules Committee referral 04/27/11)**

Documents Filed: Memorandum from Director of Economic Development/Chief Strategist Kim Walesh, dated April 26, 2011, recommending adoption of a resolution.

Action: Resolution No. 75791, entitled: "A Resolution of the Council of the City of San José (A) Setting June 7, 2011 at 1:30 p.m. as the Date and Time for the Public Meeting to Consider Adoption of a Resolution of Intention to Levy Increased Assessments in the Downtown Business Improvement District for Fiscal Year 2011-2012; (B) Setting June 21, 2011 at 1:30 p.m. as the date and time for the Public Hearing on the Levy of Increased Assessments for FY 2011-2012; and (C) Directing the City Clerk to Publish the Required Notice of the Public Meeting and Public Hearing", was adopted. (11-0.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

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

The City Manager highlighted the release of the 2011-2012 Operating Budget recommendations and the Fiscal Reform Plan.

- 3.3 (a) **Approve a settlement and authorize the City Attorney to execute a Settlement Agreement and Release to settle the case of Licking v. City of San Jose. The settlement includes \$2,104,000 for purchase of property for the Route 101/Mabury interchange and attorney fees, payment of \$1,000,000 for loss of business goodwill at the time that the City takes possession of the property, plus estimated closing costs of \$13,200, for a total amount of \$3,117,200.**
- (b) **Adopt the following 2010-2011 Appropriation Ordinance amendments in the Construction Excise Tax Fund:**
- (1) **Establish an appropriation to the Department of Transportation for the Route 101/Mabury Acquisition project in the amount of \$1,021,200; and**
- (2) **Decrease the Ending Fund Balance by \$1,021,200.**

CEQA: Resolution No. 74195.1, File No. PP09-186. (City Attorney's Office)

3.3 (Cont'd.)

Documents Filed: Joint memorandum from City Attorney Richard Doyle and Budget Director Jennifer Maguire, dated April 14, 2011, recommending approval of a settlement and adoption of appropriation ordinance amendments.

Action: Upon motion by Council Member Chu, seconded by Council Member Herrera and carried unanimously, the City Attorney was authorized to execute a Settlement Agreement and Release to settle the case of Licking v. City of San José, including \$2,104,000 for purchase of property for the Route 101/Mabury interchange and attorney fees, payment of \$1,000,000 for loss of business goodwill at the time that the City takes possession of the property, plus estimated closing costs of \$13,200, for a total amount of \$3,117,200, and Ordinance No. 28910, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28765 to Appropriate Monies in the Construction Excise Tax Fund for the Route 101/Mabury Acquisition Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", was adopted. (11-0.)

3.4 **As recommended by the Public Safety, Finance and Strategic Support Committee on April 21, 2011, accept the Annual Financial Scan of City-Funded Community Based Organizations. (City Auditor)** **[Public Safety, Finance and Strategic Support Committee referral 4/21/11 – Item D(3)]**

Documents Filed: Memorandum from City Clerk Dennis Hawkins, dated April 21, 2011, transmitting the recommendations of the Public Safety, Finance and Strategic Support Committee.

Public Comments: David Wall suggested the elimination of funding for community-based organizations.

Action: Upon motion by Council Member Rocha, seconded by Council Member Herrera and carried unanimously, the Annual Financial Scan of City-Funded Community Based Organizations as recommended by the Public Safety, Finance and Strategic Support Committee, was accepted. (11-0.)

3.5 **As recommended by the Public Safety, Finance and Strategic Support Committee on April 21, 2011, accept the Audit of Disability Retirement. (City Auditor)** **[Public Safety, Finance and Strategic Support Committee referral 4/21/11 – Item D(4)]**

Documents Filed: (1) Joint memorandum from Mayor Reed, Vice Mayor Nguyen and Council Member Liccardo, dated April 28, 2011, recommending amendments to the Audit of Disability Retirement; (2) Memorandum from City Clerk Dennis Hawkins, dated April 21, 2011, transmitting the recommendations of the Public Safety, Finance and Strategic Support Committee. (3) Two memoranda from San José Fire Fighters, Local 230, dated April 26 and May 2, 2011, offering ideas of improvements to the compensation/disability process.

3.5 (Cont'd.)

City Auditor Sharon Winslow-Erickson provided an overview of the Audit of Disability Retirement.

Motion: Vice Mayor Nguyen moved approval of the memorandum she cosigned with Mayor Reed and Council Member Liccardo, with amendments as outlined below in “Action”. Council Member Liccardo seconded the motion.

Council Member Constant requested to amend the motion to include collection of outstanding balances for amounts overpaid. Vice Mayor Nguyen and Council Member Liccardo accepted the amendment.

Extensive Council discussion followed.

Public Comments: Robert Sapien (San José Fire Fighters) George Beattie (San José Police Officer’s Association), and Aurelia Sanchez offered comments and suggestions on the City’s retirement reform.

Action: On a call for the question, the motion carried, the memorandum from Mayor Reed, Vice Mayor Nguyen and Council Member Liccardo, dated April 28, 2011 was approved with the following amendments:

- A. The City Auditor’s report on “Disability Retirement: A Program in Need of Reform” as amended in the joint memorandum from Mayor Reed, Vice Mayor Nguyen and Council Member Liccardo, dated April 28, 2011, including recommendations 1-6 as outlined in the Auditor’s report, was accepted.
- B. The City Manager, City Auditor and City Attorney were directed to research, conduct outreach and prepare ballot language for a ballot measure allowing the residents of San José to vote on changing the City Charter by amending Section 1504 and Section 1505 to clarify the purpose of the disability retirement benefit as outlined in the City Auditor’s report.
- C. The Administration was directed to look into the feasibility of forming a disability retirement committee, independent of the Police and Fire and Federated City Employees’ Retirement Boards, to review and decide on disability retirement applications and allow the City Council to appoint a Hearing Officer to make decisions on appeals regarding disability retirement applications.
- D. Return to Council on June 14, 2011, with proposed draft language.

Additionally, Administration was directed to aggressively enforce the collection of amounts owed to the City by retirees, and direct Staff to look into ensuring that we reconcile the differences/conflict between the Charter and the Municipal Code when drafting the ballot language. (8-3. Noes: Campos, Chu, Kalra.)

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.1 (a) Hold a final public hearing regarding the approval of the City's Annual Action Plan 2011-12 and take public comment.
- (b) Adopt the 2011-2012 Annual Action Plan, including the FY 2010-2011 funding recommendations for the Community Development Block Grant (CDBG) Program, the HOME Investment Partnership Program (HOME), the Housing Opportunities for People with HIV/AIDS (HOPWA) Program, and the Emergency Shelter Grant (ESG) Program.
- (c) Adopt a resolution authorizing the Director of Housing to negotiate and execute all non-capital agreements and contracts not requiring CEQA review and to negotiate all capital project agreements and contracts, including any amendments or modifications, for the expenditure of CDBG, ESG, HOME and HOPWA funds on behalf of the City.
- (d) Authorize the Housing Department to submit the FY 2011-2012 Annual Action Plan to the U.S. Department of Housing and Urban Development (HUD), which makes the City eligible to receive and distribute approximately \$15,400,000.

CEQA: Not a Project, File No. PP10-067, Non-Project Specific Funding Mechanism. (Housing)

Documents Filed: (1) Memorandum from Director of Housing Leslye Corsiglia, dated April 11, 2011, recommending a public hearing, adoption of an annual action plan and adoption of a resolution. (2) Supplemental memorandum from Director of Housing Leslye Corsiglia, dated May 2, 2011, providing proposed changes as a result to public comments received following the April 11 memorandum. (3) Proof of Publication of Notice of Public Hearing, executed on January 27, 2011, submitted by the City Clerk

Mayor Reed opened the public hearing.

Public Comment: David Wall offered criticism of the Plan, asserting that the City cannot financially sustain low-income housing programs. James Charles (San José NAACP) expressed concerns that the consolidated plan does not reference Section 3 requirements.

Mayor Reed closed the public hearing.

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Chu and carried unanimously, Resolution No. 75792, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Housing to Negotiate and Execute all Non-Capital Agreements and Contracts Not Requiring CEQA/NEPA Review and to Negotiate all Capital Agreements and Contracts, Including Any Amendments or Modifications, and After CEQA/NEPA Review and City Council Approval, to Execute All Documents", was adopted. (9-0-2. Absent: Herrera, Pyle.)

- 4.2 Accept the staff report to continue current practices of reservation and allocation of residential units in the North San José Area Development Policy area. CEQA: Resolution No. 72768 and Addenda thereto. Council Districts 3 and 4. (Planning, Building and Code Enforcement/Housing)**

Action: Deferred to May 10, 2011 per Administration.

NEIGHBORHOOD SERVICES

- 5.1 (a) Adopt a resolution authorizing the City Manager to negotiate and execute a Purchase and Sale Agreement (PSA) with the Santa Clara Valley Transportation Authority (VTA) for 3.5 acres of VTA Excess Property located at Lick Avenue near Pepitone Avenue and Goodyear Street, San Jose, California, within the Tamien Station Area, for an amount not to exceed \$4,500,000 and credits under the Parkland Dedication and Park Impact Ordinances and to execute any documents required to complete the transaction.**
- (b) Adopt the following Appropriation Ordinance amendments in the Construction Tax & Property Conveyance Tax Fund: Council District 3 (Fund 380):**
- (1) Establish an appropriation to the Parks, Recreation and Neighborhood Services Department in the amount \$985,000 for the Tamien Specific Plan Area Park Improvements;**
 - (2) Decrease the Reserve: Tamien Specific Plan Area Park Improvements by \$325,000; and**
 - (3) Decrease the Reserve: Roosevelt Hockey Rink Cover by \$660,000.**
- (c) Adopt the following Appropriation Ordinance amendments in the Construction Tax & Property Conveyance Tax Fund: Council District 6 (Fund 384):**
- (1) Establish an appropriation to the Parks Recreation and Neighborhood Services Department in the amount of \$50,000 for the Tamien Specific Plan Area Park Improvements; and**
 - (2) Decrease the Reserve: Tamien Specific Plan Area Park Improvements by \$50,000.**
- (d) Adopt the following Appropriation Ordinance amendments in the Subdivision Park Trust Fund (Fund 375):**
- (1) Establish an appropriation to the Parks Recreation and Neighborhood Services Department in the amount \$3,465,000 for the Tamien Specific Plan Area Park Improvements.**
 - (2) Decrease the Reserve: Tamien Specific Plan Area Park Improvements by \$505,000.**
 - (3) Decrease the Reserve: Future PDO/PIO Projects by \$2,960,000.**
- CEQA: Exempt, File No PP10-023. Council District 3. SNI: Washington. (Parks, Recreation and Neighborhood Services/City Manager's Office)**

5.1 (Cont'd.)

Documents Filed: (1) Memorandum from Council Member Liccardo, dated May 3, 2011, offering support for the Staff recommendation. (2) Joint Memorandum from Deputy City Manager Noberto Duenas, Director of Economic Development/Chief Strategist Kim Walesh and Budget Director Jennifer Maguire , dated April 11, 2011, recommending adoption of a resolution and appropriation ordinance amendments. (3) Supplemental memorandum from Deputy City Manager Noberto Duenas, Director of Economic Development/Chief Strategist Kim Walesh and Budget Director Jennifer Maguire , dated May 2, 2011 providing clarification on the selection of an appraiser.

Public Comments: Mary Guzman, representing the Tamien Neighborhood Association, spoke in support of the property purchase, citing the safety hazards in it's current condition.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Oliverio and carried unanimously, Ordinance No. 28911, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28765 to Appropriate Monies in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District No. 3 Fund for the Tamien Specific Plan Area Park Improvements; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", Ordinance No. 28912, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28765 to Appropriate Monies in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District No. 6 Fund for the Tamien Specific Plan Area Park Improvements; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", Ordinance No. 28913, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28765 to Appropriate Monies in the Subdivision Park Trust Fund for the Tamien Specific Plan Area Park Improvements; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", and Resolution No. 75793, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Purchase and Sale Agreement with the Santa Clara Valley Transportation Authority for Approximately 3.5 Acres of VTA Excess Property Located at Lick Avenue Near Pepitone Avenue and Goodyear Street, San José, California, Within the Tamien Station Area for an Amount Not to Exceed \$4,500,000 and Credits Under the Parkland Dedication and Park Impact Ordinances, and to Execute any Documents Required to Complete the Transactions", were adopted. (11-0.)

ENVIRONMENTAL & UTILITY SERVICES

- 7.1 Report on bids and award of contract for the Padres Drive Sanitary Sewer Rehabilitation project to the low bidder, McGuire and Hester, in the amount of \$1,799,192 and approval of a contingency in the amount of \$180,000. CEQA: Exempt, File No. PP08-259, dated November 14, 2008. Council District 6. (Public Works)**

7.1 (Cont'd.)

Documents Filed: Memorandum from Acting Director of Public Works David Sykes, dated April 11, 2011, recommending approval of report on bids and award of contract.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Constant and carried unanimously, the Report on bids and award of contract for the Padres Drive Sanitary Sewer Rehabilitation project to the low bidder, McGuire and Hester, in the amount of \$1,799,192 with related contingency was approved. (11-0.)

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 pending decision on the following Final Maps:

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/Units</u>	<u>Type</u>	<u>Proposed Decision</u>
10054	West side of San Felipe Rd, 600’ S of Delta Rd	8	Hawkstone Felipe, LLC	San 15 Lots / 9 Units	8 SFDR & 1 Non-Residential	Approve

OPEN FORUM

David Wall expressed a perceived disparity in the City of San José Code of Conduct for Public Meetings and addressed comments he had made regarding 360 Residences, LLC which appeared on last week’s Redevelopment Agency agenda.

ADJOURNMENT

The Council of the City of San José adjourned at 4:54 in memory of Richard Rios who passed last Monday after battling with cancer. Rios, the retired deputy director of the San Jose Redevelopment Agency, had taught at De Anza College and served as a mentor to several influential community leaders including former Mayor Ron Gonzales. Richard Rios’ presence within the community will be greatly missed. (Campos)

Minutes Recorded, Prepared and Respectfully Submitted by,

Dennis Hawkins, CMC
City Clerk

rmk/05-03-11MIN