

## MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, MAY 17, 2011

The Council of the City of San José convened in Regular Session at 9:05 a.m. in the Council Chambers at City Hall.

Present: Council Members - Campos, Chu, Constant, Kalra, Liccardo (9:07 a.m.), Pyle, Rocha; Reed.

Absent: Council Members - Herrera, Nguyen, Oliverio. (Excused)

### STRATEGIC SUPPORT SERVICES

#### 3.2 (a) Accept Labor Negotiations Update.

Documents Filed: The Labor Relations Update highlighting the Week of May 16, 2011 from the Office of Employee Relations.

Director of Employee Relations Alex Gurza offered a brief Update on Labor Negotiations.

### CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:10 a.m. to a Closed Session in Room W133 (A) to confer with Legal Counsel pursuant to Government Code Section 54956.9 subsection (a) with respect to existing litigation: In re: Jacob; Amount of Money or Other Relief Sought: Administrative Appeal. (B) to confer with Legal Counsel pursuant to Government Code subsection (c) of Section 54956.9 with respect to anticipated litigation in one matter. (C) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) Association of Building, Mechanical and Electrical Inspectors (ABMEI); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and ABMEI. (2) Association of Engineers & Architects (AEA);

## **CLOSED SESSION (Cont'd.)**

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.

By unanimous consent, Council recessed from the Closed Session at 11:55 a.m. and reconvened to Regular Session at 1:35 p.m. in the Council Chambers.

Present: Council Members - Campos, Chu, Constant, Herrera (1:40 p.m.), Kalra, Liccardo, Oliverio (1:41 p.m.), Pyle, Rocha; Reed.

Absent: Council Members - Nguyen. (Excused)

## **INVOCATION**

Father Eduardo Samaniego, Most Holy Trinity Church, presented the Invocation. (District 5)

## PLEDGE OF ALLEGIANCE

Mayor Reed, accompanied by the Third Graders from Rosemary Elementary 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, Item 2.3 was deferred to May 24, 2011, Item 3.3 was deferred to June 07, 2011 and Item 11.3 was deferred to June 14, 2011. (10-0-1. Absent: Nguyen.)

## CLOSED SESSION REPORT

City Attorney Doyle disclosed the following Closed Session actions of May 17, 2011:

A. Authority to Initiate Litigation:

Authority to initiate litigation was given in one 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, Oliverio, Pyle, Rocha; Reed.

Noes: None.

Abstention: None.

Absent: Nguyen. (Excused)

## 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: Item 1.1 was dropped.

**1.4 Presentation of a proclamation declaring the week of May 15-21, 2011 as “Public Works Week” in the City of San José. (Public Works)**

Action: Mayor Reed and Director of Public Works David Sykes recognized the week of May 15 through May 21, 2011 as “Public Works Week”.

**1.6 Presentation of a proclamation declaring the Month of May 2011 as “Jewish American Heritage Month” in the City of San José. (Herrera)**

Action: Mayor Reed and Council Member Herrera recognized the Month of May 2011 as “Jewish American Heritage Month”.

**1.7 Presentation of a commendation to Jorge Zavala for his leadership as Director of TechBA, a Mexico-Silicon Valley Technology business accelerator located in San José that has supported hundreds of entrepreneurs and small businesses through its extensive services and his involvement as a Board Member of Work2future. (Herrera/Economic Development)**

Action: Deferred to June 14, 2011 per District 8.

**1.8 Presentation of a commendation to Rebuilding Together Silicon Valley for their dedication to safe and healthy homes for low income residents and for renovating over 1,000 homes in San José over the past 20 years. (Herrera)**

Action: Mayor Reed and Council Member Herrera recognized and commended Rebuilding Together Silicon Valley.

## **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. (8-0-3. Absent: Chu, Nguyen, Rocha.)

**2.1 Approval of minutes.**

- (a) **Regular Minutes of March 1, 2011.**
- (b) **Habitat Conservation Plan Study Session Minutes of March 3, 2011.**
- (c) **Regular Minutes of March 8, 2011.**
- (d) **Regular Minutes of March 15, 2011.**
- (e) **Joint Council/San José Financing Authority Minutes of March 15, 2011.**
- (f) **Regular Minutes of March 22, 2011.**
- (g) **Regular Minutes of March 29, 2011.**
- (h) **Joint City/Diridon Development Authority Minutes of March 8, 2011.**

Documents Filed: (1) The Regular Minutes dated March 1, 2011, March 8, 2011, March 15, 2011, March 22, 2011 and March 29, 2011. (2) The Habitat Conservation Plan Study Session Minutes dated March 3, 2011. (3) The Joint/San José Financing Authority Minutes dated March 15, 2011. (4) The Joint City/Diridon Development Authority Minutes dated March 8, 2011.

Public Comments: David Wall criticized the Habitat Conservation Plan Study Session Minutes.

**2.1 (Cont'd.)**

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the City Council Minutes were approved. (8-0-3. Absent: Chu, Nguyen, Rocha.)

**2.2 Final adoption of ordinances.**

- (a) **ORD. NO. 28908 – 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.**

Action: Deferred to June 14, 2011 per Administration.

**2.3 Approval of Council Committee Reports.**

- (a) **Rules and Open Government Committee Report of April 27, 2011.**  
(b) **Rules and Open Government Committee Report of April 20, 2011.**  
(c) **Rules and Open Government Committee Report of April 13, 2011.**  
(d) **Rules and Open Government Committee Report of March 23, 2011.**  
(e) **Rules and Open Government Committee Report of March 16, 2011.**  
(f) **Rules and Open Government Committee Report of March 9, 2011.**  
**(Mayor)**

Action: Deferred to May 24, 2011 per Orders of the Day.

**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 Fourth Amendment to the Master Agreement between the City of San José and HF&H Consultants, LLC for environmental consultant services on the commercial solid waste redesign and franchise procurement, increasing the amount of the agreement by \$75,000 from \$850,000 to an amount not to exceed \$925,000. 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 25, 2011, recommending approval of the fourth amendment to the master agreement.

**2.7 (Cont'd.)**

Action: The Fourth Amendment to the Master Agreement between the City of San José and HF&H Consultants, LLC for environmental consultant services on the commercial solid waste redesign and franchise procurement, increasing the amount of the agreement by \$75,000 from \$850,000 to an amount not to exceed \$925,000, was approved. (8-0-3. Absent: Chu, Nguyen, Rocha.)

**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)**

Documents Filed: (1) Memorandum from Director of Economic Development/Chief Strategist Kim Walesh, dated April 11, 2011, recommending approval to a second amendment to the agreement. (2) Supplemental memorandum from Director of Economic Development/Chief Strategist Kim Walesh, dated May 9, 2011, reflecting more accurately the number of pay telephones that will be located at the Norman Y. Mineta San José International Airport, reducing that number from 56 to 31.

Action: The 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, was approved. (8-0-3. Absent: Chu, Nguyen, Rocha.)

**2.9 As recommended by the Rules and Open Government Committee on May 11, 2011, approve a support position for SB184 (Leno) – Land Use: Zoning Regulations. (Housing)**

Documents Filed: Memorandum from City Clerk Dennis D. Hawkins, CMC, dated May 11, 2011, transmitting the recommendations of the Rules and Open Government Committee.

Public Comments: David Wall expressed opposition to Inclusionary Housing.

Director of Housing Leslye Corsiglia responded to Council questions.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried, a support position for SB184 (Leno) – Land Use: Zoning Regulations was approved. (6-2-3. Noes: Constant, Oliverio. Absent: Chu, Nguyen, Rocha.)

- 2.10 As recommended by the Rules and Open Government Committee on May 11, 2011:**
- (a) Approve the District 8 Senior Health Fair and Walk 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 May 11, 2011, transmitting the recommendations of the Rules and Open Government Committee.

Action: The District 8 Senior Health Fair and Walk as a City Council Sponsored Special Event, was approved and the acceptance of donations from various individuals, businesses or community groups to support the event, was authorized. (8-0-3. Absent: Chu, Nguyen, Rocha.)

## **END OF CONSENT CALENDAR**

### **STRATEGIC SUPPORT SERVICES**

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

City Manager Debra Figone presented highlights of Governor Brown's revision to the California FY 2011-2012 Proposed Budget released on May 16, 2011.

#### **3.3 As recommended by the Council Salary Setting Commission, approve an ordinance setting the salaries and benefits of the Mayor and City Council for the period June 26, 2011 through June 30, 2013 – Fiscal Years (FY) 2011- 2012 and FY 2012 – 2013 as follows:**

- (a) For the Mayor, reduce the salary recommended by the Commission for the 2009-2011 period from \$127,000 annually to \$114,000 annually, to be effective June 26, 2011.**
- (b) For each Council Member, reduce the salary recommended by the Commission for 2009-2011 from \$90,000 annually to \$81,000 annually, to be effective June 26, 2011.**
- (c) Retain the levels of health, dental, life insurance and other benefits through in accordance with the benefits provided to management employees in Unit 99.**
- (d) For the current Mayor and Council Members (meaning those in office as of July 1, 2011), maintain the City's participation and contributions to CalPERS defined benefit or PTC 457 defined contribution plans through their terms of office.**
- (e) Direct the City Clerk and City Attorney to perform necessary research and return with recommendations for the implementation of a change in retirement plan benefits for future Council Members, including options available through CalPERS or other providers.**

- 3.3 (f) **Reduce the 2009-2011 Commission recommendation of a monthly \$600 vehicle allowance to a monthly \$350 vehicle allowance for the Mayor and each member of the City Council, to be effective June 26, 2011.**
- (g) **Continue to require Council Members to pay \$250 for each unexcused absence at scheduled Council meetings, pursuant to City Charter Section 407.**
- (City Clerk)

Action: Deferred to June 07, 2011 per Orders of the Day.

- 3.4 **Conduct a public hearing and 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. (Planning, Building and Code Enforcement/City Attorney’s Office)**

Action: Deferred to June 14, 2011 per Administration.

- 3.5 **Consideration of an ordinance amending Title 3 of the San José Municipal Code to add a new Chapter 3.52, and to amend Sections 3.28.380, 3.28.1980, 3.28.1995, 3.28.2030 and 3.28.2045 and add a new Section 3.28.385 of Chapter 3.28 for the purposes of establishing a new trust pursuant to Section 115 of the Internal Revenue Code related to retiree health care benefit funding and payment of retiree health care benefits. (City Attorney’s Office)**
- (Rules Committee referral 05/04/11)**

Documents Filed: Memorandum from City Attorney Richard Doyle, dated May 13, 2011, recommending consideration of an ordinance.

Action: Upon motion by Council Member Constant, seconded by Council Member Herrera and carried unanimously, Ordinance No. 28914, entitled: “An Ordinance of the City of San José Amending Title 3 of the San José Municipal Code To Add a New Chapter 3.52 and To Amend Sections 3.28.380, 3.28.1980, 3.28.1995, 3.28.2030 and 3.28.2045 and Add a New Section 3.28.385 of Chapter 3.28 of Title 3 for the Purpose of Establishing a New Trust Pursuant to Section 115 of the Internal Revenue Code Related to Retiree Healthcare Benefit Funding and Payment of Retiree Health Care Benefits”, was passed for publication. (10-0-1. Absent: Nguyen.)

- 3.6 (a) **Approve an ordinance amending Section 3.36.580 of Part 4 of Chapter 3.36 of Title 3 of the San José Municipal Code to provide that there shall be no supplemental retiree benefit reserve distribution from the Police and Fire Department Retirement Plan during fiscal year 2011-12, upon a finding that is needed to adopt the ordinance within a time period which does not allow for a sixty day review period by Board of Administration of the Police and Fire Department Retirement Plan under San José Municipal Code Section 3.36.485.A.; and refer the ordinance to the Board for study and consideration pursuant to San José Municipal Code Section 3.36.485.B.**
- (b) **Direct staff to forward for review by the Board of Administration of the Federated City Employees Retirement Plan a draft resolution amending and restating Resolution No. 75635 to provide that there shall be no supplemental retiree benefit reserve distribution from the Federated City Employees Retirement Plan during fiscal year 2011-12.**

**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 May 13, 2011, recommending approval of an ordinance and direction to Staff to continue the suspension of distribution of funds from the Police and Fire Department Retirement Plan Supplemental Retiree Benefit Reserve (SRBR) Fund for Fiscal Year 2011-2012.

City Manager Debra Figone presented introductory remarks.

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

Public Comments: Expressing opposition, disappointment and not enough outreach were: Bob Leininger, Federated Retired Employees Association, Paul Salerno, Jay Wendling, Retired Police and Fire Departments and David Wall.

City Attorney Richard Doyle, City Manager Debra Figone and Director of Employee Relations Alex Gurza responded to Council questions.

Council Member Rocha requested to amend the motion to direct Staff to return with a status report in six months. The amendment was accepted by Council Members Constant and Liccardo.

Mayor Reed requested the City Manager to recirculate an information memorandum to the Council about the distribution of funding for the Supplemental Retiree Benefit Reserve payments.

Action: On a call for the question, the motion carried, Ordinance No. 28915, entitled: "An Ordinance of the City of San José Amending Section 3.36.580 of Part 4 of Chapter 3.36 of Title 3 of the San José Municipal Code to Suspend the Distribution of Funds from the Police and Fire Department Retirement Plan Supplemental Retiree Benefit Reserve During Fiscal Year 2011-2012", was passed for publication. Staff was directed to forward

### 3.6 (Action Cont'd.)

for review by the Board of Administration of the Federated City Employees Retirement Plan a draft resolution amending and restating Resolution No. 75635 to provide that there shall be no supplemental retiree benefit reserve distribution from the Federated City Employees Retirement Plan during Fiscal Year 2011-12. Staff was further directed to return to Council with a status report in six months. City Manager was requested to recirculate an information memorandum to Council about the distribution of funding for the Supplemental Retiree Benefit Reserve (SRBR) payments. (7-3-1. Noes: Campos, Chu, Kalra. Absent: Nguyen.)

## COMMUNITY & ECONOMIC DEVELOPMENT

### 4.1 **Accept the status report of housing unit reservation and allocation in North San José and direct staff to continue to track residential developer progress and reallocate unused units for shovel ready projects that best implement the North San José Area Development Policy criteria. CEQA: Not a Project, File No. PP10-069(a), Staff Reports/Assessments/Annual Reports/Information Memos. Council Districts 3 and 4. (Planning, Building and Code Enforcement/Housing)**

Documents Filed: (1) Memorandum from Mayor Reed and Council Member Chu, dated May 13, 2011, recommending acceptance of the Staff recommendations with direction. (2) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel and Director of Housing Leslye Corsiglia, dated May 2, 2011, recommending acceptance of the status report and direction to Staff.

Director of Planning, Building and Code Enforcement Joseph Horwedel presented the report and responded to Council questions.

Mayor Reed and Council Members Chu, Rocha and Campos provided meeting disclosures.

Motion: Council Member Chu moved approval of the memorandum he cosigned with Mayor Reed, dated May 13, 2011, accepting the Staff recommendations with further direction as described in "Action". Council Member Pyle seconded the motion.

Council Member Chu requested to amend the motion to amend the number of units currently from 500 to 552. The amendment was accepted by Council Member Pyle.

Public Comments: Speaking in support to the Staff recommendations and the motion on the floor were: John Bruno, DMB Associates, Marvin Fox, The Fox Family, Erik Schoennauer, representing Equity Residential/Vista Montana and Ed McCoy, Fairfield Residential. Roger Storz and David Wall expressed opposition to the Staff recommendations.

#### 4.1 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, the memorandum from Mayor Reed and Council Member Chu, dated May 13, 2011, was approved as amended, accepting the Staff recommendations, with additional amendments: (1) Accept the status report on housing unit reservation and allocation in North San José as outlined in the May 2, 2010 Staff Report. (2) Policy Alternative Option 1, as outlined in the Staff Report was approved, which provides for maintaining the current reservation system using criteria established in the North San José Area Development Policy (NSJADP). (3) Allocate 552 of the remaining 1,168 unallocated affordable units temporarily toward the development of market rate housing projects in North San José that comply with the NSJADP. (4) Allocated 275 of the 552 units mentioned in Item 3 above toward a proposed Phase 1 private development of For Sale units on the Fox Properties site on Brokaw and Old Oakland Roads, with a condition that building permits for at least 100,000 square feet of retail use shall be obtained prior to or concurrent with obtaining the planning permits for the other 375 units on the site for which a PD Zoning was approved in December 2010. (10-0-1. Absent: Nguyen.)

#### 4.2 Adopt a resolution:

- (a) **Approving a funding commitment to For the Future Housing, Inc. or its designated affiliate for up to \$5,250,000 for an acquisition, rehabilitation and permanent loan funded from the Neighborhood Stabilization Program 2 (“NSP2”).**
- (b) **Authorizing the Director of Housing to negotiate and execute an amended consortium agreement with The Housing Trust of Santa Clara County under NSP2 in an amount up to \$5,250,000 for acquisition, rehabilitation, and permanent financing of the 59-unit Taylor Oaks Apartments located at 2726-2738 Kollmar Avenue, in Council District 5.**

**CEQA: Exempt, File No. PP11-022. Council District 5. (Housing)**

Documents Filed: (1) Memorandum from Council Member Campos, dated May 17, 2011, recommending approval of the Staff recommendations. (2) Memorandum from Director of Housing Leslye Corsiglia, dated April 25, 2011, recommending adoption of a resolution. (3) Statement and Declaration of Conflict of Interest form from Council Member Kalra, dated May 17, 2011, stating that he currently serves on the Board of Directors for the Housing Trust of Santa Clara County.

Council Member Kalra recused himself from voting as he serves on the Board of Directors for the Housing Trust of Santa Clara County.

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

Public Comments: David Wall spoke in opposition to the Staff recommendations.

Mayor Reed provided meeting disclosures.

## 4.2 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, Resolution No. 75800, entitled: "A Resolution of the Council of the City of San José Approving a Funding Commitment to For the Future Housing, Inc. for an Acquisition and Rehabilitation Loan for the Taylor Oaks Apartments and Authorizing the Director of Housing to Negotiate and Execute an Amended Consortium Agreement with the Housing Trust of Santa Clara County", was adopted. (7-0-3-1. Absent: Chu, Herrera, Nguyen. Abstained: Kalra. )

## 4.3 (a) Adopt a resolution:

- (1) **Authorizing the Director of Housing to release Neighborhood Housing Services of Silicon Valley's (NHSSV) \$1,300,000 HomeVenture Fund restricted capital grant, allowing the use of the funds for past operating expenses. In exchange NHSSV will commit to utilize \$1,300,000 in other grant proceeds within City of San José municipal boundaries.**
- (2) **Accepting NHSSV's proposal to repay the City \$1,917 per month over five years for its \$115,000 obligation in HOME Investment Partnership ("HOME") funds.**
- (3) **Authorizing the Director of Housing to negotiate and execute all documents related to the fulfillment of the conditions of these recommendations as adopted by the Council.**

## (b) Adopt the following Appropriation Ordinance amendments in the Housing Trust Fund:

- (1) **Establish a Transfer to the Home Investment Partnership Program Fund by \$115,000.**
- (2) **Decrease the Ending Fund Balance by \$115,000.**

## (c) Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the Home Investment Partnership Program Fund:

- (1) **Increase the revenue estimate for Transfers by \$115,000.**
- (2) **Increase the appropriation to the Housing Department for the Loans and Grants project by \$115,000.**

**CEQA: Not a Project, File No. PP10-067(b), Non-Project Specific Funding Mechanism, Appropriation Ordinance. (Housing/City Manager's Office)**

Documents Filed: Memorandum from Director of Housing Leslye Corsiglia and Budget Director Jennifer Maguire, dated April 25, 2011, recommending adoption of a resolution and appropriation ordinances and funding sources resolution amendments.

Public Comments: David Wall expressed opposition to housing projects.

Ed Moncrief, Executive Director, Neighborhood Housing Services Silicon Valley, presented comments about the HUD financing and announced his retirement.

Mayor Reed and Council Members Pyle and Campos provided meeting disclosures.

#### 4.3 (Cont'd.)

Action: Upon motion by Council Member Campos, seconded by Council Member Chu and carried unanimously, Resolution No. 75801, entitled: "A Resolution of the Council of the City of San José Authorizing a Resolution of the Council of the City Of San José Approving the Plan by Neighborhood Housing Services Silicon Valley to Address the Obligations to HomeVenture Fund and Home Investment Partnership Fund"; Ordinance No. 28916, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28765 to Appropriate Monies in the Housing Trust Fund for the Home Investment Partnership Program Fund; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption"; Ordinance No. 28917, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28765 to Appropriate Monies in Home Investment Partnership Program Fund for the Housing Department Loans and Grants Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption" and Resolution No. 75802, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 75447 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2010-2011 to Adjust Revenues in the Home Investment Partnership Program Fund", were adopted. (9-0-2. Absent: Nguyen, Rocha.)

### TRANSPORTATION & AVIATION SERVICES

#### 6.1 Report on bids and award of contract for the 2011 Slurry Seal Project to the low bidder, Graham Contractors, Inc. in the amount of \$1,783,896 and approval of a five percent (5%) contingency in the amount of \$89,195. CEQA: Exempt, File No. PP11-035. (Transportation)

Documents Filed: Memorandum from Director of Transportation Hans F. Larsen, dated April 25, 2011, recommending award of the contract to the low bidder, with related contingency.

Action: Upon motion by Council Member Pyle, seconded by Council Member Liccardo and carried unanimously, the award of contract for the 2011 Slurry Seal Project to the low bidder, Graham Contractors, Inc. in the amount of \$1,783,896, with related contingency, was approved. (10-0-1. Absent: Nguyen.)

#### 6.2 Report on bids and award of a construction contract for the 2011 Remove and Replace Asphalt Concrete Pavement Project to the low bidder, Top Grade Construction, Inc., in the amount of \$1,608,570, and approval of a five percent (5%) contingency in the amount of \$80,429. CEQA: Exempt, File No. PP11-035. (Transportation)

Documents Filed: (1) Memorandum from Director of Transportation Hans F. Larsen, dated April 25, 2011, recommending award of the contract to the low bidder, with related contingency. (2) Supplemental memorandum from Director of Transportation Hans F. Larsen, dated May 11, 2011, transmitting a follow up protest letter from O'Grady Paving, Inc. on May 5, 2011 in response to a letter from the Department of Transportation rejecting the protest previously submitted by O'Grady Paving.

## 6.2 (Cont'd.)

Action: Upon motion by Council Member Pyle, seconded by Council Member Liccardo and carried unanimously, the award of a construction contract for the 2011 Remove and Replace Asphalt Concrete Pavement Project to the low bidder, Top Grade Construction, Inc., in the amount of \$1,608,570, with related contingency, was approved. (10-0-1. Absent: Nguyen.)

## ENVIRONMENTAL & UTILITY SERVICES

### 7.1 Adopt a resolution authorizing the City Manager:

- (a) **To establish an independent Qualified Active Low-Income Community Business with nonprofit status under the Internal Revenue Code section 501c3 for the purpose of participating in the federal New Markets Tax Credit program to secure additional financing to fund the construction of the San José Environmental Innovation Center.**
- (b) **To appoint the five members of the Qualified Active Low-Income Community Business Board of Directors, and replace board members if any of the appointees are unable to serve through the closing of the New Markets Tax Credit transaction.**
- (c) **To negotiate and prepare the agreements necessary to complete the New Markets Tax Credit financing transaction for the City Council's consideration in June 2011.**
- (d) **Evaluate the feasibility of Commercial Paper notes as an interim source of financing pending the close of New Markets Tax Credit financing, or alternative source of financing for a reduced project scope.**

**CEQA: Negative Declaration for the renovation of the EIC was adopted on December 1, 2009. File No. PP09-138. (Environmental Services)**

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean, dated May 5, 2011, recommending adoption of a resolution. (2) Supplemental memorandum from Director of Environmental Services John Stufflebean, dated May 11, 2011, approving an executive summary for the New Markets Tax Credit financing staff report, information regarding other jurisdictions and an additional attachment. (3) Staff presentation dated May 17, 2011 summarizing the New Markets Tax Credit Financing Pilot Environmental Innovation Center.

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

Director of Economic Development/Chief Strategist Kim Walesh, Director of Environmental Services John Stufflebean and Deputy Director of Environmental Services Jo Zientek presented the report.

Director of Environmental Services John Stufflebean introduced the Consultants and responded to Council questions.

## 7.1 (Cont'd.)

Council Member Herrera requested to amend the motion to direct Staff to report to the Community and Economic Development Committee three times a year with status updates. Council Members Liccardo and Constant accepted the amendment.

Public Comments: David Wall spoke in opposition to the Staff recommendations.

Action: On a call for the question, the motion carried, Resolution No. 75803, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Establish an Independent Qualified Active Low-Income Community Business; To Appoint Five Members of the Qualified Active Low Income Community Business Board of Directors; To Negotiate and Prepare the Agreements Necessary to Complete the New Markets Tax Credit Financing Transaction for the City Council’s Consideration in June 2011; and To Evaluate Commercial Paper as an Interim or Alternative Source of Financing”, was adopted. Staff was directed to report back to the Community and Economic Development Committee three times a year with status updates. (9-1-1. Noes: Oliverio. Absent: Nguyen.)

## OPEN FORUM

- (1) David Wall expressed concerns about the City’s Public Safety Budget recommendations that include the reduction of 350 Police Officer positions and 135 Firefighter positions.
- (2) Michael McDuffie who lives near the Seven Trees Shopping Center, complained about the noise from street sweeping which occurs between 2:00 a.m. and 6:00 a.m. in the morning.

Mayor Reed asked Deputy Director of Planning, Building and Code Enforcement Mike Hannon to follow up with Mr. McDuffie.

## ADJOURNMENT

The Council of the City of San José adjourned the afternoon session at 5:16 p.m.

## RECESS/RECONVENE

The City Council recessed at 5:16 p.m. from the afternoon Council Session and reconvened at 7:03 p.m. in the Council Chambers, City Hall.

Present: Council Members - Campos, Chu, Constant (7:18 p.m.), Herrera, Kalra, Liccardo, Oliverio (7:13 p.m.), Rocha; Reed.

Absent: Council Members - Nguyen, Pyle. (Excused)

## CEREMONIAL ITEMS

- 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: Mayor Reed and Council Member Chu recognized and commended to Friends Helping Friends with Special Needs.

- 1.3 Administer Oaths of Office to District 1 Youth Commissioner Sandeep Peddada, District 2 Youth Commissioner Emily To, District 4 Youth Commissioner Max Chen, District 5 Youth Commissioner Veronica Abad, District 6 Youth Commissioner Brendon Yu, District 7 Youth Commissioner Diana Le, and District 10 Youth Commissioner Layla Forooghi. (City Clerk)**

Documents Filed: Memorandum from City Clerk Dennis D. Hawkins, CMC, dated April 22, 2011, transmitting background information about the appointments to the Youth Commission.

Action: City Clerk Dennis D. Hawkins, CMC, administered the Oaths of Office to the newly appointed Youth Commissioners. Mayor Reed and Council Members Kalra, Chu, Campos and Oliverio were present.

- 1.5 Presentation of a commendation to Junior Sharks 12 U Girls Team for capturing the USA Hockey's Tier II Girl's National Championship as the first national title for the Junior Sharks Program in the City of San José. (Chu)**

Action: Mayor Reed and Council Member Chu recognized and commended Junior Sharks 12 U Girls Team for capturing the USA Hockey's Tier II Girl's National Championship.

## PUBLIC HEARINGS

City Clerk Dennis D. Hawkins read the requests for continuance of the applications. Upon motion by Council Member Liccardo, seconded by Council Member Herrera, and carried unanimously, the below noted continuances and actions were taken as indicated. (10-0-1. Absent: Nguyen.)

- 11.2 Consideration of an ordinance rezoning the real property located at the southwest corner of Foxworthy Avenue and Almaden Expressway (1175 Hillsdale Avenue) from A(PD) Planned Development Zoning District to CN(PD) Planned Development Zoning District to modify the base zoning district and to add drive-through uses to the previously approved Planned Development Zoning allowing a range of commercial uses for up to 24,250 square feet of development on an approximately 2.17-acre portion of an approximately 10.44-acre site (Calvary Chapel San José, Owner). CEQA: Mitigated Negative Declaration and Addenda thereto. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (7-0-0).**

**PDC11-004 – District 9**

Documents Filed: (1) Memorandum from Planning Commission Secretary Joe Horwedel, dated April 25, 2011, transmitting the recommendation of the Planning Commission. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC11-004, dated April 12, 2011. (3) Proof of Publication of Notice of Public Hearing, executed on August 13, 2010, submitted by the City Clerk.

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

Director of Planning, Building and Code Enforcement Joseph Horwedel provided introductory comments.

Action: Upon motion by Council Member Rocha, seconded by Council Member Liccardo and carried unanimously, the recommendation of the Planning Director and Planning Commission was approved, Ordinance No. 28918, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated at the Southwest Corner of Foxworthy Avenue and Almaden Expressway (1175 Hillsdale Avenue; APN: 451-06-066 and -068) to CN(PD) Planned Development Zoning District”, was passed for publication. (7-0-4. Absent: Chu, Constant, Nguyen, Pyle.)

- 11.3 Conduct an Administrative Hearing and consider an appeal of the Planning Commission's decision to deny a Conditional Use Permit and Determination of Public Convenience or Necessity to allow off-sale of alcohol at a general retail/pharmacy store in an existing approximately 20,317 square-foot tenant space in a shopping center on an approximately 13.2 gross-acre site in the CG-Commercial General Zoning District located 100 feet westerly of the northwest corner of Morrill Avenue and Amberwood Lane (2105 Morrill Avenue) (Chiu Gabriel H Trustee & Et Al, Owner; Walgreens, Applicant). CEQA: Exempt. Director of Planning, Building and Code Enforcement and Planning Commission recommend denial (5-0-2; Commissioners Kamkar and Platten Absent). CP10-016/ABC10-003 – District 4**

Action: Deferred to June 14, 2011 per Orders of the Day.

- 11.4 Conduct an Administrative Hearing and consider an appeal of the Planning Commission's decision to deny a Conditional Use Permit and Determination of Public Convenience or Necessity to allow off-sale of alcohol at an existing full-service grocery store in an approximately 39,661 square-foot tenant space in a shopping center on a 14.10 gross-acre site in the CG-Commercial General Zoning District at the northeast corner of South White Road and Story Road (1070 S White road) (Mi Pueblo San José, Inc., Applicant / White Road Partners, LLC, Owner). SNI: East Valley/680 Communities. CEQA: Exempt. Director of Planning, Building and Code Enforcement recommends the Council uphold the appeal and overturn the Planning Commission's decision to deny the permit and not grant the Determination of Public Convenience or Necessity. CP11-017/ABC11-003 – District 5**

Action: Upon motion by Council Member Campos, seconded by Council Member Oliverio and carried unanimously, Item 11.4 was deferred to June 21, 2011 in order for Staff to provide more outreach with the community. (7-0-4. Absent: Chu, Constant, Nguyen, Pyle.)

## **JOINT COUNCIL/REDEVELOPMENT AGENCY**

- 9.1 Public Hearing on the City's Proposed Operating and Capital Budgets for the Fiscal Year 2011 -2012, the Proposed Five-Year Capital Improvement Program for 2012-2016, the Proposed Fees and Charges Report for the Fiscal Year 2011-2012 as well as the Fiscal Year 2011-2012 San José Redevelopment Agency Operating and Capital Budgets. (City Manager's Office/Redevelopment Agency)**

Documents Filed: (1) Proof of Publication of the Notice of Public Hearing dated April 8, 2011, submitted by the City Clerk. (2) A copy of the San José Alliance of Californians for Community Empowerment's Project to Identify Vacant Foreclosed Homes in San José and Hold the Banks Accountable dated May 17, 2011, submitted by a member of the public.

## 9.1 (Cont'd.)

Mayor Reed presented introductory remarks and provided a brief slide presentation about the City's Skyrocketing Retirement Contributions.

Budget Director Jennifer Maguire presented an overview of the Proposed Fiscal Year 2011-2012 Budget.

Mayor Reed opened the Public Hearing on the City's Proposed Operating and Capital Budgets for the Fiscal Year 2011 -2012, the Proposed Five-Year Capital Improvement Program for 2012-2016, the Proposed Fees and Charges Report for the Fiscal Year 2011-2012 as well as the Fiscal Year 2011-2012 San José Redevelopment Agency Operating and Capital Budgets.

Public Comments: The following speakers presented complaints, comments and suggestions: Emilio Sandoval and Bill Brooks, Friends of Grace, Allison Lasser and Rita Espino, Sacred Heart Community Service, Amanda Aldama, Layla Forooghi, Manum Khan, Peter Tang, Rose Dhaliwal, Amy Heng, Brendon Yu, Diana Le, Sandeep Peddada and Kasey Ong, Youth Commission of San José, Michelle Simmons, San José Police Department Dispatch, Judy Purrington, Sandy Perry, CHAM Ministries, Pat Sausedo and Pat Dando, San José Silicon Valley Chamber of Commerce, Carol Garvey, Melanie Helnke, Will Bick, Bud Courtney, Paul J. Gonzalez, Dorsa Siquashy, Sasha Stuart, C. Pacheco, Israel Pacheco and Rosa Gross, ACCE, Debra Basher, Ben Field, South Bay Labor Council, Sally Zarnowitz, Shirley Hanson, Mike Yoshimoto, Bob Brownstein, Lindsey Don, Jesse Encinias, Mark Ruffing, Rita Tabaldo, Mary Guzman, Alma Community Center, Jon Max Reger, Thien Tran, Julie Lam and Sylvia Lowe, Overfelt Gardens, Corazon B. Tomalinas, John Trieu, Joyce Huang, Jon Evans, Sal Ventura, Emilie Gatfield, Tina Huang, Paula Martinez, Paula Wolk and Blynthia Williams, MEF, Richard Zappelli, Patricia Ramos, Carly Sandoval, Brett Benitez, Local 3 (OE3) and Reverend Reginald Swilley.

Mayor Reed closed the public hearing. There was no Council action.

## ADJOURNMENT

The Council of the City of San José was adjourned at 8:34 p.m. in memory of Alejandra Maree Gonzales, whose vivacious approach to life and artistic expression inspired those around her, will be warmly remembered. (Campos)

Minutes Recorded, Prepared and Respectfully Submitted by,

Dennis D. Hawkins, CMC  
City Clerk