

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, MAY 24, 2011

The Council of the City of San José convened in Regular Session at 9:04 a.m. in the Council Chambers at City Hall.

Present: Council Members - Campos, Chu, Constant, Oliverio, Pyle, Rocha; Reed.

Absent: Council Members - Herrera, Kalra, Liccardo, Nguyen.

STRATEGIC SUPPORT SERVICES

3.2 Accept Labor Negotiations Update.

Director of Employee Relations Alex Gurza offered the Labor Negotiations Update.

Public Comments: Brian Doyle (ALP) and Jon Max Regger (OE-3) expressed a lack of communication on the part of the City's bargaining team.

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 9:11 a.m. to a Closed Session in Room W133 (A) to confer with Legal Counsel pursuant to Government Code subsection (b) of Section 54956.9 with respect to anticipated litigation of significant exposure 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) Alvis v. City, et al.; Names of Parties Involved: Jennifer M. Alvis, Derek Alvis, David N. Olmos, City of San José, Does 1 to 50; Court: Superior Court of California, County of Santa Clara; Case No: 1-09-CV140422; Amount of Money or Other Relief Sought: Damages according to proof;

CLOSED SESSION (Cont'd.)

(2) Banuelos v. City, et al., Names of Parties Involved: Teresa Banuelos, Jose Banuelos, City of San José, Does 1 to 100; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV184319; Amount of Money or Other Relief Sought: Damages according to proof; (C) to confer with Real Property Designated Representatives Pursuant to Government Code Section 54956.8: 150 Terrain Street, San José, CA; Negotiating Parties: Nanci Klein for the City of San José and Tom McEnery and Martin Menne for Urban Markets LLC; Under Negotiation: The direction will concern price and terms of payment; Likely Range of Value of Property: Negotiated price based on appraisal and comparable property values; (D) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) Association of Building, Mechanical and Electrical Inspectors (ABMEI); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and ABMEI; (2) Association of Engineers & Architects (AEA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AEA; (3) Association of Maintenance Supervisory Personnel (AMSP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AMSP; (4) City Association of Management Personnel Agreement (CAMP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CAMP; (5) Confidential Employees' Organization, AFSCME Local 101 (CEO); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CEO; (6) International Association of Firefighters, Local 230 (IAFF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Association of Firefighters; (7) International Brotherhood of Electrical Workers (IBEW); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and IBEW; (8) Municipal Employees' Federation, AFSCME Local 101, AFL-CIO (MEF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and MEF; (9) International Union of Operating Engineers, Local No. 3 (OE#3); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Union of Operating Engineers, Local No. 3; (10) San José Police Officers' Association (SJPOA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association; (11) Association of Legal Professionals of San José (ALP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; 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 1:33 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

Students from Alum Rock Union School District performing as the Alum Rock Jazz Band performed the Irving Berlin classic "Blue Skies". (District 5)

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Herrera, seconded by Council Member Pyle and carried unanimously, the Orders of the Day and the Amended Agenda were approved, with Items 2.3(c) through (i) deferred to June 7, 2011 and Item 7.3 deferred to May 31, 2011. (11-0.)

CEREMONIAL ITEMS

1.1 Presentation of a proclamation declaring the month of May 2011 as "Older Americans Month" in the City of San José. (Constant)

Action: Mayor Reed and Council Member Constant recognized the month of May 2011 as "Older Americans Month" in the City of San José.

1.2 Presentation of a commendation to Raging Waters San José, the largest waterpark in Northern California, in recognition of their importance as a key employer, regional family destination, and their commitment to the community. (Herrera)

Action: Mayor Reed and Council Member Herrera presented a commendation to Raging Waters San José, the largest water park in Northern California.

1.3 Presentation of a commendation to the Housing Trust of Santa Clara County for their commitment to providing affordable housing opportunities to the San José community. (Nguyen)

Action: Mayor Reed and Vice Mayor Nguyen presented a commendation to the Housing Trust of Santa Clara County for their commitment to providing affordable housing opportunities to the San José community.

1.4 Presentation of a proclamation declaring May as “Foster Care Month” in the City of San José. (Mayor) (Rules Committee referral 05/18/11)

Action: Mayor Reed recognized the month of May as “Foster Care 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.)

- 2.2 (a) ORD. NO. 28914 – 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.**

Documents Filed: (1) Supplemental memorandum from City Attorney Richard Doyle, dated May 20, 2011, recommending modifications to the proposed ordinance. (2) Proof of Publication of the Title of Ordinance No. 28914 executed on May 20, 2011, submitted by the City Clerk.

Action: Ordinance No. 28914 was adopted. (11-0.)

- (b) ORD. NO. 28915 – 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.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 28915 executed on May 20, 2011, submitted by the City Clerk.

Action: Ordinance No. 28915 was adopted. (11-0.)

2.3 Approval of Council Committee Reports.

- (a) Ad Hoc Committee on Airport Competitiveness Report of April 8, 2011. (Mayor)**
(b) Transportation and Environment Committee Report of May 2, 2011. (Liccardo)

Documents Filed: (1) Ad Hoc Committee on Airport Competitiveness Report dated April 8, 2011; (2) Transportation and Environment Committee Report dated May 2, 2011.

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

2.3 (Cont.'d.)

- (c) **Rules and Open Government Committee Report of May 4, 2011. (Mayor)**
- (d) **Rules and Open Government Committee Report of April 27, 2011. (Mayor)**
[Deferred from 5/17/11 – Item 2.3(a)]
- (e) **Rules and Open Government Committee Report of April 20, 2011. (Mayor)**
[Deferred from 5/10/11 – Item 2.3(a) and 5/17/11 – Item 2.3(b)]
- (f) **Rules and Open Government Committee Report of April 13, 2011. (Mayor)**
[Deferred from 5/3/11 – Item 2.3(a), 5/10/11 – Item 2.3(c) and 5/17/11 – Item 2.3(c)]
- (g) **Rules and Open Government Committee Report of March 23, 2011. (Mayor)**
[Deferred from 4/12/11 – Item 2.3(a), et al, and 5/17/11 – Item 2.3(d)]
- (h) **Rules and Open Government Committee Report of March 16, 2011. (Mayor)**
[Deferred from 4/5/11 – Item 2.3(a), et al, and 5/17/11 – Item 2.3(e)]
- (i) **Rules and Open Government Committee Report of March 9, 2011. (Mayor)**
[Deferred from 3/29/11 – Item 2.3(a), et al, and 5/17/11 – Item 2.3(f)]

Action: Deferred to June 7, 2011 per Orders of the Day.

- 2.4**
- (a) **Request for an excused absence Council Member Chu from the Regular Meeting of the Public Safety, Finance and Strategic Support Committee on May 19, 2011 due to *City business*. (Chu) (Rules Committee referral 05/18/11)**
(Correction as noted)
 - (b) **Request for an excused absence Council Member Constant from the Regular Meeting of the Public Rules and Open Government Committee on May 11, 2011 due to Authorized City Business: Aging Services Collaborative Recognition Event; and from the Afternoon Budget Study Session on May 12, 2011 due to illness. (Constant) (Rules Committee referral 05/18/11)**
 - (c) **Request for an excused absence Vice Mayor Nguyen from the Closed Session and Regular Meeting of the City Council on May 17, 2011 due to illness. (Nguyen)**
(Rules Committee referral 05/18/11)
 - (d) **Request for an excused absence Vice Mayor Nguyen from the City Council Budget Study Session on May 18, 2011 due to illness. (Nguyen)**
(Rules Committee referral 05/18/11)
 - (e) **Request for an excused absence Vice Mayor Nguyen from the Regular Meeting of the Rules and Open Government Committee on May 18, 2011 due to illness. (Nguyen)**
(Rules Committee referral 05/18/11)
 - (f) **Request for an excused absence Council Member Pyle from the City Council Budget Study Session on May 13, 2011 due to illness. (Pyle)**
(Rules Committee referral 05/18/11)
 - (g) **Request for an excused absence Council Member Pyle from the City Council Evening Session on May 17, 2011 due to illness. (Pyle)**
(Rules Committee referral 05/18/11)

2.4 (Cont'd.)

Documents Filed: (1) Memorandum from Council Member Chu, dated May 17, 2011, requesting an absence due to authorized City business. (2) Memorandum from Council Member Constant, dated May 17, 2011, requesting absences due to authorized City business and to illness. (3) Three (3) memoranda from Vice Mayor Nguyen, dated May 17 and 18, 2011, requesting excused absences due to illness. (4) Two (2) memoranda from Council Member Pyle, dated May 13 and 17, 2011, requesting excused absences due to illness.

Action: The absences for Council Members Chu, Constant, Pyle and Vice Mayor Nguyen were excused. (11-0.)

2.5 City Council Travel Reports.

Action: There were none.

2.6 Report from the Council Liaison to the Retirement Boards.

2.7

Council Member Constant reported on a presentation provided for the Federated Retirement Board last week by the new actuary for the Plan.

2.7 Approve a Fourth Amendment to the Consultant Agreement with LeighFisher Inc., formerly Jacobs Consultancy, Inc., for Airport airspace and airfield analysis services, extending the term of the Agreement from July 1, 2011 to June 30, 2014, increasing compensation by \$150,000, from \$500,000 to \$650,000, and consenting to the assignment to LeighFisher Inc. CEQA: Not a Project, File No. PP10-066(d), Consultant Services for Design/Study/Research/Inspection. (Airport)

Documents Filed: Memorandum from Director of Aviation William F. Sherry, dated May 2, 2011, recommending approval of a fourth amendment to a consultant agreement with LeighFisher, Inc.

Director of Aviation William F. Sherry responded to Council Member Rocha's questions regarding the agreement.

Action: Upon motion by Council Member Constant, seconded by Council Member Herrera and carried unanimously, the Fourth Amendment to the Consultant Agreement with LeighFisher Inc., for Airport airspace and airfield analysis services, extending the term of the Agreement from July 1, 2011 to June 30, 2014, increasing compensation by \$150,000, from \$500,000 to \$650,000, and consenting to the assignment to LeighFisher Inc., was approved. (11-0.)

- 2.8 Approve First Amendment to the Consultant Agreement with David J. Powers & Associates, Inc. for Airport environmental analysis services, extending the term of the Agreement from July 1, 2011 to June 30, 2014, and increasing compensation by \$100,000, from \$250,000 to \$350,000. CEQA: Not a Project, PP10-066(d), Consultant Services for Design/Study/Research/Inspection. (Airport)**

Documents Filed: Memorandum from Director of Aviation William F. Sherry, dated May 2, 2011, recommending approval of a first amendment to a consultant agreement with David J. Powers & Associates, Inc.

Action: The First Amendment to the Consultant Agreement with David J. Powers & Associates, Inc. for Airport environmental analysis services, extending the term of the Agreement from July 1, 2011 to June 30, 2014, and increasing compensation by \$100,000, from \$250,000 to \$350,000, was approved. (11-0.)

- 2.9 Adopt a resolution authorizing the Director of Environmental Services or his designee to negotiate and execute Contract Change Order No. 6 to install new remote control, relay protection and monitoring equipment as part of the Switchgears M1, M2 & M3 Replacement Design-Build Project, in an amount not to exceed \$400,000. CEQA: Exempt, File No. PP04-03-079. (Environmental Services/Public Works)**

Documents Filed: (1) Joint memorandum from Director of Environmental Services John Stufflebean and Acting Director of Public Works David Sykes, dated May 2, 2011, recommending adoption of a resolution. (2) Letter from Chairperson Chuck Reed, the Treatment Plant Advisory Committee, dated May 19, 2011, stating concurrence with the Staff recommendation.

Action: Resolution No. 75804, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Environmental Services to Negotiate and Execute Change Order No. 6 for the Switchgears M1, M2 & M3 Replacement Design-Build Project", was adopted. (11-0.)

- 2.10 (a) Award the construction contract for the San José/Santa Clara Water Pollution Control Plant, Filter Under-Drain System Renovation and Media Replacement (A-4) Project to the sole bidder, ERS Industrial Services, Inc., in the amount of \$519,118.72.**
(b) Approve a contingency in the amount of \$51,900.
CEQA: Exempt, File No. PP11-024. (Environmental Services/Public Works)

Documents Filed: (1) City Council Action Request, approved by Director of Environmental Services John Stufflebean and Acting Director of Public Works David Sykes, dated May 9, 2011, regarding a Report on Bids and Award of a Contract. (2) Letter from Chairperson Chuck Reed, the Treatment Plant Advisory Committee, dated May 19, 2011, stating concurrence with the Staff recommendation.

2.10 (Cont'd.)

Action: The construction contract for the San José/Santa Clara Water Pollution Control Plant, Filter Under-Drain System Renovation and Media Replacement (A-4) Project to the sole bidder, ERS Industrial Services, Inc., in the amount of \$519,118.72, with related contingency, was approved. (11-0.)

2.11 Adopt a resolution summarily vacating:

(a) A portion of Old Taylor Street between San Pedro Street and Guadalupe Parkway and reserving a public service easement over a 15-foot wide strip adjacent to San Pedro Street; and

(b) A sanitary sewer easement adjacent to San Pedro Street.

CEQA: Exempt, File No. PP10-041. Council District 3. (Public Works)

Documents Filed: Memorandum from Acting Director of Public Works David Sykes, dated May 11, 2011, recommending adoption of a resolution.

Action: Resolution No. 75805 entitled: “A Resolution of the Council of the City of San José Summarily Vacating a Portion of Old Taylor Street and a Sanitary Sewer Easement Adjacent to San Pedro Street and North of Taylor Street and Reserving a Public Service Easement”, was adopted. (11-0.)

2.12 Report on bids and award of contract for the Newhall Park Project No. 4650 to the low bidder, Blossom Valley Construction, Inc., in the amount of \$1,035,100, and approve a contingency in the amount of \$52,000. CEQA: Exempt, File No. PP10-110. Council District 3. (Public Works)

Documents Filed: Memorandum from Acting Director of Public Works David Sykes, dated May 2, 2011, recommending approval of a construction contract for the Newhall Park Project.

Action: Report on bids and award of contract for the Newhall Park Project No. 4650 to the low bidder, Blossom Valley Construction, Inc., in the amount of \$1,035,100, with related contingency, was approved. (11-0.)

2.13 (a) Adopt a resolution authorizing the Director of Public Works to negotiate and execute the following amendments to the Agreement for Design Services with the Santa Clara Valley Transportation Authority for the Capitol Expressway Light Rail Pedestrian Improvements (CELR) Project:

- (1) A first amendment to add services, extend the term, and increase compensation in the amount of \$150,000 for a total contract amount not to exceed \$459,225, subject to the appropriation of funds; and**
- (2) A subsequent amendment to adjust reimbursable hourly compensation rates upon adoption of the 2011-2012 Operating Budget.**

- 2.13 (b) **Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in 2010-2011 in the Construction Excise Tax Fund:**
- (1) **Increase the appropriation to the Department of Transportation for the Capitol Expressway Light Rail Pedestrian Improvements project by \$50,000.**
 - (2) **Increase the estimate for Earned Revenue by \$50,000.**

CEQA: Not a Project, File No. PP10-066(a), Agreements and Contracts. Council Districts: 5 & 8. SNI Areas: Five Wounds/Brookwood Terrace, Gateway East, Mayfair, East Valley/680 Communities. (Public Works/City Manager's Office)

Action: Deferred to June 7, 2011 per Administration.

- 2.14 **As recommended by the Rules and Open Government Committee on May 18, 2011, adopt a position of support for AB 1167 (Fong) – Interagency Council on Homelessness. (Housing)**
[Rules Committee referral 5/18/11 – Item D(1)(c)]

Documents Filed: Memorandum from City Clerk Dennis Hawkins, dated May 18, 2011, transmitting the recommendations of the Rules and Open Government Committee.

Action: A position of support was adopted for AB 1167 (Fong) – Interagency Council on Homelessness. (11-0.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

- 3.4 **Accept the City Manager's Fiscal Reform Plan and direct staff to proceed with the steps necessary to implement the plan, including meeting and conferring with the bargaining units, as applicable. (Mayor)**
[Rules Committee referral 5/11/11 – Item E(1)]

Documents Filed: (1) Joint memorandum from Mayor Reed, Vice Mayor Nguyen, Council Members Herrera and Liccardo, dated May 13, 2011, outlining proposals for fiscal reforms. (2) Memorandum from Mayor Reed, dated May 24, 2011, forwarding a Law Journal article "Declaration of Fiscal Emergency". (3) Fiscal Reform Plan from City Manager Debra Figone, dated May 2, 2011. (4) Memorandum from Council Member Rocha, dated May 20, 2011, recommending proposals to address retirement reform. (5) Memorandum from Council Member Pyle, dated May 23, 2011, recommending proposals regarding the City Manager's Fiscal Reform Plan. (6) Powerpoint presentation regarding Tier 2 "Opt-in DB Plan for Current Employees" provided by Council Member Constant, May 24, 2011. (7) Letter from Assembly Member Paul Fong, dated May 20, 2011, regarding Investigation into City of San José Fiscal Emergency Declaration. (8) City of Stockton News Release "Stockton Retiree Healthcare to Benefit from Federal Reimbursement". (9) Letter from Evet S. Loewen, dated May 20, 2011, offering comments on retirement reform. (10) Letter from Joan R. Gallo, dated May 24, 2011, raising concerns around the City's fiscal reform proposals.

3.4 (Cont'd.)

Mayor Reed provided an overview, and City Manager Debra Figone presented the proposed Fiscal Reform Plan, outlining recommendations to achieve \$216 million in General Fund savings by Fiscal Year 2015-2016.

Mayor Reed outlined recommendations as presented in the memorandum he cosigned with Vice Mayor Nguyen and Council Members Herrera and Liccardo.

Council Member Constant proposed an opt-in plan for current employees, which he outlined for Council's consideration.

Motion: Council Member Liccardo moved approval of the memorandum he cosigned with Mayor Reed, Vice Mayor Nguyen and Council Member Herrera, recommendations as outlined by the City Manager, with consideration of the recommendations provided by Council Member Constant, including continued discussions with bargaining units, with Staff to return with recommendations on June 21, 2011. The motion was seconded by Council Member Herrera.

Council Member Rocha requested to amend the motion to include his memorandum of May 20, 2011. Council Members Liccardo and Herrera accepted the amendment.

Director of Employee Relations Alex Gurza and City Attorney Rick Doyle provided clarification and responded to questions from Council.

Public Comments: Sixty-six members of the public provided input on recommendations put forth on the fiscal reform plan and collective bargaining issues.

Extensive Council discussion continued.

Council Member Campos offered support of Council Member Rocha's memorandum, but declined support of points set forward in the other memoranda under consideration. He deemed it irresponsible to declare a fiscal emergency at this time.

Council Member Chu reiterated supporting an increased retirement age, but pointed out the volume of information being presented is setting Staff up for an impossible mission.

Council Member Kalra warned of potential legal risks involved in going forward with the recommendations being considered.

Council Member Herrera requested to amend the motion to include increasing revenue as outlined in Council Member Pyle's memorandum of May 23, 2011. Council Member Liccardo accepted the amendment.

3.4 (Cont'd.)

Action: On a call for the question, the motion carried, the City Manager's memorandum with the inclusion of the following Council memorandums as guidelines for Staff's analysis and direction to report back on June 21 were approved, including:

- (a) Memorandum cosigned by Mayor Reed, Vice Mayor Nguyen and Council Members Herrera and Liccardo dated May 13, 2011 as modified to include:
 - i) To make temporary, if possible, Recommendation B, the limitations on retirement benefits and requirement of voter approval of increases in retirement benefits, ii) direct staff to determine how to allocate any savings in the cost of the pension plans to the pension portion of the City's fiscal problems, and iii) the concept of a "middle tier" for opt-in by existing employees;
- (b) Memorandum from Council Member Rocha, dated May 20, 2011;
- (c) Memorandum from Council Member Pyle, dated May 23, 2011; and
- (d) Slide presented by Council Member Constant "Tier 2 Opt-in DB Plan for Current Employees - to be Designed with Parameters", as follows: "(1) Total City contribution not to exceed 50% of current normal cost; (2) Increased retirement age; (3) Reduced CPI, with cap; (4) Actuarial evaluations to be based on an assumed rate of return that has a 50% probability of occurrence as outlined in previous presentations by Retirement Services (6.75%); (5) Elimination of SRBR; (6) other modifications as needed.
- (e) Staff to return to Council on June 21 with a full cost analysis for the proposals by the Mayor, Council Member Rocha and Council Member Constant both as percentage of employee compensation as well as an estimate of the aggregate dollar value, both as a mandatory set of benefits imposed on current employees and evaluated as an opt-in tier; that staff should apply some sensitivity analysis around assumptions of the percentage of employees that may opt-in and the likely demographics, particularly the ages of those employees; and apply the same 6.75% investment return assumption, the return which the retirement plans have a 50/50 probability of achieving.
- (f) Continue discussions with bargaining units regarding various options for reform and explore opportunities to achieve points of agreement.
- (g) Defer the declaration of a fiscal emergency until Staff returns to Council on June 21, 2011 with draft language relating to that declaration.
(8-3. Noes: Campos, Chu, Kalra.)

3.3 Adopt a resolution authorizing the City Manager to execute:

- (a) **An amendment to the existing Second Amended and Restated Agreement with San Jose Convention & Visitors Bureau until June 30, 2011, with a compensation for the extension period in an amount not to exceed \$1,100,000; and**

3.3 (Cont'd.)

- (b) An additional amendment to the existing Second Amended and Restated Agreement with San Jose Convention & Visitors Bureau until December 31, 2011, without further Council action other than the appropriation of funds.
CEQA: Not a Project, File No.PP10-066(e), Agreements/Contracts.
(City Manager's Office)**

Documents Filed: Memorandum from Assistant City Manager Ed Shikada, dated May 2, 2011, recommending adoption of a resolution.

Action: Upon motion by Council Member Herrera, seconded by Council Member Pyle and carried unanimously, Resolution No. 75806, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute Amendments to the Existing Second Amended and Restated Agreement with San José Convention Center & Visitor's Bureau", was adopted. (11-0.)

- 3.5 As recommended by the Rules and Open Government Committee on May 18, 2011, discuss and adopt the 2011 Clean Tech Legislative Agenda. (Mayor)
[Rules Committee referral 5/18/11 – Item A(1)(a)(1)]**

Documents Filed: Memorandum from City Clerk Dennis Hawkins, dated May 18, 2011, transmitting the recommendations of the Rules and Open Government Committee.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, the 2011 Clean Tech Legislative Agenda was approved. (11-0.)

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.1 Conduct a Public Hearing and consider adoption of a resolution ordering 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)**

4.1 (Cont'd.)

Documents Filed: (1) Memorandum from Council Member Pyle, dated May 20, 2011, recommending support of Staff's recommendations. (2) Memorandum from Planning, Building and Code Enforcement Director Joseph Horwedel, dated May 2, 2011, recommending adoption of a resolution. (3) Proof of Publication of Notice of Public Hearing, executed on April 29, 2011, 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.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, Resolution No. 75807, entitled: "A Resolution of the Council of the City of San Jose ordering the Reorganization of Certain Uninhabited Territory Designated as Downer No. 11, Subject to Liability for General Indebtedness of the City", was adopted. (8-0-2. Absent: Constant, Kalra.)

TRANSPORTATION & AVIATION SERVICES

- 6.1 (a) **Adopt a resolution:**
- (1) **Revising General Aviation Fees, Ground Transportation Fees and charges, and Badging fees, rates, and charges effective July 1, 2011;**
 - (2) **Revising Public Parking Fees and charges effective June 1, 2011;**
 - (3) **Re-adopting all other Airport Rates and Charges; and**
 - (4) **Repealing Resolution No. 74875.**
- (b) **Approve an ordinance amending Chapter 25.08 of Title 25 of the San José Municipal Code to require all providers of taxicab services at the Airport to obtain an Airport ground transportation permit and to require that parking shuttle operations be conducted in a separate vehicle from any other ground transportation services at the Airport.**

CEQA: Statutorily Exempt, File No. PP10-067(a), CEQA Guidelines Section 15273, Rates/Tolls/Fares/Charges. (Airport)

Documents Filed: Memorandum from Director of Aviation William F. Sherry, dated May 2, 2011, recommending adoption of a resolution and approval of an ordinance.

Airport Assistant Director/Chief Operating Officer Kim Aguirre offered an overview of the Airport Operations Program and Fee adjustments.

Public Comments: David Logan (Yellow Checker Cab Company) spoke in support of adding the definition of a trip fee to be a pickup or a drop-off including a refund or credit to make up for the disadvantage to their drivers.

6.1 (Cont'd.)

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera, and carried unanimously, Ordinance No. 28919, entitled “An Ordinance of the City of San Jose Amending Sections 25.08.700 and 25.08.730 of Part 7 of Chapter 25.08 and Section 25.16.050 of Chapter 25.16 of Title 25 of the San Jose Municipal Code to Require all Providers of Taxicab Services at the Airport to Obtain an Airport Ground Transportation Permit, to Require that Parking Shuttle Operations be Conducted in a Separate Vehicle from any Other Ground Transportation Services at the Airport and to Clarify the Circumstances Under Which Persons May be Authorized to Park Without Charge in Public Parking Facilities at the Airport”, was passed for publication, and Resolution No. 75809, entitled “A Resolution of the Council of the City of San Jose Establishing Fees, Rates and Charges at the Norman Y. Mineta San Jose International Airport, and Repealing Resolution No. 74875”, was adopted. (10-0-1. Absent: Constant.)

**6.2 As recommended by the Transportation and Environment Committee on May 2, 2011, accept the Valley Transportation Plan 2040 Report. (Transportation)
[Transportation and Environment Committee referral 5/2/11 – Item D(4)]**

Action: Deferred to June 7, 2011 per Rules and Open Government Committee.

ENVIRONMENTAL & UTILITY SERVICES

- 7.1 (a) Accept the Plant’s odor assessment status report and direct staff to continue with the development of a regional odor assessment study:**
- (1) Develop a stakeholder process including the other possible odor generating facilities and the Plant’s tributary agencies.**
 - (2) Develop a funding plan to include a portion of the funding from sources other than the Sewer Service and Use Charges.**
 - (3) Complete development of a scope and engage consultant services.**
 - (4) Provide a status report in the fall of 2011 on progress made.**
- (b) Accept the analysis of the feasibility of implementing odor control projects in three to seven years and direct staff to continue to explore the possibility of accelerating biosolids projects and deliver a status report in fall 2011.**
- CEQA: Not a Project, File No. PP10-069 (a) Staff Reports. (Environmental Services/Public Works)**

Action: Deferred June 14, 2011 per Administration.

7.2 Report on bids and award of construction contract for New Construction of Various Equipment 2010-2011 project to the low bidder, Anderson Pacific Engineering Construction, Inc., in the amount of \$1,299,300, and approval of a 15 percent contingency in the amount of \$200,700. CEQA: Exempt, File No. PP08-202. (Environmental Services/Public Works)

Documents Filed: (1) Joint memorandum from Director of Environmental Services John Stufflebean and Acting Director of Public Works David Sykes, dated May 6, 2011, recommending approval of a report on bids and award of a construction contract. (2) Memorandum from Treatment Plant Advisory Committee Chair, Chuck Reed, dated May 19, 2011, providing recommendations of the Treatment Plant Advisory Committee.

Action: Upon motion by Council Member Herrera, seconded by Council Member Pyle and carried unanimously, the report on bids and award of construction contract for New Construction of Various Equipment 2010-2011 project to the low bidder, Anderson Pacific Engineering Construction, Inc., in the amount of \$1,299,300, with related contingency, was approved. (10-0-1. Absent: Constant.)

- 7.3**
- (a) Accept the report on bids and, subject to staff's evaluation of any protests and further report to City Council, award of contract for the San José Environmental Innovation Center (Project) Rebid to the lowest bidder, Applegate Johnston, Inc., to include the base bid of \$10,624,000 and Add Alternates #1 and 2 in the amount of \$470,935.**
 - (b) Adopt a resolution authorizing the Director of Public Works to approve a contingency amount of \$1,330,000 for the Project, conditioned upon the necessary appropriation actions by City Council.**
 - (c) Approve the third amendment to the master agreement for consultant services with Group 4 Architecture Research + Planning, Inc. (Group 4) for the Project, to modify the scope of services and increase the amount of compensation by \$187,000 for a total agreement amount not to exceed \$2,980,000.**
 - (d) Adopt the following 2010-2011 Appropriation Ordinance and Funding Source Resolution amendments in the Integrated Waste Management Fund:**
 - (1) Increase the Estimate for Earned Revenue by \$2,209,000;**
 - (2) Establish a Transfer from the Sewer Service and Use Charge Fund in the amount of \$1,539,454;**
 - (3) Establish a Transfer from the Storm Sewer Operating Fund in the amount of \$200,000;**
 - (4) Increase the appropriation for Household Hazardous Waste Las Plumas Facility by \$10,708,454;**
 - (5) Decrease the appropriation to the Environmental Services Department for Non-Personal/Equipment by \$125,000; and**

- 7.3 (6) **Decrease the Reserve for the Environmental Innovation Center by \$6,635,000.**
- (e) **Adopt the following 2010-2011 Appropriation Ordinance amendments in the Sewer Service and Use Charge Fund:**
- (1) **Establish a transfer to the Integrated Waste Management Fund in the amount of \$1,539,454; and**
- (2) **Decrease the Ending Fund Balance by \$1,539,454.**
- (f) **Adopt the following 2010-2011 Appropriation Ordinance amendments in the Storm Sewer Operating Fund:**
- (1) **Establish a transfer to the Integrated Waste Management Fund in the amount of \$200,000;**
- (2) **Decrease the Ending Fund Balance by \$100,000; and**
- (3) **Decrease the Non-Personal/Equipment appropriation to the Environmental Services Department by \$100,000.**

CEQA: Negative Declaration for the renovation for the EIC was adopted on December 1, 2009, File No. PP09-138. Council District 3. (Environmental Services/Public Works/City Manager's Office)

Action: Deferred to May 31, 2011 per Orders of the Day.

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.2 (a) **Accept the Mexican Heritage Plaza Steering Committee's Business Plan for the School of Arts & Culture at the Mexican Heritage Plaza ("Plaza").**
- (b) **Adopt a resolution authorizing the City Manager to negotiate an Interim Incubator Operator Agreement with 1stACT Silicon Valley, for the management and operation of the Plaza based on business terms and conditions described in staff's memorandum for a term not to exceed 3 years at a maximum total compensation not to exceed \$1,485,000, subject to the City Council's annual appropriation of funds for the operating payments.**

CEQA: Exempt, File No. PP10-097. Council District 5. SNI: Mayfair. (Public Works/Office of Economic Development)

Documents Filed: (1) Joint memorandum from Mayor Reed and Council Members Campos, Herrera, Kalra and Liccardo, dated May 24, 2011, recommending actions related to implementation of the School of Arts & Culture at the Mexican Heritage Plaza. (2) Joint memorandum from Acting Director of Public Works David Sykes and Director of Economic Development/Chief Strategist Kim Welsh, dated May 2, 2011, recommending adoption of a resolution. (3) Supplemental memorandum from Director of Economic Development/Chief Strategist Kim Welsh, dated May 23, 2011, updating the source of funding shift of the operating subsidy.

Acting Assistant Director of General Services Peter Jensen and Staff provided a presentation on the business plan for the proposed School of Arts & Culture.

4.2

Public Comments: Jerry Mungai spoke in opposition to the business plan, citing the money would be better spent on core City needs. Offering support of the Plan and appreciation for the Council's consideration and support were: Bobby Yount (Arts Commission), Hector Armienta, Alcarcio Castellano (MHP Steering Committee), Carmen Castellano, Ruben Barron, Maria Luisa Colmenarez (Danzantes Unidos), Michelle Mann (Adobe Foundation), Rich Braugh (1st Act), Elisa Marina Alvarado and Rodrigo Garcia (Teatro Vision); Gabriel Paredo (M.A.L.I.), Linda Snook, Danny Garza, Roy Hirabayashi (San Jose Taiko), and John Zamora.

Motion: Council Member Campos moved approval of the business plan for the School of Arts & Culture at the Mexican Heritage Plaza. Council Member Herrera seconded the motion.

Action: On a call for the question, the motion carried, the Mexican Heritage Plaza Steering Committee's Business Plan for the School of Arts & Culture at the Mexican Heritage Plaza was approved, and Resolution No. 75808, entitled: "A Resolution of the Council of the City of San Jose Authorizing the City Manager to Negotiate an Interim Incubator Operator Agreement with 1stACT Silicon Valley, for the Management and Operation of the Mexican Heritage Plaza for a Term Not to Exceed Three Years at a Maximum Total Compensation Not to Exceed \$1,485,000, Subject to Annual Appropriation", was adopted. (8-1-2. Noes: Oliverio. Absent: Constant, Rocha.)

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>
10080	Southeast corner of River Oaks Parkway and Seely Avenue	4	Essex Portfolio, L.P.	4 Lots/ 769 Units	MFA
10026	East corner of Berryessa and Jackson Avenues	4	Pulte Home Corporation	50 Lots/ 162 Units	MFA

ADJOURNMENT

The Council of the City of San José adjourned at 6:09 p.m. in memory of Bruce DeMers, who served for 26 years with the San José Fire Department and was active in local political and community politics. His many contributions to the City of San José will be forever remembered. (Campos)

Minutes Recorded, Prepared and Respectfully Submitted by,

Dennis Hawkins, CMC
City Clerk

rmk/5-24-11MIN