MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA **TUESDAY, APRIL 5, 2011**

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

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

Absent: Council Members - Herrera, Kalra, Oliverio, Pyle.

STRATEGIC SUPPORT SERVICES

3.2 Accept Labor Negotiations Update.

Employee Relations Manager Gina Donnelly offered the Labor Negotiations Update.

Action: No action was taken.

CLOSED SESSION

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

Absent: Council Members - Pyle. (Excused)

Upon motion unanimously adopted, Council recessed at 9:05 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) Watson – Stalker, et al. v City, et al.; Tracy Watson, Renee Stalker, Olivia Stalker, Shafer Watson, Riley Watson, County of Santa Clara, County of Santa Clara Department of Family and Children Services; County of Santa Clara Department of County Counsel; County of Santa Clara District Attorneys Office; Santa Clara Valey Medical Center; Evergreen School District, City of San José, San José Police Department; Norma Sparks, Yazmina Letona; Sharon

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CLOSED SESSION (Cont'd.)

Burgan; Jewels Ramirez, Vu Tran; Ann Miller Ravel; Rima Singh; Aaron West; George Kennedy; Clifton Black; Rose Real; Robert Pruitt; Cheryl Harms; Claudia Bldgett; Gary Kishimoto; John Hamilton, Anita Noble, Janet Kahle, Mary Ritter, David Kearns, Rajul Kazi; Rob Davis; William Hoyt; Craig Blank; Court: United States District Court, Northern District of California; Case No: C06-04029 RMW; Amount of Money or Other Relief Sought: Damages according to proof; (B) to confer with Legal Counsel pursuant to Government Code subsection (b) of Section 54956.9 with respect to anticipated litigation of significant exposure (Claim Not Filed) in one (1) matter. (C) to confer with Legal Counsel pursuant to Government Code subsection (c) of Section 54956.9 with respect to anticipated litigation (Claim Not Filed) in one (1) matter. (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) 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; (3) 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; (4) 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; (5) 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; (6) 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. (7) Association of Legal Professionals of San José (ALP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc;. How to obtain a copy of existing contract or MOA: web: **http://www.sanjoseca.gov/employee relations/moa.asp**; Telephone for Employee Relations: 408-535-8150

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

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

Absent: Council Members - Pyle. (Excused)

INVOCATION

Father Michael Hendrickson from St. Victor's Church provided the Invocation. (District 4)

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance accompanied by students from Easterbrook Discovery School. (District 1)

ORDERS OF THE DAY

Upon motion by Council Member Herrera, seconded by Council Member Liccardo and carried unanimously, the Orders of the Day and the Amended Agenda were approved, with Items 1.2 and 2.3 deferred to April 12, 2011, Item 4.2 dropped and Item 6.1 deferred to April 19, 2011. (10-0-1. Absent: Pyle)

CEREMONIAL ITEMS

1.1 Presentation of a proclamation recognizing the Month of April 2011 as "DMV/Donate Life California Month" in the City of San José. (Kalra)

Action: Mayor Reed and Council Member Kalra recognized the Month of April 2011 as "DMV/Donate Life California Month" in the City of San José.

1.2 Presentation of a proclamation declaring the Month of April 2011 as "Month of the Young Child" in the City of San José. (Pyle)

Action: Deferred to April 12, 2011 per Orders of the Day.

1.3 Presentation of a proclamation declaring March 25, 2011 as "Greek Independence Day" in the City of San José. (Constant)
(Deferred from 3/22/11 – Item 1.1 and 3/29/11 – Item 1.2)

Action: Mayor Reed and Council Member Constant recognized March 25, 2011 as "Greek Independence Day" in the City of San José.

1.4 Presentation of a commendation to the Sikh Gurdwara – San José on the Grand Opening of their new 100,000 sq. ft. temple in Evergreen. (Herrera)
(Rules Committee referral 03/23/11)

Action: Mayor Reed and Council Member Herrera presented a commendation to the Sikh Gurdwara – San José on the Grand Opening of their new temple in Evergreen.

CONSENT CALENDAR

Upon motion by Vice Mayor Nguyen, seconded by Council Member Herrera and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (10-0-1. Absent: Pyle)

2.1 (a) Regular Meeting Minutes of December 7, 2010.
(b) Special Meeting Minutes of December 13, 2010 on Medical Marijuana.
(c) Regular Meeting Minutes of December 14, 2010.
(d) Special Meeting Minutes of December 16, 2010.

Documents Filed: (1) Regular Minutes dated December 7 and 14, 2010; (2) Special Meeting Minutes dated December 13 and 16, 2010.

Action: The minutes were approved. (10-0-1. Absent: Pyle)

2.2 (a) ORD. NO. 28900 – Amending Section 2.08.1220 of Part 12 Chapter 2.08 of Title 2 of the San José Municipal Code to require Public Members of the Board of Administration of the Police and Fire Retirement Plan who are appointed on or after April 1, 2011 to reside within a fifty mile radius of San José City Hall.

Documents Filed: Proof of Publication of the Title of Ordinance No. 28900 executed on March 29, 2011, submitted by the City Clerk.

Action: Ordinance No. 28900 was adopted. (10-0-1. Absent: Pyle)

(b) ORD. NO. 28901 – Rezoning certain real property situated on the east side of South Bascom Avenue, approximately 450 feet northerly of Fruitdale Avenue, to the CN Commercial Neighborhood Zoning District. C10-024

Documents Filed: Proof of Publication of the Title of Ordinance No. 28901 executed on March 29, 2011, submitted by the City Clerk.

Action: Ordinance No. 28901 was adopted. (10-0-1. Absent: Pyle)

(c) ORD. NO. 28899 – Amending Parts 1 and 10 of Chapter 2.08 of Title 2 of the San José Municipal Code to amend Sections 2.08.130, 2.08.1020 and 2.08.1070 to correct clerical errors related to the process for removal of members of the Board of Administration of the Federated City Employees Retirement System and filling vacancies on said board, and to require public members who are appointed to said board on or after April 1, 2011 to reside within a fifty mile radius of San José City Hall.

2.2 (c) (Cont'd.)

Documents Filed: Proof of Publication of the Title of Ordinance No. 28899 executed on March 29, 2011, submitted by the City Clerk.

Action: Ordinance No. 28899 was adopted. (10-0-1. Absent: Pyle)

2.3 Approval of Council Committee Reports.
(a) Rules and Open Government Committee Report of March 16, 2011. (Mayor)
(b) Rules and Open Government Committee Report of March 9, 2011. (Mayor)
[Deferred from 3/29/11 – Item 2.3(a)]

Action: Deferred to April 12, 2011 per Orders of the Day.

2.7 (a) Adopt a resolution appointing Director of Housing Leslye Corsiglia to represent the City's interests on the Destination: Home Leadership Board.
(b) Accept the Theory of Change formulated by Destination: Home.
CEQA: Not a Project, File No. PP10-068, General Procedure and Policy Making. (City Manager's Office)

Documents Filed: Memorandum from City Manager Debra Figone, dated March 14, 2011, recommending adoption of a resolution.

Action: Resolution No. 75767, entitled: "A Resolution of the Council of the City of San José Appointing Director of Housing Leslye Corsiglia to Represent the City of San José on the Destination: Home Leadership Board", was adopted, and the Theory of Change formulated by Destination: Home was accepted. (10-0-1. Absent: Pyle)

2.8 Adopt a resolution authorizing the City Manager to negotiate and execute an Agreement with the County of Santa Clara, terminating the City's responsibility for specified State hazardous materials programs in the City of San José. CEQA: Not a Project File No. PP10-066, Agreements. (Fire)

Documents Filed: Memorandum from Fire Chief William McDonald, dated March 14, 2011, recommending adoption of a resolution.

Action: Resolution No. 75768, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with the County of Santa Clara to Terminate the City's Role as a Participating Agency in the County's Hazardous Materials Certified Unified Program", was adopted. (10-0-1. Absent: Pyle)

2.9 Approve an increase in the construction contingency for the 2010 Proposition 1B Slurry Seal Project from five percent to ten percent, for an increase from $160,668 to $321,336. CEQA: Exempt, File No. PP09-101. (Transportation)

Documents Filed: Memorandum from Director of Transportation Hans Larsen, dated March 14, 20110, recommending approval in construction contingency for a slurry seal project.

Action: An increase in the construction contingency for the 2010 Proposition 1B Slurry Seal Project from five percent to ten percent, for an increase from $160,668 to $321,336 was approved. (10-0-1. Absent: Pyle)

2.10 As recommended by the Rules and Open Government Committee on March 30, 2011, approve a support position for AB 57 (Beall) Metropolitan Transportation Commission. (Transportation)
[Rules Committee referral 3/30/11 – Item D(1)(b)]

Documents Filed: Memorandum from City Clerk Dennis Hawkins, dated March 30, 2011, transmitting the recommendations of the Rules and Open Government Committee.

Action: A support position for AB 57 (Beall) Metropolitan Transportation Commission, was approved. (10-0-1. Absent: Pyle)

STRATEGIC SUPPORT SERVICES

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

The City Manager reported on upcoming community budget meetings and the City Manager's budget recommendations to be released May 2, 2011.

3.3 Eliminate 2.0 positions (1.0 Principal Accountant, 1.0 Assistant Director) in the Redevelopment Agency, effective April 6, 2011. CEQA: Not a Project, File No. PP10-069(b), Personnel Related Decisions. (City Manager's Office)
(Rules Committee referral 03/30/11)

Documents Filed: Memorandum from Budget Director Jennifer Maguire, dated April 1, 2011, recommending San José Redevelopment Agency Civil Service staffing reductions.

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Herrera and carried unanimously, Elimination of 2.0 positions in the San José Redevelopment Agency Civil Service, effective April 6, 2011 were approved. (10-0-1. Absent: Pyle)

3.4 As referred by the Rules and Open Government Committee on March 30, 2011 and outlined in the attached memorandum previously submitted to and approved by Rules and Open Government Committee, as amended:

(1) The City Council grants a leave of absence to Troy Overton, a member of the Appeals Hearing Board for the period April 1, 2011 through April 30, 2012.

(2) The City Council appoints Cynthia Cobb as the interim Commissioner to serve during Commissioner Overton's leave of absence through April 30, 2012.

Documents Filed: Memorandum from City Clerk Dennis Hawkins, dated April 1, 2011, transmitting the recommendations of the Rules and Open Government Committee.

Council Member Constant gave an overview of the requirements, and City Attorney Richard Doyle affirmed that there was no apparent conflict.

Action: Upon motion by Council Member Constant, seconded by Council Member Herrera and carried unanimously, the City Council granted a leave of absence to Troy Overton, a member of the Appeals Hearing Board for the period April 1, 2011 through April 30, 2012, and approved the appointment of Cynthia Cobb as the interim Commissioner to serve during Commissioner Overton's leave of absence through April 30, 2012.

COMMUNITY & ECONOMIC DEVELOPMENT

4.1 (a) Approve the purchase agreement with James and Jean McCarthy, as trustees, in the amount of $1,675,000 for the purchase of land located at 802 West Home Street, San José, CA, (APN No. 264-11-112) for the future expansion of the Del Monte Park;

(b) Adopt a resolution authorizing the City Manager to execute the purchase agreement and all other documents necessary to complete the transaction, to settle any relocation claims stemming from the City's purchase of this property up to a maximum of $196,625, and to make the necessary payments to hold the site vacant if the tenants vacate early to a maximum of $278,375;

(c) Adopt the following Appropriation Ordinance amendments in the Subdivision Park Trust Fund (375):

(1) Establish an appropriation to the Parks, Recreation and Neighborhood Services Department in the amount of $2,150,000 for the West Home Street Land Acquisition; and

(2) Decrease the Reserve: Del Monte Park Land Acquisition and Development by $2,150,000.

CEQA: Exempt, File No. PP08-220. Council District 6. SNI: Burbank/Del Monte. (Economic Development/Parks, Recreation and Neighborhood Services/City Manager)

4.1 (Cont'd.)

Documents Filed: Joint memorandum from Director of Economic Development/Chief Strategist Kim Walesh, Director of Parks, Recreation and Neighborhood Services Albert Balagso and Budget Director Jennifer Maguire, dated March 14, 2011, recommending approval of a purchase agreement, and adoption of a resolution and appropriation ordinance.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Herrera and carried unanimously, the purchase agreement with James and Jean McCarthy, as trustees, in the amount of $1,675,000 for the purchase of land located at 802 West Home Street, San José, CA, for the future expansion of the Del Monte Park, was approved, Ordinance No. 28904, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28765 to Appropriate Monies in the Subdivision Park Trust Fund for the West Home Street Land Acquisition; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption"; and Resolution No. 75769, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Take Various Actions Relating to the Purchase of Real Property Located at 802 Home Street", were adopted.(9-1-1. Noes: Liccardo. Absent: Pyle.)

4.2 (a) Adopt a resolution:

(1) Authorizing the Director of Finance to write-off Neighborhood Housing Services of Silicon Valley's (NHSSV) $1,300,000 loan from the Low and Moderate Income Housing Fund for past operating expenses and in exchange, accepting NHSSV's commitment to utilize $1,300,000 in CalHOME 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 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 City 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; and

(2) Decrease the Ending Fund Balance by $115,000.

(c) Adopt of 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; and

(2) Increase the appropriation to the Housing Department for the Loans and Grants project by $115,000.

CEQA: Not a Project. (Housing/Finance/City Manager's Office) Deferred from 3/22/11

4.2 (Cont'd.)

Documents Filed: Joint memorandum from Director of Housing Leslye Corsiglia, Director of Finance Scott P. Johnson and Budget Director Jennifer Maguire, dated March 14, 2011, regarding HomeVenture Fund and Home Investment Partnership Obligations.

Action: Dropped per Orders of the Day.

TRANSPORTATION & AVIATION SERVICES

6.1 (a) Adopt a resolution to provide for the preparation and issuance by the Airport of an Annual Airport Noise Report and to discontinue the current Airport practice of preparing and issuing a Monthly Noise Report.

(b) Approve an ordinance amending Section 25.04.570 of Chapter 25.04 of Title 25 of the San José Municipal Code to provide that Airport engine run-up reports will be included in the Monthly Noise Summary on the Airport web site and the Annual Airport Noise Report.

CEQA: Not a Project, File No. PP10-069(a), Staff Reports/Assessments/Annual Reports/ Information Memos. (Airport)

Action: Deferred to April 19, 2011 per Orders of the Day.

ENVIRONMENTAL & UTILITY SERVICES

7.1 (a) Consider the appeal by Recology Silicon Valley regarding the Commercial Solid Waste System Request for Proposals and adopt a resolution setting forth the decision of the City Council.

(b) Accept the Report on Request for Proposals;

(c) Adopt a resolution authorizing the City Manager to:

(1) Negotiate agreements with Allied Waste Industries including exclusive franchise agreements to perform Commercial Solid Waste and Recyclable Material Collection services citywide from July 1, 2012 through June 30, 2027, and a Memorandum of Understanding for transition to the redesigned commercial solid waste system.

(2) Negotiate agreements with Zero Waste Energy Development Company including an agreement to perform Commercial Organic Waste Processing services citywide from July 1, 2012 through June 30, 2027, and a Memorandum of Understanding for transition to the redesigned commercial solid waste system.

(d) Direct staff to return to the City Council in June 2011 with proposed agreements for execution and proposed ordinances or resolutions for adoption, to implement the redesigned commercial solid waste system.

CEQA: Not a Project, File No. PP10-066(e), e. Services that involve no physical changes to the environment. (Environmental Services/Finance)

7.1 (Cont'd.)

Documents Filed: (1) Joint memorandum from Mayor Reed, Vice Mayor Nguyen and Council Member Rocha, dated April 1, 2011, approving Staff's recommendation and making recommendations for proposed agreements. (2) Joint memorandum from Director of Environmental Services John Stufflebean and Director of Finance Scott P. Johnson, dated March 10, 2011, recommending adoption of a resolution. (3) Two (2) supplemental memoranda from Director of Environmental Services John Stufflebean and Director of Finance Scott P. Johnson, both dated April 1, 2011, both offering additional information regarding the Report on RFPS for a Commercial Solid Waste System. (4) Letter from Nicole Rinauro, General Manager/Principal, Revolution Resources Recovery, dated April 4, 2011 regarding the Commercial Solid Waste Collection Franchise Procurement.

Meeting disclosures were provided by Mayor Reed, Vice Mayor Nguyen and Council Members Chu, Constant, Herrera, Nguyen and Rocha.

Director of Environmental Services John Stufflebean offered a presentation on commercial solid waste system redesign proposals, and Director of Finance Scott P. Johnson continued the presentation outlining agreements to perform Citywide services.

Public Comments: The following members of the public provided input on Staff's recommendations: Gil Cheso (Allied Waste Services), Pat Dando (San José/Silicon Valley Chamber of Commerce), Randy King (San José Stage Company), Michael Pynn (Santana Row), Monte Chavez (HP Pavilion), Virginia Santa Ines (San José Hilton), Mary Mashburn (Addison Avenue Credit Union); Mark Arsenault, Kevin Chiapello, John Delgado, Mosie Hill, Mike Page and Ronnie Reed (Recology Silicon Valley); Michael Tejero (California Waste Consultants), Nicole Rinauro, Todd Stort and Rick Mauck (Revolution Resource Recovery); Bruce Olszewski (SJSU Center for Development of Recycling), Terry Reilly, Steve Lopes and David Wall.

Motion: Vice Mayor Nguyen moved approval of the memorandum she cosigned with Mayor Reed and Council Member Rocha. Council Member Rocha seconded the motion.

Action: The appeal by Recology Silicon Valley regarding the Commercial Solid Waste System Request for Proposals was withdrawn, the Report on Request for Proposals was accepted, and Resolution No. 75770, entitled: "A Resolution of the Council of the City of San José authorizing the City Manager to Negotiate Agreements with Allied Waste Industries and Zero Waste Energy Development Company Relating to the Commercial Solid Waste System", was adopted, with direction to Staff to return to the City Council in June 2011 with proposed agreements for execution and proposed ordinances or resolutions for adoption, to implement the redesigned commercial solid waste system. (10-0-1. Absent: Pyle)

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:

Tract	Location	Council District	Developer	Lots/ Units	Type	Proposed Decision
10062	1345 Foxworthy Avenue	9	Hawkstone Foxworthy LLC	5 Lots/ 5 Units	SFD	Approve

OPEN FORUM

(1) David Wall questioned a Treatment Plant Advisory Committee Meeting item regarding the Feasibility Assessment for the Creation of a South San Francisco Bay Emergency Port Access Study and suggested that the Environmental Services Director provide a report on access to funds.

(2) Scott Soper recommended clarification to the proposed resolution to replace the Airport's Monthly Noise Report with an annual report.

ADJOURNMENT

The Council of the City of San José adjourned at 3:59 p.m. in memory of Reverend Father John Asimacopoulos from Saint Nicholas Greek Orthodox Church, who served the Greek Community with distinction for over 50 years.

Minutes Recorded, Prepared and Respectfully Submitted by,

Dennis Hawkins, CMC
City Clerk

rmk/4-05-11MIN

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