

## MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, AUGUST 2, 2011

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

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

Absent: Council Members - Kalra, Oliverio.

### STRATEGIC SUPPORT SERVICES

#### 3.2 Accept Labor Negotiations Update.

Employee Relations Manager Gina Donnelly offered the Labor Negotiations Update.

Documents Filed: Memorandum from Nancy Ostrowski, IFPTE Local 21 senior staff member and SJ Coalition Chair, dated August 2, 2011, re: “Normal Cost of Your Proposal Should Not Be a State Secret”.

Public Comments: Nancy Ostrowski, IFPTE Local 21, questioned the City’s perceived resistance to providing the public with the projected normal cost of a retirement reform proposal.

### CLOSED SESSION

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

Absent: Council Members - All Present.

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

Upon motion unanimously adopted, Council recessed at 9:17 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) Smith v. City of San José, et al.; Names of Parties Involved: Ted Smith, City of San José, San José Elections Commission, Does 1-20; Court: Superior Court of California, County of Santa Clara; Case No: 1-07-CV089167; Amount of Money or Other Relief Sought: Declaratory relief and attorney's fees; (2) Smith v. City of San José, et al.; Names of Parties Involved: Ted Smith, City of San José, a municipal entity; San José Redevelopment Agency, a municipal entity; Harry Mavrogenes, in his official capacity as Executive Director of the San José Redevelopment Agency; Mayor Chuck Reed in his official capacity as Mayor of the City of San José; Pete Constant, in his official capacity as a Councilmember for the City of San José; Ash Kalra, in his official capacity as a Councilmember for the City of San José; Sam Liccardo, in his official capacity as a Councilmember for the City of San José; Pierluigi Oliverio, in his official capacity as a Councilmember for the City of San José; Madison Nguyen, in her official capacity as a Councilmember for the City of San José; Rose Herrera, in her official capacity as a Councilmember for the City of San José; Judy Chirco, in her official capacity as a Councilmember for the City of San José; Kansen Chu, in his official capacity as a Councilmember for the City of San José; Nora Campos, in her official capacity as a Councilmember for the City of San José; Nancy Pyle, in her official capacity as a Councilmember for the City of San José; and Does 1-20; Court: Superior Court of California, County of Santa Clara; Case No: 1-09-CV150427; Amount of Money or Other Relief Sought: Declaratory relief and attorney's fees; (3) Vietnamese-American Community of Northern California v. City of San José, et al.; Names of Parties Involved: Vietnamese-American Community of Northern California; City of San José; City Council of San Jose; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV107082; Amount of Money or Other Relief Sought: For declaratory and injunctive relief according to proof; (4) California Redevelopment Association, et al. v. Matosantos, et al.; Names of Parties Involved: California Redevelopment Association, League of California Cities, John F. Shirley, Ana Matosantos, John Chiang, Patrick O'Connell; Court: Supreme Court, State of California; Case No: S194861; Amount of Money or Other Relief Sought: Writ of mandate; (5) Campos v. City, et al.; Names of Parties Involved: Arthur Campos, City of San José, Does 1-100; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV-178335; Amount of Money or Other Relief Sought: Damages according to proof; (B) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) Association of Building, Mechanical and Electrical Inspectors (ABMEI); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and ABMEI; (2) Association of Engineers & Architects (AEA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AEA; (3) Association of Maintenance Supervisory Personnel (AMSP); Nature of Negotiations: Wages/Salaries,

*(Item Continued on the next page)*

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

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](http://www.sanjoseca.gov/employee_relations/moa.asp); Telephone for Employee Relations: 408-535-8150.

## **INVOCATION**

Pastor Tony Williams of Maranatha Christian Center presented the Invocation.

## **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 Item 3.3 deferred to August 30, 2011, Items 2.3(a), (c), (d), (e), (i), (k) and (m), and Item 3.6 deferred to August 9, 2011; Items 2.14 – 2.17 added from the Rules and Open Government Meeting of July 27, 2011, with renumbering of Items 4.4 to 2.18, and waived the ten-day noticing requirement for Item 3.5(a). (11-0.)

## CEREMONIAL ITEMS

### 1.1 Presentation of a proclamation declaring August 7, 2011 as “Assyrian Martyrs Remembrance Day” in the City of San José. (Chu/Oliverio)

Action: Mayor Reed and Council Members Chu and Oliverio presented a proclamation declaring August 7, 2011 as “Assyrian Martyrs Remembrance Day” in the City of San José.

### 1.2 Presentation of a proclamation declaring August 7 – 13, 2011 as National Farmers Market Week in the City of San Jose. (Chu)

Action: Mayor Reed and Council Member Chu presented a proclamation declaring August 7 – 13, 2011 as National Farmers Market Week in the City of San Jose.

## 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. 28935 – Amending Ordinance No. 28178 to extend the ending date of the pilot for the Neighborhoods Commission to December 31, 2011.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 28935 executed on June 28, 2011, submitted by the City Clerk.

Action: Ordinance No. 28935 was adopted. (11-0.)

### (b) **ORD. NO. 28936 – Granting a Commercial Solid Waste and Recyclable Material Collection Franchise for the South District to Allied Waste Services of North America, LLC dba Allied Waste Services of Santa Clara County.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 28936 executed on June 28, 2011, submitted by the City Clerk.

Action: Ordinance No. 28936 was adopted. (11-0.)

- 2.2 (c) **ORD. NO. 28937 – Granting a Commercial Solid Waste and Recyclable Material Collection Franchise for the North District to Allied Waste Services of North America, LLC dba Allied Waste Services of Santa Clara County.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 28937 executed on June 28, 2011, submitted by the City Clerk.

Action: Ordinance No. 28937 was adopted. (11-0.)

- (d) **ORD. NO. 28939 – Rezoning certain real property situated on the east side of Monterey Road, approximately 300 feet southerly of Alma Avenue, from the LI-Light Industrial and HI-Heavy Industrial Zoning Districts to the CG(PD) Planned Development Zoning District. PDC10-026**

Documents Filed: Proof of Publication of the Title of Ordinance No. 28939 executed on June 28, 2011, submitted by the City Clerk.

Action: Ordinance No. 28939 was adopted. (11-0.)

- (e) **ORD. NO. 28940 – Rezoning certain real property situated at the northeast corner of Toy Lane and Kettman Road (2605 Toy Lane), from A(PD) Planned Development Zoning District to R-1-8 (PD) Planned Development Zoning District. PDC07-052**

Documents Filed: Proof of Publication of the Title of Ordinance No. 28940 executed on June 28, 2011, submitted by the City Clerk.

Action: Ordinance No. 28940 was adopted. (11-0.)

- 2.3 (b) **Neighborhood Services and Education Committee Report of June 9, 2011. (Pyle)**  
[Deferred from 6/21/11 – Item 2.3(b)]
- (f) **Rules and Open Government Committee Report of May 4, 2011. (Mayor)**  
[Deferred from 5/24/11 – Item 2.3(c), et al, and 6/21/11 – Item 2.3(f)]
- (g) **Rules and Open Government Committee Report of April 27, 2011. (Mayor)**  
[Deferred from 5/17/11 – Item 2.3(a), et al, and 6/21/11 – Item 2.3(g)]
- (h) **Transportation and Environment Committee Report of June 6, 2011. (Liccardo)**
- (l) **Public Safety, Finance and Strategic Support Committee Report of June 16, 2011. (Constant)**

Documents Filed: (1) The Neighborhood Services and Education Committee Report dated June 9, 2011. (2) The Rules and Open Government Committee Reports dated May 4, 2011 and April 27, 2011. (3) The Transportation and Environment Committee Report dated June 6, 2011. (4) The Public Safety, Finance and Strategic Support Committee Report dated June 16, 2011.

Action: The committee reports were approved. (11-0.)

**2.3 (Cont'd.)**

- (a) **Rules and Open Government Committee Report of June 1, 2011. (Mayor)**  
[Deferred from 6/21/11 – Item 2.3(a)]
- (c) **Rules and Open Government Committee Report of May 18, 2011. (Mayor)**  
[Deferred from 6/14/11 – Item 2.3(a) and 6/21/11 – Item 2.3(c)]
- (d) **Rules and Open Government Committee Report of May 25, 2011. (Mayor)**  
[Deferred from 6/14/11 – Item 2.3(b) and 6/21/11 – Item 2.3(d)]
- (e) **Rules and Open Government Committee Report of May 11, 2011. (Mayor)**
- (i) **Rules and Open Government Committee Report of June 8, 2011. (Mayor)**
- (k) **Rules and Open Government Committee Report of June 15, 2011. (Mayor)**
- (m) **Rules and Open Government Committee Report of June 22, 2011. (Mayor)**

Action: Deferred to August 9, 2011 per City Clerk.

**2.7 Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the Gift Trust Fund:**

- (a) **Increase the estimate for Earned Revenue by \$35,000; and**
- (b) **Increase the appropriation to the Parks, Recreation and Neighborhood Services Department for O'Donnell's Garden's Park by \$35,000.**

**CEQA: Not a Project, File No. PP10-067(b), Appropriation Ordinance (Parks, Recreation and Neighborhood Services/City Manager's Office).**

Documents Filed: Memorandum from Deputy City Manager Norberto Dueñas and Budget Director Jennifer Maguire, dated July 20, 2011, recommending adoption of an appropriation ordinance and funding sources resolution amendments.

Council Member Liccardo extended his appreciation to local residents that comprised the University Neighborhoods Coalition for their efforts in raising funds for this project during these economically challenging times.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, Ordinance No. 28941 entitled: "An Ordinance of the City of San José Amending Ordinance No. 28928 to appropriate monies in the Gift Trust Fund for the O'Donnell's Garden Park Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", and Resolution No. 75933, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 75872 Setting forth the Estimated Sources of Funds for the Fiscal Year 2011-2012 to Adjust Revenues in the Gift Trust Fund", were adopted. (11-0.)

- 2.8 Adopt a resolution to repeal Resolution No. 75898 and authorize the Director of Finance to execute the Second Amendment to the Public Address System Agreement with Signatures Technology Inc., dba Com-Net Software, to expand the public address system into the Federal Inspections Services International Terminal at the Norman Y. Mineta San José International Airport and to increase the compensation by an amount not to exceed \$50,438, from \$2,671,231 to \$2,721,669, including all hardware, software, sales tax, and the first year of support and professional services and warranty. CEQA: Not a Project, File No. P10-066(c), Purchase Order/Cooperative Purchase of Supplies, Equipment & Professional Services with no changes in the physical environment. (Finance)**

Documents Filed: City Council Action Request from Director of Finance Scott P. Johnson, dated August 2, 2011, recommending adoption of a resolution.

Action: Resolution No. 75341, entitled: “A Resolution of the Council of the City of San José Repealing Resolution No. 75898 and Authorizing the Director of Finance to Execute the Second Amendment to the Public Address System Agreement with Signatures Technology, Inc., dba Com-Net Software Relating to the Public Address System at the Norman Y. Mineta San José International Airport”, was adopted. (11-0.)

- 2.9 Approve a matching grant agreement with the Castellano Family Foundation in an amount up to \$5,000 to support the Independent Police Auditor's Teen Leadership Council. CEQA: Not a Project; File No. PP10-066, Services that involve no physical changes to the environment. (Independent Police Auditor)**

Documents Filed: Memorandum from Independent Police Auditor Judge LaDoris Cordell (Ret.), dated July 18, 2011, recommending approval of a matching grant agreement.

Action: A matching grant agreement with the Castellano Family Foundation in an amount up to \$5,000 to support the Independent Police Auditor's Teen Leadership Council was approved. (11-0.)

- 2.10 Adopt a resolution to amend the City of San Jose Pay Plan effective August 2, 2011, to create the following classification:**

**(a) Principal Engineer/Architect (3820)**

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

Documents Filed: Memorandum from Deputy City Manager/Human Resources Director Alex Gurza , dated July 12, 2011 recommending adoption of a resolution.

Action: Resolution No. 75935, entitled: “A Resolution of the Council of the City of San José Amending the City of San José Pay Plan”, was adopted. (11-0.)

- 2.11 Adopt a resolution initiating proceedings and setting August 16, 2011 at 1:30 p.m. for a public hearing on the reorganization of territory designated as Downer No. 11 which involves the annexation to the City of San José of approximately 8.6 gross acres of land generally located 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: Mitigated Negative Declaration (Related approved Prezoning File No. PDC10-007). Council District 10. (Planning, Building and Code Enforcement)**

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on July 22, 2011 submitted by the City Clerk.

Action: Continued to August 9, 2011 per Administration.

- 2.12 Adopt a resolution of intention to form Community Facilities District No. 14 (Raleigh/Charlotte) to authorize the levy of special tax pursuant to the City of San José Community Facilities District Financing Procedure, to set a public hearing on September 20, 2011 at 1:30 p.m., regarding the formation of the District, to hold an election immediately following the close of the public hearing and authorizing other related actions. CEQA: Resolution No. 72772, Hitachi Mixed Use Project Final EIR. Council District 2. (Public Works)**

Documents Filed: (1) Memorandum from Acting Director of Public Works David Sykes, dated July 11, 2011, recommending adoption of a resolution. (2) Letter from Roland Lebrun offering suggestions for the recommended project.

Public Comments: Roland Lebrun asked that the Council consider additional trail connections to Hitachi transit village and submitted a letter for Council's review.

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

Action: Resolution No. 75936, entitled: "A Resolution of the Council of the City of San José of Intention to Establish a Community Facilities District and to Authorize the Levy of Special Taxes", was adopted. (11-0.)

- 2.13 Adopt a resolution summarily vacating three sanitary sewer easements lying on the property owned by Win Time @ First, LLC, a California limited liability company (APN 097-14-094) between Holger Way (private street) and State Route 237, east of North First Street. CEQA: Addendum to the North San Jose Development Policies Update Final EIR, EIR Resolution No. 72768, File No. CP10-059. Council District 4. (Public Works)**

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

**2.13 (Cont'd.)**

Action: Resolution No. 75937 entitled: “A Resolution of the Council of the City of San José Summarily Vacating Three Sanitary Sewer Easements Lying on a Private Property Between Holger Way (Private Street) and State Route 237, East of North First Street”, was adopted. (11-0.)

**2.14 Subject to approval under Orders of the Day, as referred by the Rules and Open Government Committee on July 27, 2011, approve a support position for AB 341 (Chesbro) Solid Waste: Diversion. (Environmental Services)  
[Rules Committee referral 7/27/11 – Item D(1)(b)]**

Documents Filed: Memorandum from City Clerk Dennis Hawkins, dated July 27, 2011, transmitting the recommendations of the Rules and Open Government Committee.

Public Comments: David Wall recommended that the City of San José take 100% lead in this project.

Motion: Council Member Pyle moved approval of the recommendations as referred by the Rules and Open Government Committee. Council Member Herrera seconded the motion.

Action: A support position for AB 341 (Chesbro) Solid Waste: Diversion, was accepted. (11-0.)

**2.15 Subject to approval under Orders of the Day, as referred by the Rules and Open Government Committee on July 27, 2011, approve a support position for AB 723 (Bradford) Public Goods Charge for Energy Efficiency. (Environmental Services)  
[Rules Committee referral 7/27/11 – Item D(1)(c)]**

Documents Filed: Memorandum from City Clerk Dennis Hawkins, dated July 27, 2011, transmitting the recommendations of the Rules and Open Government Committee.

Action: A support position for AB 723 (Bradford) Public Goods Charge for Energy Efficiency, was accepted. (11-0.)

**2.16 Subject to approval under Orders of the Day, as referred by the Rules and Open Government Committee on July 27, 2011:**

- (a) **Appoint Jonathan I. Clough, Donna Garcia-Cowsert, Kevin P. Klink, and Dr. Charles Whitcomb to the San José Arena Authority Board. (Mayor)**
- (b) **Reappoint Jean Lee and Harish Chinai to the Library Commission. (Oliverio)**
- (c) **Reappoint Ramiro Torres and Steven Cohen to the Historic Landmarks Commission. (Oliverio)**

**[Rules Committee referral 7/27/11 – Item G(1)(a) – G(1)(c)]**

**2.16 (Cont'd.)**

Documents Filed: Memorandum from City Clerk Dennis Hawkins, dated July 27, 2011, transmitting the recommendations of the Rules and Open Government Committee.

Action: The Appointments to the San José Arena Authority Board, and Reappointments to the Library Commission and Historic Landmarks Commission were accepted. (11-0.)

**2.17 Subject to approval under Orders of the Day, as referred by the Rules and Open Government Committee on July 27, 2011:**

- (a) **Approve National Night Out, to be held at various locations throughout the City on August 2, 2011, as a City Council sponsored Special Event; and**
- (b) **Approve and accept donations from various individuals, businesses, or community groups to support the event.**

**CEQA: Not a Project. (City Clerk)**

**[Rules Committee referral 7/27/11 – Item H(4)]**

Documents Filed: Memorandum from City Clerk Dennis Hawkins, dated July 27, 2011, transmitting the recommendations of the Rules and Open Government Committee.

Action: National Night Out as a City Council Sponsored Special Event was approved and authorization to accept donations from various individuals, businesses or community groups to support the event, was approved. (11-0.)

**2.18 Consideration of an ordinance approving an amendment to a Development Agreement with Cisco Technology, Inc. to remove a requirement that 1/2 of the square footage entitled be constructed on the subject property within 12 years of the executed date of the Agreement. The subject property is located in the A(PD) Planned Development Zoning District, said area bounded by Highway 237, North First Street, Grand Boulevard, and Disk Drive (75 Nortech Parkway)(Cisco Technology, Owner). CEQA: EIR Resolution No. 69636 and addendum thereto.**

**DA08-004 – District 4**

*Note: Renumbered from Item 4.4*

Documents Filed: (1) Memorandum from Director of Economic Development/Chief Strategist Kim Welsh on Project File No. DA08-004, dated July 21 2011, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated July 28, 2011, transmitting the Planning Commission recommendation. (3) Proof of Publication of Notice of Public Hearing, executed on July 15, 2011 submitted by the City Clerk. (4) Statement and Declaration of Conflict of Interest Form from Council Member Liccardo, dated August 2, 2011, declaring a conflict of interest due to ownership of Cisco stock. (5) Statement and Declaration of Conflict of Interest Form from Council Member Herrera, dated August 2, 2011, declaring a conflict of interest due to ownership of Cisco stock.

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

## 2.18 (Cont'd.)

Action: Upon motion by Council Member Pyle, seconded by Vice Mayor Nguyen and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, and Ordinance No. 28942, entitled: “An Ordinance of the City of San José Amending Ordinance No. 26136, Which Ordinance Approved a Development Agreement with Cisco Technology, Inc. Relative to the Development of Real Property in North San José, and Amending Ordinance No. 28339 and Ordinance No. 28446, Which Ordinances Amended Said Development Agreement, in Order to Further Amend the Original Development Agreement, as Amended, to Modify and Find Compliance with a Certain Construction Condition Contained at Section 1.(c)2 of the Original Development Agreement and Authorizing the City Clerk to Execute the Third Amendment to Development Agreement”, was passed for publication. (9-0-0-2. Abstain: Herrera, Liccardo.)

### END OF CONSENT CALENDAR

## STRATEGIC SUPPORT SERVICES

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

The City Manager announced that San Jose’s Environmental Innovation Center was a recipient of a grant from the Federal Economic Development Administration. As a result of recent staffing cuts and redeployments, she expressed the need for establishing new expectations with reduced services.

- 3.3 Consider an ordinance amending Title 3 of the San José Municipal Code to add new Chapter 3.54 and 3.56, and to amend Sections 3.36.575, 3.36.1925, 3.36.1930, 3.36.2030 and 3.36.2050 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. CEQA: Not a Project; File No. PP10-068(b), Municipal Code or Policy. (City Attorney's Office)  
(Rules Committee referral 05/25/11)  
(Deferred from 6/7/11 – Item 3.6)**

Action: Deferred to August 30, 2011 per Administration.

- 3.4 Hold a public hearing on the Sewer Service and Use Charges and Storm Sewer Services Charges report filed by the Director of Finance with the City Clerk’s Office and adopt a resolution to approve the placement of recommended charges on the 2011-2012 Santa Clara County assessment roll, with such modifications as the City Council may make based on public hearing testimony. CEQA: Not a Project, File No. PP10-069(a) City Organizational & Administrative Activities. (Finance)**

Documents Filed: Memorandum from Director of Finance Scott P. Johnson, dated July 13, 2011, recommending conducting a public hearing on Sewer Service and Use Charges and Storm Sewer Service Charges.

### 3.4 (Cont'd.)

Public Comments: David Wall expressed opposition to a 'sliding scale', offering that the rate should be predicated on flow.

City Attorney Richard Doyle asked that this item be renoticed and continued for two weeks and that Council take action on the report itself.

Council Member Oliverio asked for clarification from Staff on equalizing charges according to flow and its potential for providing extra funding for sewer improvements.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the public hearing was renoticed to August 16, 2011; Resolution No. 75938, entitled: "A Resolution of the Council of the City of San José approving the Annual Report for Fiscal Year 2011-2012 of the Director of Finance on Sanitary Sewer Service and Use Charges and Storm Sewer Service Charges and Approving the Placement of Charges as Set Forth Therein on the 2010-2011 Tax Roll", was adopted. Staff was directed to return on August 16, 2011 with a breakout report on the differential rate between single-family homes and condos/townhouses, and if equalizing charges according to flow would provide extra funding for sewer improvements. (11-0.)

- 3.5
- (a) (1) **Subject to approval under Orders of the Day, Council by motion waive the 10-day noticing requirement for Item 3.5(a)(2).**
  - (2) **Discussion regarding ballot measure polling results and direction on revenue measures.**
  - (b) **Update on state budget impacts.**
  - (c) **Update regarding status of discussions on ballot measure language and retirement reform negotiations with the City's bargaining units.**
  - (d) **Defer to September 20th, discussion and consideration of declaration of a Fiscal and Public Safety Emergency.**
  - (e) **Defer discussion of possible draft ballot language for ballot measures allowing the residents of San José to vote on proposed changes to the Charter.**

**CEQA: Not a Project, File No. PP10-068(b), General Procedure and Policy Making, Municipal Code Title 3.  
(Deferred from 6/24/11 – Item 3.1)**

Documents Filed: (1) Memorandum from Council Member Liccardo, dated August 1, 2011, offering additions to staff recommendations. (2) Memorandum from City Manager Debra Figone, dated July 22, 2011, offering recommendations on discussion of ballot measure polling results, discussion of state budget impacts, updates on discussions of ballot measure language and retirement reform negotiations, deferral of declaration of fiscal and public safety emergency and deferral of discussion of possible draft ballot language. (3) Replacement memorandum from Communications Director Tom Manheim, dated July 28, 2011, regarding survey of potential revenue measures.

### 3.5 (Cont'd.)

The Council waived the ten-day noticing requirement per Orders of the Day.

City Manager Debra Figone outlined the Staff's recommendations, and Communications Director Tom Manheim introduced the ballot measure survey.

David Metz, representing Fairbank, Maslin, Maullin, Metz & Associates, provided key findings from the survey.

Public Comments: (1) David Wall blamed the Council for creating the fiscal emergency and offered criticism of what he sees as a three-party contract. (2) Kevin Fish warned Council that such a ballot measure would pose a violation of federal labor codes.

Legislative Research Specialist Roxanne Miller responded to questions regarding the loss of sales tax revenue.

Motion: Council Member Liccardo moved approval of the Staff recommendations with direction as outlined below in "Action". Council Member Constant seconded the motion.

Council Member Kalra expressed concerns that the draft ballot issue language raises some legal issues and does not get the City where it needs to be in terms of real pension reform.

Action: On a call for the question, the motion carried, Staff recommendations were accepted, with additional recommendation to decline going to the November 2011 ballot with any revenue-raising measure. (8-2-1. Noes: Campos, Kalra. Absent: Oliverio.)

### 3.6 **As recommended by the Public Safety, Finance and Strategic Support on June 16, 2011, accept the audit of Supplemental Military Pay and Benefits. CEQA: Not a Project, File No. PP10-069(a), City Organizational and Administrative Activities, Staff Report. (City Auditor)** **[Public Safety, Finance and Strategic Support Committee referral 6/14/11]**

Action: Deferred to August 9, 2011 per Council District 1.

## COMMUNITY & ECONOMIC DEVELOPMENT

- 4.1 (a) Approve a Parkland Agreement for Tentative Maps No. PT07-083 and PT07-084 with Novellus Systems, Inc., Vista Montana Park Homes, LLC, and Equity-Tasman Apartments, LLC (collectively “Developer”) under the Parkland Dedication Ordinance for the development of a one acre and five acre park and to provide certain extraordinary park benefits to the City.
- (b) Approve an Environmental Agreement related to the Parkland Agreement for Tentative Maps No. PT07-083 and PT07-084 with Developer for the completion of certain soil remediation required by the California Department of Toxic Substances Control for the one acre and five acre parks.
- (c) Approve an ordinance approving the Second Amendment to the Development Agreement with Developer setting forth the terms, conditions and obligations of the Developer in order to satisfy the Developer’s Parkland Dedication Obligation and provide certain extraordinary park benefits to the City.
- DA11-001 – District 4**
- (d) Adopt the following 2011-2012 Appropriation Ordinance amendments in the Subdivision Park Trust Fund (Fund 375):
- (1) Establish an appropriation to the Parks Recreation and Neighborhood Services Department in the amount \$3,000,000 for the Vista Montana Turnkey Park Improvements;
  - (2) Decrease the Reserve: Vista Montana Turnkey Park by \$2,800,000; and
  - (3) Decrease the Reserve: Future PDO/PIO Projects by \$200,000

**CEQA: North San José Development Policies Updated Final EIR, EIR Resolution No 72768. Council District 4. (Planning, Building and Code Enforcement/Parks, Recreation and Neighborhood Services/City Manager’s Office)**

*Note: Heard concurrently with Items 4.2 and 4.3*

Documents Filed: (1) Joint memorandum from Deputy City Manager Norberto Dueñas, Director, Planning, Building and Code Enforcement Joseph Horwedel and Budget Director Jennifer Maguire, dated July 11, 2011, recommending approval of an ordinance. (2) Transmittal memorandum from Director, Planning, Building and Code Enforcement Joseph Horwedel, dated July 11, 2011, modifying zoning provisions for Project DA11-001. (3) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File Nos. DA11-001, PDC11-006, and PDC11-007, dated May 2, 2011, recommending approval. (4) Memorandum from Planning Commission Secretary Joseph Horwedel, dated July 28, 2011, transmitting the Planning Commission recommendation. (5) Proof of Publication Notice of Public Hearing, executed on July 15, 2011 submitted by the City Clerk.

Mayor Reed provided meeting disclosures.

#### 4.1 (Cont'd.)

Mayor Reed opened the public hearing.

Public Comments: Erik Schoennauer provided an overview of the agreements and urged support.

Mayor Reed closed the public hearing.

Action: Upon motion by Council Member Chu, seconded by Council Member Herrera and carried unanimously, the recommendations of the Planning Commission and the Planning Director were approved, and a Parkland Agreement for Tentative Maps No. PT07-083 and PT07-084 with Novellus Systems, Inc., Vista Montana Park Homes, LLC, and Equity-Tasman Apartments, LLC (collectively “Developer”) under the Parkland Dedication Ordinance for the development of a one acre and five acre park and to provide certain extraordinary park benefits to the City, and an Environmental Agreement related to the Parkland Agreement for Tentative Maps No. PT07-083 and PT07-084 with Developer for the completion of certain soil remediation required by the California Department of Toxic Substances Control for the one acre and five acre parks were approved, and Ordinance No. 28943, entitled: “An Ordinance of the City of San José Amending Ordinance Nos. 28154 and 28662 , Which Ordinances Approved a Development Agreement, and a First Amendment Thereto, Respectively, with Novellus Systems, Inc. Relative to the Development of Real Property in North San José, to Amend Provisions Contained in the Development Agreement in Connection with Certain Parkland Obligations and to Authorize the City Clerk to Execute a Second Amendment to the Development Agreement”, passed for publication, and Ordinance No. 28944, entitled: “An Ordinance of the City of San José Amending Ordinance No. 28928 to Appropriate Monies in the Subdivision Park Trust Fund for the Vista Montana Turnkey Park; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”, was adopted. (11-0.)

#### 4.2 **Consideration of an ordinance rezoning the real property located on the northwesterly corner of Vista Montana and W. Tasman Drive (81 Vista Montana) and westerly and southerly corners of N. First Street and Vista Montana respectively from A(PD) Planned Development Zoning District to IP(PD) Planned Development Zoning District to modify the zoning provision in each of the zonings related to parkland development and maintenance. CEQA: Addendum to the North San José Development Policies Update Finale EIR, EIR Resolution No. 72768. PDC11-006 – District 4**

*Heard concurrently with Item 4.1.*

## 4.2 (Cont'd.)

Documents Filed: (1) Transmittal memorandum from Director, Planning, Building and Code Enforcement dated July 11, 2011, modifying zoning provisions for Project PDC11-006. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File Nos. DA11-001, PDC11-006, and PDC11-007, dated May 2, 2011, recommending approval. (3) Memorandum from Planning Commission Secretary Joseph Horwedel, dated July 28, 2011, transmitting the Planning Commission recommendation. (4) Proof of Publication Notice of Public Hearing, executed on July 15, 2011 submitted by the City Clerk.

Action: Upon motion by Council Member Chu, seconded by Council Member Herrera and carried unanimously, the recommendations of the Planning Commission and the Planning Director were approved, Ordinance No. 28945, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the Northwesterly Corner of Vista Montana and West Tasman Drive from A(PD) Planned Development Zoning District to IP(PD) Planned Development Zoning District”, was passed for publication. (11-0.)

## 4.3 **Consideration of an ordinance rezoning the real property located on the northwesterly corner of Vista Montana and W. Tasman Drive (81 Vista Montana) and westerly and southerly corners of N. First Street and Vista Montana respectively from A(PD) Planned Development Zoning District to IP(PD) Planned Development Zoning District to modify the zoning provision in each of the zonings related to parkland development and maintenance. CEQA: Addendum to the North San José Development Policies Update Finale EIR, EIR Resolution No. 72768. PDC11-007 – District 4**

*Heard concurrently with Item 4.1.*

Documents Filed: (1) Transmittal memorandum from Director, Planning, Building and Code Enforcement dated July 11, 2011, modifying zoning provisions for Project PDC11-006. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File Nos. DA11-001, PDC11-006, and PDC11-007, dated May 2, 2011, recommending approval. (3) Memorandum from Planning Commission Secretary Joseph Horwedel, dated July 28, 2011, transmitting the Planning Commission recommendation. (4) Proof of Publication Notice of Public Hearing, executed on July 15, 2011 submitted by the City Clerk.

Action: Upon motion by Council Member Chu, seconded by Council Member Herrera and carried unanimously, the recommendations of the Planning Commission and the Planning Director were approved, Ordinance No. 28946, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the Westerly and southerly Corners of North First Street and Vista Montana From the A(PD) Planned Development Zoning District to the IP(PD) Planned Development Zoning District”, was passed for publication. (11-0.)

- 4.4 **Consideration of an ordinance approving an amendment to a Development Agreement with Cisco Technology, Inc. to remove a requirement that 1/2 of the square footage entitled be constructed on the subject property within 12 years of the executed date of the Agreement. The subject property is located in the A(PD) Planned Development Zoning District, said area bounded by Highway 237, North First Street, Grand Boulevard, and Disk Drive (75 Nortech Parkway)(Cisco Technology, Owner). CEQA: EIR Resolution No. 69636 and addendum thereto. DA08-004 – District 4**

Action: Renumbered to Item 2.18.

- 4.5 (a) **Adopt a resolution authorizing the City Manager to negotiate and execute an agreement with the City of Campbell (1) to allow financial adjustments between the City of Campbell and the City of San José to account for costs and proceeds flowing from the possible future annexation of the Cambrian No. 36 pocket area to the City of Campbell; (2) to establish a process to calculate and reconcile such costs and proceeds during the term of the agreement; and (3) that reflects and is consistent with the key terms and provisions as described to City Council in memoranda from the Administration;**
- (b) **Adopt a Resolution to accomplish all of the following:**
- (1) **Extend until November 30, 2011 the time to work with the City of Campbell on an alternative reorganization proposal for the Cambrian No. 36 pocket area; and**
  - (2) **Express support for consideration of the City of Campbell's actions to annex the Cambrian No. 36 pocket including LAFCO consideration of detachment of the Central Park Drive, Oak Park Lane and Highland Park Lane area from the City of San Jose; and**
  - (3) **Suspend City's prior reorganization action for Cambrian No. 36; and**
  - (4) **Authorize the Director of Planning, Building and Code Enforcement to take certain actions to facilitate the alternative reorganization of the Cambrian No. 36 pocket area pursued by the City of Campbell or, alternatively, to complete the City's Cambrian No. 36 reorganization if certain actions do not occur, whichever is appropriate.**

**CEQA: Not a Project, File No. PP10-066, Agreements/Contracts; and San Jose 2020 General Plan Final EIR, Resolution No. 65459. Council District 9. (Planning, Building and Code Enforcement/Finance)**

Documents Filed: (1) Joint memorandum from Director, Planning, Building and Code Enforcement Joseph Horwedel and Director of Finance Scott P. Johnson, dated July 20, 2011, recommending approval of an agreement with the City of Campbell related to the reorganization of Cambrian No. 36. (2) Supplemental joint memorandum from Director, Planning, Building and Code Enforcement Joseph Horwedel and Director of Finance Scott P. Johnson, dated July 28, 2011, resolving details before prior agreement could be finalized.

#### 4.5 (Cont'd.)

Director, Planning, Building and Code Enforcement Joseph Horwedel provided a brief introduction to the agreement.

Public Comment: The following individuals expressed enthusiasm and support for the agreements: Lisa Harmer, Michael Krisman, Tom Davis (Campbell Village Neighborhood Association); Ken Prochazka and David Wall.

Council Member Oliverio declined support of the agreement for what he deemed a lack of consistency.

Action: Upon motion by Council Member Rocha, seconded by Council Member Constant and carried unanimously, Resolution No. 75939, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with the City of Campbell (1) to Allow Financial Adjustments Between the City of Campbell and the City of San José to Account for Costs and Proceeds Flowing from the Possible Future Annexation of the Cambrian No. 26 Pocket Area to the City of Campbell, (2) to Establish a Process to Calculate and Reconcile Such Costs and Proceeds During the Term of the Agreement, and (3) That Reflects and is Consistent with the Key Terms and Provisions as Described to City Council in Memoranda from the Administration"; and Resolution No. 75940, entitled: "A Resolution of the Council of the City of San José Extending to November 30, 2011 the Period of Time for City to Continue to Work with the City of Campbell Regarding Options for an Alternative Reorganization of that Certain Territory Designated as Cambrian No. 36 and Allowing Continued Suspension of City's Previously Ordered Reorganization of Cambrian No. 36, Expressing Support for the City of Campbell's Efforts to Pursue an Alternative Reorganization of the Cambrian No. 36 Pocket Area, and Authorizing the Director of Planning, Building and Code Enforcement to Sign Applications or Other Documents that May be Required or Requested by the Santa Clara county Local Agency Formation Commission to Indicate City's Support for or to Facilitate the City of Campbell's Reorganization Proposal for the Cambrian No. 36 Pocket Area, Or, In the Alternative, Directing the Director of Planning, Building and Code Enforcement to Proceed with the Completion of City's Previously Ordered Reorganization of Cambrian No. 36, as Appropriate", were adopted. (10-1. Noes: Oliverio.)

**4.6 Consideration of an ordinance 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. CEQA: Negative Declaration, File No. PP11-039. Citywide**

Action: Deferred to September 13, 2011 per Administration.

**NOTICE OF CITY ENGINEER’S PENDING DECISION ON FINAL MAPS**

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

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/Units</u>	<u>Type</u>	<u>Proposed Decision</u>
10064	Between W. Campbell Avenue and Via Cristobal 750 feet westerly of Via D’Este	1	Edenbridge Castilla, LP	7/6	SFD	Approve

**OPEN FORUM**

David Wall suggested that the Office of the City Auditor should ensure that the Reclaimed Water Department and Advanced Water Treatment Facility each have their own separate and distinct audits.

**ADJOURNMENT**

The Council of the City of San José adjourned at 4:02 p.m. in memory of Fred DeFuniak, who passed away in June. Mr. DeFuniak served for nearly 7 years on the San José Elections Commission, and as Chair for the last 3 years, was a member of the Santa Clara County Grand Jury, and was a dedicated educator serving as an administrator with the East Side Union High School District. (City Clerk)

Minutes Recorded, Prepared and Respectfully Submitted by,

Dennis Hawkins, CMC  
City Clerk

rmk/08-02-11MIN

Access the video, the agenda and related reports for this meeting by visiting the City's website at <http://www.sanjoseca.gov/clerk/agenda.asp> or <http://www.sanjoseca.gov/clerk/MeetingArchive.asp>. For information on any ordinance that is not hyperlinked to this document, please contact the Office of the City Clerk at (408) 535-1266.