

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, SEPTEMBER 13, 2011

The Council of the City of San José convened in Regular Session at 9:32 a.m. in the Council Chambers at City Hall.

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

Absent: Council Members - Herrera, Kalra, Oliverio.

STRATEGIC SUPPORT SERVICES

3.2 Accept Labor Negotiations Update.

Employee Relations Deputy Director Gina Donnelly offered the Labor Negotiations Update.

Documents Filed: Memorandum from Deputy City Manager Alex Gurza, dated September 12, 2011, providing an update to retirement reform negotiations.

Action: The update was accepted.

CLOSED SESSION

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

Absent: Council Members - Liccardo. (Excused)

Upon motion unanimously adopted, Council recessed at 9:45 a.m. to a Closed Session in Room W133 (A) to confer with Legal Counsel with respect to Public Employment/Public Employee Appointment pursuant to Government Code Section 54957: Department: Public Works; Title: Public Works Director. (B) to confer with Legal Counsel pursuant to Government Code subsection (a) of Section 54956.9 with respect to existing litigation:

CLOSED SESSION (Cont'd.)

(1) 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; (2) 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: United States District Court, Northern District of California; Case No: C10-00210 RS; Amount of Money or Other Relief Sought: Declaratory and injunctive relief; (C) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) Association of Building, Mechanical and Electrical Inspectors (ABMEI); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and ABMEI; (2) Association of Engineers & Architects (AEA); 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); 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: <http://www.sanjoseca.gov/employeerelations/moa.asp>; Telephone for Employee Relations: 408-535-8150.

CLOSED SESSION (Cont'd.)

By unanimous consent, Council recessed from the Closed Session at 11:10 a.m. and reconvened to Regular Session at 1:31 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

The Most Venerable Thich Chon Minh, Quan The Am Thien Tu (Buddist Temple) presented the Invocation.

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance. (District 8)

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(a) and (f) deferred to September 20, 2011. (11-0.)

City Manager Debra Figone announced the appointment of David Sykes to the position of Director of Public Works.

CLOSED SESSION REPORT

City Attorney Richard Doyle reported on the settlement in the case of DeLaRosa et al. v. the City of San José.

CEREMONIAL ITEMS

1.1 Presentation of proclamation declaring San José's participation in "The Great Race for Clean Air," during September and October, 2011. (Environmental Services)

Action: Mayor Reed represented a proclamation declaring San José's participation in "The Great Race for Clean Air," during September and October, 2011.

CEREMONIAL ITEMS (Cont'd.)

1.2 Presentation of a proclamation declaring September 16, 2011 as “Mexican Independence Day” in the City of San José. (Campos)

Action: Mayor Reed and Council Members Campos and Rocha presented a proclamation declaring September 16, 2011 as “Mexican Independence Day” in the City of San José.

1.3 Presentation of a commendation to the residents of Watkins Way for promoting energy efficiency measures and for launching Project 500², an environmentally-themed economic development campaign, in their neighborhood. (Herrera) (Rules Committee referral 9/7/11)

Action: Mayor Reed and Council Member Herrera commended the residents of Watkins Way for promoting energy efficiency measures and for launching Project 500², an environmentally-themed economic development campaign, in their neighborhood.

CONSENT CALENDAR

Upon motion by Council Member Herrera, seconded by Council Member Pyle and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (11-0.)

2.1 Approval of minutes.

- (a) **Regular Minutes of May 3, 2011**
- (b) **Joint Council/San José Financing Authority Minutes of May 3, 2011**
- (c) **Regular Minutes of May 10, 2011**
- (d) **The 2011-2012 Budget Study Session Minutes of May 11, 2011 – May 19, 2011**
- (e) **Regular Minutes of May 17, 2011**
- (f) **Regular Minutes of May 24, 2011**
- (g) **Regular Minutes of May 31, 2011**

Documents Filed: Regular Minutes of May 3, May 10, May 17, May 24, and May 31, 2011. (2) Joint Council/San José Financing Authority Minutes of May 3, 2011. (3) 2011-2012 Budget Study Session Minutes of May 11, 2011 – May 19, 2011.

Action: The Council Minutes were approved. (11-0.)

2.2 Final adoption of ordinances.

- (a) **ORD. NO. 28952 – Establishing and declaring the boundaries of the City Council Districts using 2010 Federal Census Data.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 28952 executed on August 30, 2011, submitted by the City Clerk.

Action: Ordinance No. 28952 was adopted. (11-0.)

- 2.2 (b) **ORD. NO. 28953 – Rezoning certain real property situated at the northeast corner of North Capitol Avenue and Sierra Road from R-1-8 Single Family Residence**

Documents Filed: Proof of Publication of the Title of Ordinance No. 28953 executed on August 30, 2011, submitted by the City Clerk.

Action: Ordinance No. 28953 was adopted. (11-0.)

2.3 **Approval of Council Committee Reports.**

- (c) **The Community and Economic Development Committee Report of August 22, 2011. (Herrera)**
- (d) **The Rules and Open Government Committee Report of August 24, 2011. (Mayor)**
- (e) **The Rules and Open Government Committee Report of August 31, 2011. (Mayor)**

Documents Filed: (1) The Community and Economic Development Committee Report dated August 22, 2011 (2) The Rules and Open Government Committee Reports dated August 24 and August 31, 2011.

Public Comments: David Wall offered an update on shopping cart theft and commented on the revolving door waiver request which was presented at the Rules and Open Government Committee meeting.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the Committee Reports were approved. (11-0.)

- (a) **The Rules and Open Government Committee Report of August 17, 2011. (Mayor)**
- (b) **The Public Safety, Finance and Strategic Support Committee Report of August 18, 2011. (Constant)**
- (f) **The Rules and Open Government Committee Report of August 10, 2011. (Mayor)**
[Deferred from 8/30/11 – Item 2.3(a)]

Action: Deferred to September 20, 2011 per City Clerk.

- 2.7 Adopt a resolution amending the Open Government requirement to videotape all City Council meetings to exempt any City Council meeting that is called to order for the sole purpose of either convening or reporting out on the results of a closed session and repealing Resolution No. 74414. CEQA: Not a Project, File No. PP10-069, City organizational & administrative activities. (City Manager's Office)**

Documents Filed: City Council Action Request from Communications Director Tom Manheim, dated September 13, 2011, recommending a resolution to amend the requirement to videotape council meetings.

Action: Resolution No. 75978, entitled: "A Resolution of the Council of the City of San José (1) Amending the Open Government Requirement to Videotape all City Council Meetings to Exempt any City Council Meeting that is Called to Order for the Sole Purpose of Either Convening or Reporting Out on the Results of a Closed Session; and (2) Repealing Resolution No. 74414", was adopted. (11-0.)

- 2.8 Authorize travel for City Manager Debra Figone to Milwaukee, Wisconsin on September 18-20, 2011, to participate in the ICMA 97th Annual Conference. Source of Funds: City Manager's Personal Services Appropriation. CEQA: Not a Project, File No. PP10-069, administrative activities. (City Manager's Office)**

Documents Filed: Memorandum from City Manager Debra Figone, dated August 22, 2011, requesting approval of a travel request.

Action: The travel request was approved. (11-0.)

- 2.9 Adopt a resolution:**

- (a) Authorizing an alternative competitive process for the sale of the property at 502 Calero Avenue, APN: 687-31-042;**
- (b) Approving an agreement between the City and Richard G. Swan and Nancy C. Swan, for sale of the property in the amount of \$390,000, including payment from sales proceeds of the associated \$11,700 brokerage fee to buyer's broker; and**
- (c) Authorizing the City Manager or designee to execute all sales documents and the deed necessary to complete the transaction, and ratifying any disclosures or certifications made by the City Manager or designee regarding the property as required by law.**

CEQA: Exempt, File No. PP10-040. Council District 2. (Economic Development)

Documents Filed: Memorandum from Director of Economic Development/Chief Strategist Kim Walesh, dated August 22, 2011, recommending adoption of a resolution.

Action: Resolution No. 75979, entitled: "A Resolution of the Council of the City of San José, Approving an Alternative Competitive Process for the Sale of Real Property at 502 Calero Avenue, Approving an Agreement with Richard G. Swan and Nancy C. Swan for Sale of the Property in the Amount of \$390,000 and Authorizing the Director of Economic Development to Negotiate and Execute Certain Documents Necessary to Complete the Transaction", was adopted. (11-0.)

2.10 Adopt a resolution approving the agreements set forth below and authorizing and directing the City Manager or designee to execute subject agreements together with all other documents needed to conclude the transaction.

- (a) A Purchase and Sale Agreement for Electric Pole Line Easement with Los Esteros Critical Energy Facility, LLC (“LECEF”) setting forth terms and conditions of City’s conveyance of the easement to Pacific Gas and Electric Company (“PG&E”) on a 16,575 square foot portion of City’s Water Pollution Control buffer lands, and**
- (b) An Electric Pole Line Easement Agreement with PG&E allowing it the non-exclusive use of a portion of City’s WPCP buffer lands for an electrical pole line to connect existing PG&E Transmission Lines with the adjacent LECEF Facility.**

CEQA: Exempt, File No. PP10-135, July 16, 2010. Council District 4. (Economic Development)

Documents Filed: (1) Memorandum from Director of Economic Development/Chief Strategist Kim Walesh, dated August 22, 2011, recommending adoption of a resolution. (2) Letter from Chairperson Chuck Reed, the Treatment Plant Advisory Committee, dated September 8, 2011, stating concurrence with the Staff recommendation.

Action: Resolution No. 75980, entitled: “A Resolution of the Council of the City of San José Authorizing the Director of Economic Development to Execute Certain Documents for the Conveyance of Property for an Electric Pole Line Easement on the City’s Water Pollution Control Buffer Lands”, was adopted. (11-0.)

2.11 Approve the recommendation of the Arena Authority to accept the HP Pavilion Advertising Plan as submitted by San Jose Arena Management LLP with upgrades to electronic signage along the Pavilion public concourse and hockey dasher boards. Council District 3. CEQA: Not a Project, File No. PP10-066(e), services that involve no physical changes to the environment. (Economic Development)

Documents Filed: Memorandum from Director of Economic Development/Chief Strategist Kim Walesh, dated August 22, 2011, recommending approval of acceptance of the HP Pavilion Advertising Plan.

Action: The HP Pavilion Advertising Plan as submitted by San Jose Arena Management LLP with upgrades to electronic signage along the Pavilion public concourse and hockey dasher boards was accepted. (11-0.)

2.12 Adopt a resolution that:

- (a) Authorizes the City Manager, or designee, to submit two grant applications in an amount not to exceed \$700,000 (\$350,000 per grant) to the State of California Natural Resources Agency under the Environmental Enhancement and Mitigation Program (EEMP) grant to supplement existing funding for the Lower Silver Creek Trail (Alum Rock to Highway 680) and Thompson Creek Trail (Tully Road to Aborn Road) (Projects) with no local match required;**
- (b) Certifies that City agrees to comply with assurances in the EEMP application as set forth in the memorandum to Council;**
- (c) Certifies that the City has or will have sufficient funds to operate and maintain the Projects; and**
- (d) Delegates the authority to the City Manager, or designee, to accept any grant funding and conduct all negotiations, execute and submit all documents, including, but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of the Projects.**

CEQA: Mitigated Negative Declaration, File No. PP04-283 (Thompson Creek); and Mitigated Negative Declaration, File No. PP07-106. (Lower Silver Creek). Council District 4. (Parks, Recreation and Neighborhood Services)

Documents Filed: Memorandum from Acting Director of Parks, Recreation and Neighborhood Services, Julie Edmonds-Mares, dated August 22, 2011, recommending adoption of a resolution.

Council Member Herrera pulled Item 2.12 to clarify that local funding is a match for the grant and to offer her support.

Action: Upon motion by Council Member Herrera, seconded by Council Member Pyle and carried unanimously, Resolution No. 75981, entitled: "A Resolution of the Council of the City of San José, Approving the Application for Grant Funds for the Environmental Enhancement and Mitigation Program Under Section 164.56 of the Streets and Highways Code for the Lower Silver Creek (Alum Rock Avenue to Highway 280) and Thompson Creek (Tully Road to Aborn Road) Trails Project", was adopted. (11-0.)

- 2.13 (a) Adopt a resolution finding the Initial Study and Mitigated Negative Declaration complete and having been prepared in compliance with the California Environmental Quality Act (CEQA), that it represents the City's independent judgment and analysis, that the subject project will not have a significant effect on the environment, and adopting a program for monitoring or reporting on environmental mitigation measures as set forth in the Mitigation Monitoring and Reporting Program for the project.**
- (b) Approve the Coyote Creek Trail Master Plan for the reach from Montague Expressway to Watson Park (near Lower Silver Creek)**

CEQA: Mitigated Negative Declaration, File No. PP09-218, Resolution to be Adopted. Council District 4. (Parks, Recreation and Neighborhood Services)

2.13 (Cont'd.)

Documents Filed: City Council Action Request provided by Acting Director of Parks, Recreation and Neighborhood Services, Julie Edmonds-Mares, dated September 23, 2011, recommending adoption of a resolution.

Action: Resolution No. 75982, entitled: "A Resolution of the Council of the City of San José Adopting the Coyote Creek Trail Master Plan Mitigated Negative Declaration, for Which an Initial Study was Prepared, All in Accordance with the California Environmental Quality Act, as Amended, and Adopting a Related Mitigation Monitoring and Reporting Program", was adopted, and the Coyote Creek Trail Master Plan for the reach from Montague Expressway to Watson Park (near Lower Silver Creek) was approved. (11-0.)

2.14 **Adopt a resolution authorizing the City to continue its participation in the Santa Clara County Abandoned Vehicle Abatement Service Authority (AVASA) program and the extension for a third 10-year term beginning May 1, 2012 the collection of the vehicle registration fee by the California Department of Motor Vehicles to fund the AVASA reimbursement program. CEQA: File No. PP10-069, City Organizational and Administrative Activities. (Transportation/Planning, Building and Code Enforcement)**

Documents Filed: Joint memorandum from Director, Planning, Building and Code Enforcement Joseph Horwedel and Director of Transportation Hans Larsen, dated August 22, 2011, recommending adoption of a resolution.

Council Member Constant pulled Item 2.14 to request further clarification from the City Attorney. He asserted that he could not support the Staff's recommendations, citing that it is contrary to the will of the voters on the basis of regulatory fees and their renewal.

Action: Upon motion by Council Member Herrera, seconded by Council Member Pyle and carried, Resolution No. 75983, entitled: "A Resolution of the Council of the City of San José Authorizing (1) the City of San José to Continue its Participation in the Santa Clara County Abandoned Vehicle Abatement Service Authority Program, (2) Extending the Collection of the One Dollar (\$1.00) Vehicle Registration Fee by the California Department of Motor Vehicles to Fund the Program for a Period of Ten (10) Years from May 1, 2012 to April 30, 2022, and (3) Authorizing the City Manager or Designee to Participate as a Member of the Santa Clara County Abandoned Vehicle Abatement Service Authority", was adopted. (9-1-1. Absent: Liccardo. Noes: Constant.)

- 2.15 Approve travel by Council Member Pyle to Dublin, Ireland on October 6, 2011 through October 11, 2011 to serve as the Mayor's Designee to represent the City of San José. Source of Funds: District 10 Council Office Budget. (Pyle)
(Rules Committee referral 08/31/11)**

Documents Filed: Memorandum from Council Member Pyle, dated August 26, 2011, requesting approval of travel.

Action: The travel request was approved. (11-0.)

- 2.16 Approve travel by Council Member Campos to San Francisco, California on September 21 through September 23, 2011 to attend the League of California Annual Conference, Latino Caucus Event. Source of Funds: Council District 5. (Campos)
(Rules Committee referral 08/31/11)**

Action: Dropped per City Clerk.

- 2.17 As recommended by the Rules and Open Government Committee on August 31, 2011, adopt an oppose position for AB 438 (Williams) – County Free Libraries: Withdrawal: Use of Private Contractors. (City Manager's Office)
[Rules Committee referral 08/31/11 – Item D(1)(a)]**

Documents Filed: Memorandum from City Clerk Dennis Hawkins, dated August 31, 2011, transmitting the recommendations of the Rules and Open Government Committee.

Action: An oppose position was adopted for AB 438 (Williams) – County Free Libraries: Withdrawal: Use of Private Contractors. (11-0.)

- 2.18 As recommended by the Rules and Open Government Committee on August 31, 2011:**

- (a) **Approve a request for a Waiver of the Revolving Door Restriction under San José Municipal Code Section 12.10.030 A. for Edith Ramirez, former Redevelopment Agency employee, to allow her to work on legislative or administrative matters which she worked on during the twelve months prior to her termination of service, or which was within her area of job responsibility as defined in Section 12.10.030 A. The Committee recommends a finding that a Waiver of the Revolving Door Restriction under San José Municipal Code Section 12.10.070 for Ms. Ramirez, is in the best interest of the City, under the above defined terms and limitations.**
- (b) **A waiver of Municipal Code Sections 12.10.030 B. and C is not granted and Ms. Ramirez is still subject to the Revolving Door Restrictions under those sections.**

[Rules Committee referral 08/31/11 – Item H(5)]

2.18 (Cont'd.)

Documents Filed: (1) Memorandum from Council Member Liccardo, dated September 12, 2011, providing additional recommendations for consideration by the Rules and Open Government Committee. (2) Memorandum from City Clerk Dennis Hawkins, dated August 31, 2011, providing recommendations from the Rules and Open Government Committee of August 31, 2011.

Council Member Liccardo pulled Item 2.18 to reference his memorandum of September 12, 2011.

Public Comments: David Wall presented issues regarding the Waiver of the Revolving Door Restrictions and thanked Council Member Liccardo for seeing that it returned to the Rules and Open Government Committee.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, the item was referred to the September 21, 2011 Rules and Open Government Committee meeting to consider recommendations as outlined in Council Member Liccardo's memorandum of September 12, 2011. (11-0.)

**2.19 As recommended by the Rules and Open Government Committee on August 31, 2011, retroactively approve travel by the City Auditor to Washington, D.C. on September 12 – 13, 2011 to attend GOVERNING's 2011 Summit on the Cost of Government. Source of Funds: No cost to the City of San José, all costs paid by the sponsoring organization. (City Auditor)
[Rules Committee referral 08/31/11 – Item H(6)]**

Documents Filed: Memorandum from City Clerk Dennis Hawkins, dated August 31, 2011, transmitting the recommendations of the Rules and Open Government Committee.

Action: Retroactive approval of travel by the City Auditor to Washington, D.C. on September 12 – 13, 2011 to attend GOVERNING's 2011 Summit on the Cost of Government, was approved. (11-0.)

2.20 As recommended by the Rules and Open Government Committee on September 7, 2011:

- (a) **Approve the appointment of David London, Senior Director of U.S. Government Relations at eBay, San José, California, to serve as a private-sector representative on the Silicon Valley Workforce Investment Network Board of Directors as required by law. (Mayor)**
- (b) **Approve the appointment of, Regional Vice President of Staples, Inc., San José, California, to serve as a private-sector representative on the Silicon Valley Workforce Investment Network Board of Directors as required by law. (Mayor)**

[Rules Committee referral 9/7/11 – Items G(1)(a) – G(1)(b)]

2.20 (Cont'd.)

Documents Filed: Memorandum from City Clerk Dennis Hawkins, dated September 7, 2011, transmitting the recommendations of the Rules and Open Government Committee.

Action: The appointments of David London and Matt D. Navarro to the Silicon Valley Workforce Investment Network Board of Directors, were approved. (11-0.)

2.21 **As recommended by the Rules and Open Government Committee on September 7, 2011, approve the appointment of Robert Dolci as a Neighborhoods Commission Member for Council District 5, and Rita Ann Guess as the District 5 1st Alternate. (City Manager's Office)** **[Rules Committee referral 9/7/11 – Items G(1)(c)]**

Documents Filed: Memorandum from City Clerk Dennis Hawkins, dated September 7, 2011, transmitting the recommendations of the Rules and Open Government Committee.

Action: The appointments of Robert Dolci as a Neighborhoods Commission Member for Council District 5, and Rita Ann Guess as the District 5 1st Alternate, were approved. (11-0.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

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

City Manager Debra Figone reported on a visiting delegation to San José from China's Cisco Government Leadership Program to learn about the City's economic development efforts.

3.3 **Approve the response to the Santa Clara County Civil Grand Jury Report entitled "Rehiring of Pensioners: Bad Policy, Good Business or Both?" CEQA: Not a Project, File No.PP10-069(a), Staff Reports/Assessments/Annual Reports/Information Memos. (City Manager's Office)**

Documents Filed: Memorandum from Deputy City Manager Alex Gurza, dated August 29, 2011, recommending a response to the Santa Clara County Civil Grand Jury Report.

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Herrera and carried unanimously, the response to the Santa Clara County Civil Grand Jury Report entitled "Rehiring of Pensioners: Bad Policy, Good Business or Both?" was accepted. (11-0.)

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.2 As recommended by the Community and Economic Development Committee on August 22, 2011, accept the report and adopt the Prioritized Work Plan for *Cultural Connection: San José's Cultural Plan for 2011-2020*. CEQA: Not a Project, File No. PP10-066(e), services that involved no physical changes to the environment. (Economic Development)
[Community and Economic Development Committee referral 8/22/11 – Item D(5)]**

Documents Filed: Memorandum from City Clerk Dennis Hawkins, dated August 22, 2011, transmitting the recommendations of the Community and Economic Development Committee.

Public Comments: Arts Commissioner Bobby Yount spoke in support of the Work Plan.

Motion: Council Member Liccardo thanked Cultural Affairs Director Kerrie Adams-Hapner and her team for their work on this project and moved acceptance of the report and adoption of the Work Plan. The motion was seconded by Council Member Herrera.

Action: On a call for the question, the report was accepted, and the adoption of the Prioritized Work Plan for Cultural Connection: San José's Cultural Plan for 2011-2020 was approved. (11-0.)

- 4.3 Adopt a resolution amending the City Demonstration Partnership Policy, City Council Policy 0-40, "Framework for Establishing Demonstration Partnerships." CEQA: Not a Project, File No. PP10-068(b). (Economic Development)
[Rules Committee referral 08/31/11 – Item H(2)]**

Documents Filed: (1) Memorandum from Director of Economic Development/Chief Strategist Kim Welsh, dated September 2, 2011, recommending adoption of a resolution. (2) Memorandum from City Clerk Dennis Hawkins, dated August 31, 2011, transmitting the recommendations of the Rules and Open Government Committee.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Herrera and carried unanimously, Resolution No. 75985, entitled: "A Resolution of the Council of the City of San José Approving Revisions to City Council Policy 0-40, "Framework for Establishing Demonstration Partnerships", was adopted. (11-0.)

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) **Direct staff to develop an implementation plan for the biosolids transition and further explore the quickest feasible implementation with the following next steps:**
- (1) **Engage consultant services to develop an implementation plan, alternative project delivery methods, and associated costs.**
- Direct staff to develop an implementation plan for the biosolids transition and further explore the quickest feasible implementation with the following next steps:**
- (2) **Engage additionally with stakeholders to further discuss opportunities and any associated costs and trade-offs for accelerating the biosolids transition.**
 - (3) **Update the technical staff of the tributary agencies monthly.**
 - (4) **Include the results of the meetings in the future report on biosolids transition plan, anticipated to be presented to the Treatment Plant Advisory Committee and Council by the end of 2011.**

CEQA: Not a Project, File No. PP10-069 (a) Staff Reports. (Environmental Services/ Public Works)
(Deferred from 5/24/11 – 8/16/11 – Item 7.1)

Documents Filed: (1) Joint memorandum from Director of Environmental Services John Stufflebean and Director of Public Works David Sykes, dated May 13, 2011, recommending acceptance of the status report with additional transitional recommendations. (2) Supplemental memorandum from Acting Director Environmental Services Kerrie Romanow and Director of Public Works David Sykes, dated August 30, 2011, providing an update on the status of stakeholder outreach. (3) Letter from Chairperson Chuck Reed, the Treatment Plant Advisory Committee, dated September 8, 2011, stating concurrence with the Staff recommendation.

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Pyle and carried unanimously, the Plant's odor assessment status report with the development of a regional odor assessment study, including an implementation plan for the biosolids transition was accepted. (11-0.)

- 7.2 (a) **Adopt a resolution authorizing the City Manager to negotiate and execute a WaterSMART Funding Agreement with the U.S. Bureau of Reclamation (Reclamation) to allow the City to accept federal grant funding of \$2,000,000 for design and construction of South Bay Water Recycling (SBWR) Facilities.**
- (b) **Adopt a resolution authorizing the City Manager to negotiate and execute Feasibility Study Funding Agreement #R11AF20020 with Reclamation to allow the City to accept federal grant funding, ranging from \$268,000 to \$1,200,000, to perform a Feasibility Study to revise the South Bay Water Recycling Master Plan;**
- (c) **Adopt the following amendments to the Appropriation Ordinance and Funding Sources Resolution for 2011-2012 in the San José/Santa Clara Treatment Plant Capital Fund:**
- (1) **Increase the estimate for Earned Revenue by \$1,268,000;**
 - (2) **Increase the appropriation to the Environmental Services Department for the Revised South Bay Action Plan - SBWR Extension by \$1,000,000;**
 - (3) **Increase the appropriation to the Environmental Services Department for SBWR Master Plan by \$268,000.**

CEQA: Resolution No. 64667, EIR for the San Jose Nonpotable Reclamation Project, now known as the South Bay Water Recycling Program dated June 15, 1993; South Bay Water Recycling Nonpotable Water System Environmental Impact Report, San Jose City Council Resolution 64667. (Environmental Services/City Manager's Office)

Documents Filed: (1) Joint memorandum from Acting Director Environmental Services Kerrie Romanow and Budget Director Jennifer Maguire, dated August 22, 2011, recommending adoption of resolutions and amendments to the appropriation ordinance and funding sources resolution. (2) Letter from Chairperson Chuck Reed, the Treatment Plant Advisory Committee, dated September 8, 2011, stating concurrence with the Staff recommendation.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, Resolution No. 75986, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Watersmart Funding Agreement with the U.S. Bureau of Reclamation to Allow the City to Accept Federal Grant Funding of \$2,000,000 for Design and Construction of South Bay Water Recycling Facilities"; Resolution No.75987, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Feasibility Study Funding Agreement #R11AF20020 with the U.S. Bureau of Reclamation to Allow the City to Accept Federal Grant Funding, Ranging from \$268,000 to \$1,200,000 to Perform a Feasibility Study to Revise the South Bay Water Recycling Master Plan; Resolution No. 75988, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 75872 Setting Forth the Estimated Sources of Funds

7.2 (Cont'd.)

for the Fiscal Year 2011-2012 to Adjust Revenues in the San José – Santa Clara Treatment Plant Capital Fund”; and Ordinance No. 28959, entitled: “An Ordinance of the City of San José Amending Ordinance No. 28928 to Appropriate Monies in the San José – Santa Clara Treatment Plant Capital Fund for the Revised South Bay Action Plan – SBWR Extension Project and for the SBWR Master Plan Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”, were adopted. (11-0.)

PUBLIC SAFETY SERVICES

8.1 **Approve the response to the Santa Clara County Civil Grand Jury Report entitled “Fighting Fire or Fighting Change? Rethinking Fire Department Response Protocol and Consolidation Opportunities.” CEQA: Not a Project, File No.PP10-069(a), Staff Reports/Assessments/Annual Reports/Information Memos. (Fire)**

Documents Filed: Memorandum from Fire Chief William McDonald, dated August 22, 2011, recommending approval of the staff response to the Civil Grand Jury Report.

Mayor Reed offered his appreciation to Fire Chief William McDonald and the San José Firefighters Local 230 for their efforts. Extensive discussion followed and Fire Chief William McDonald responded to questions from Council.

Public Comments: Robert Sapien expressed requirements of the San José Fire Department.

Action: Upon motion by Council Member Constant, seconded by Council Member Herrera and carried unanimously, the response to the Santa Clara County Civil Grand Jury Report entitled “Fighting Fire or Fighting Change? Rethinking Fire Department Response Protocol and Consolidation Opportunities”, was approved. (11-0.)

8.2 **Approve the response to the Santa Clara County Civil Grand Jury Report entitled “Can You Hear Me Now?” Emergency Dispatch in Santa Clara County.” CEQA: Not a Project, File No.PP10-069(a), Staff Reports/Assessments/Annual Reports/Information Memos. (Fire)**

Documents Filed: Memorandum from Fire Chief William McDonald, dated August 22, 2011, recommending approval of the staff response to the Civil Grand Jury Report.

Action: Upon motion by Council Member Constant, seconded by Council Member Herrera and carried unanimously, the response to the Santa Clara County Civil Grand Jury Report entitled “Can You Hear Me Now?” Emergency Dispatch in Santa Clara County.” was approved. (11-0.)

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.1 (a) **Adopt a resolution to adopt the Negative Declaration prepared for the Medical Marijuana Program, File No. PP11-039, as having been completed in compliance with the California Environmental Quality Act and reflecting the City's independent judgment and analysis and finding that adoption of the proposed ordinances will not result in a significant effect on the environment;**
- (b) **Approve an ordinance of the City of San Jose amending Title 20 of the San Jose Municipal Code to establish land use regulations pertaining to Medical Marijuana Collectives and to establish a Zoning Verification Certificate process.**
- (c) **Approve an ordinance of the City of San Jose amending Title 6 of the San Jose Municipal Code to add a new Chapter 6.88 to establish a registration process pertaining to Medical Marijuana Collectives; and, to establish regulations pertaining to Medical Marijuana Collectives and to the individual cultivation and use of medical marijuana.**

(Deferred from 6/14/11 – Item 3.9; 8/2/11 – Item 4.6; and 8/9/11 – Item 4.1)

CEQA: Negative Declaration, File No. PP11-039. Citywide. (Planning, Building and Code Enforcement/City Attorney's Office)

Documents Filed: (1) Memorandum from Council Member Oliverio, dated September 9, 2011, outlining recommendations regarding the regulation of medical cannabis. (2) Memorandum from Council Member Liccardo, dated September 12, 2011, regarding adoption of the Santa Clara County Cities Association resolution regarding medicinal marijuana. (3) Memorandum from Planning Commission Secretary Joseph Horwedel, dated August 29, 2011, transmitting the Planning Commission recommendations. (4) Memorandum from City Attorney Richard Doyle, dated September 7, 2011, providing a legal update on medical marijuana issues and impacts on ordinances. (5) Joint memorandum from Assistant to the City Manager, Angelique Gaeta; Director, Planning, Building and Code Enforcement Joseph Horwedel, and Chief of Police Chris Moore, dated September 13, 2011, recommending adoption of a resolution and ordinances. (6) Letter from Patricia E. Sausedo, San José Silicon Valley Chamber of Commerce Vice President, dated September 6, 2011, providing suggestions for regulation of the medical cannabis collective industry. (7) Matrix information from Sean Cambern, President, Cannabis Patients Alliance, dated September 13, 2011. (8) Email from Anupam Prasad, dated September 12, 2011, asking that stricter zoning requirements be considered. (9) Letter from Douglas Chloupek, Medmar Healing Center, dated September 13, 2011, providing zoning recommendations.

Assistant Director of Planning and Code Enforcement Laurel Prevetti and Assistant to the City Manager, Angelique Gaeta provided an overview of the negative declaration and land use and regulatory ordinances. Police Lieutenant Dave Hober provided a review of on-site cultivation criteria.

4.1 (Cont'd.)

Public Comments: Offering recommendations, criticism and comments on the resolution to adopt the Negative Declaration and the proposed ordinances were: Matt Lucero (Buddy's Cannabis), Randy Welty (American Patient Rights), Craig Beresh (California Cannabis Coalition), Steve DeAngelo (Harborside Health Center), Jerry Strangis (MC3), Tili Ayala (Justice for Families), Daniel McCormick, James Anthony (MC3), Lauren Vazquez (SV ASA), Michele Korpos, Susan Landry (Patient's Rights), Ace Salvatore (SV Care), Michael Gammino, Dave Hodges (A2C2), Chris Coulter (Americans for Safe Access), Ramandy Springfield (The Portal), Michael Hovland (Med Ex Collective & Deliveries), Joshua Beilky, Mathew Sena (SV ASA), Danielle Pirslin, Sharon Potter (Almaden Valley Parents), Sean Cambern (C.P. Alliance), Ross Signorino, and Seher Khan.

Mayor Reed offered meeting disclosures.

Acting Director of Finance Julia H. Cooper responded to questions regarding the audit process and business taxes due the City.

Motion: Vice Mayor Nguyen moved the Staff's recommendation regarding Item (a) to adopt a resolution to adopt the Negative Declaration prepared for the Medical Marijuana Program. The motion was seconded by Council Member Herrera.

Assistant Director of Planning and Code Enforcement Laurel Prevetti provided clarifications regarding environmental issues.

Action: On a call for the question, Resolution No. 75984, entitled: "A Resolution of the Council of the City of San José Adopting a Negative Declaration for the Medical Marijuana Ordinances, for which an Initial Study was Prepared, all in Accordance with the California Environmental Quality Act", was adopted. (11-0.)

Motion: Vice Mayor Nguyen moved approval of Items (b) and (c) as outlined in Staff's memorandum of September 13, 2011. The motion was seconded by Council Member Pyle.

Substitute Motion: Council Member Oliverio moved approval of item #1 from his memorandum dated September 9, 2011, "A licensed physician or registered nurse must serve on the board of each medical cannabis collective. The motion was seconded by Council Member Herrera.

4.1 (Cont'd.)

City Attorney Richard Doyle offered further clarification on the language presented by Council Member Oliverio.

Action: On a call for the question, the substitute motion carried, Ordinance No. 28958 entitled: "An Ordinance of the City of San José 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", was passed for publication, with the Staff recommendation amended to include the requirement that at least one person with responsibility in the ownership/management of the collective be a licensed physician or registered nurse. (8-3-0. Noes: Campos, Pyle, Rocha.)

Motion: Council Member Oliverio moved approval of item #3 from his memorandum dated September 9, 2011, regarding the City's access to Collective's general ledger information. The motion was seconded by Council Member Herrera.

Council Members Constant and Kalra expressed opposition to the recommendation, citing a potential invasion of privacy.

Action: The motion failed. (3-8. Noes: Campos, Constant, Herrera, Kalra, Nguyen, Pyle, Rocha; Reed.)

Motion: Council Member Oliverio moved approval of item #5 from his memorandum dated September 9, 2011, regarding allowance of first floor use. The motion was seconded by Council Member Rocha.

Action: The motion failed. (2-8-1. Noes: Campos, Chu, Herrera, Kalra, Liccardo, Nguyen, Pyle; Reed. Absent: Constant.)

Motion: Council Member Oliverio moved approval of item #5 from his memorandum dated September 9, 2011, regarding allowance of Commercial-Office (CO) zoning. The motion was seconded by Council Member Rocha.

Action: The motion failed. (2-9. Noes: Campos, Chu, Constant, Herrera, Kalra, Liccardo, Nguyen, Pyle; Reed.)

Motion: Council Member Oliverio moved approval of item #4 from his memorandum dated September 9, 2011, regarding off-site cultivation. The motion was seconded by Council Member Rocha.

Action: The motion failed. (2-8-1. Noes: Campos, Chu, Herrera, Kalra, Liccardo, Nguyen, Pyle; Reed. Absent: Constant.)

4.1 (Cont'd.)

Motion: Council Member Oliverio moved approval of item #5 from his memorandum dated September 9, 2011, regarding allowance of Commercial-Office (CO) zoning. The motion was seconded by Council Member Rocha.

Assistant Director of Planning and Code Enforcement Laurel Prevetti offered that if additional grow locations are allowed, the Negative Declaration would need to be modified, and administration would need to return with a new staffing model.

Action: The motion failed. (3-8. Noes: Campos, Chu, Constant, Herrera, Liccardo, Nguyen, Pyle; Reed.)

Motion: Council Member Oliverio moved approval of item #6 from his memorandum dated September 9, 2011, regarding adopting a process that selects the best collectives, rather than first come first serve. The motion was seconded by Council Member Rocha.

Council Member Liccardo questioned defining the criteria as to which collective is best.

Action: The motion failed. (4-7. Noes: Campos, Constant, Herrera, Liccardo, Nguyen, Pyle; Reed.)

Final Motion: Vice Mayor Nguyen moved approval of the Staff's recommendation regarding Item (c) to approve an ordinance amending Title 6 of the Municipal Code. The motion was seconded by Council Member Herrera.

Action: On a call for the question, the final motion carried, Ordinance No. 28960, entitled: "An Ordinance of the City of San José Amending Title 6 of the San José Municipal Code to add a New Chapter 6.88 to Establish Regulations Pertaining to Medical Marijuana Collectives and to the Individual Cultivation and Use of Medical Marijuana" passed for publication. Council Member Liccardo's memorandum dated September 12, 2011 regarding the adoption of the Santa Clara County Cities Association Resolution regarding Medicinal Marijuana omitted from today's agenda, was directed to be presented before the Rules and Open Government Committee on September 13, 2011 and to return before full Council for discussion on September 20, 2011. (8-3. Noes: Campos, Kalra, Rocha.)

OPEN FORUM

- Mike Han asked for assistance in getting an administrative hearing for an appeal. The Mayor referred Mr. Han to Assistant Director of Planning, Building, and Code Enforcement Laurel Prevetti.
- The following residents of San Jose urged the continued funding of the Lake Cunningham Skate Park, expressing its importance to the community: Carol, Carl, Jimmy and Wesley Kruger; Dawn, Gavin and Jayden Melo; Kim Smallwood and Paul Murphy.

ADJOURNMENT

The Council of the City of San José adjourned at 5:57 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Dennis D. Hawkins, CMC
City Clerk

Rmk/09/13/11 MIN