

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, JANUARY 31, 2012

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

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

Absent: Council Members - Chu, Herrera, Kalra, Liccardo, Oliverio.

STRATEGIC SUPPORT SERVICES

3.2 Accept Labor Negotiations Update.

None provided.

CLOSED SESSION

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

Absent: Council Members - All Present.

Upon motion unanimously adopted, Council recessed at 9:10 a.m. to a Closed Session in Room W133 to confer with Legal Counsel with respect to (A) Public Employee Evaluation Pursuant to Government Code Section 54957: Title: City Auditor; Name: Sharon Erickson; (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, Hours, Working Conditions, etc; Name of Existing Contract or MOA:

CLOSED SESSION (Cont'd.)

Memorandum of Agreement between City of San José and AMSP; (4) City Association of Management Personnel Agreement (CAMP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CAMP; (5) Confidential Employees' Organization, AFSCME Local 101 (CEO); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CEO; (6) International Association of Firefighters, Local 230 (IAFF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Association of Firefighters; (7) International Brotherhood of Electrical Workers (IBEW); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and IBEW; (8) Municipal Employees' Federation, AFSCME Local 101, AFL-CIO (MEF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and MEF; (9) International Union of Operating Engineers, Local No. 3 (OE#3); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Union of Operating Engineers, Local No. 3; (10) San José Police Officers' Association (SJPOA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association; (11) Association of Legal Professionals of San José (ALP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; How to obtain a copy of existing contract or MOA: web: http://www.sanjoseca.gov/employee_relations/moa.asp; Telephone for Employee Relations: 408-535-8150.

By unanimous consent, Council recessed from the Closed Session at 10:45 a.m. and reconvened to Regular Session at 1:32 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

Rabbi Daniel Pressman, Congregation Beth David, presented the Invocation. (District 1)

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. (11-0.)

CEREMONIAL ITEMS

1.1 Presentation of a proclamation declaring January 27, 2012 as “International Holocaust Remembrance Day” in the City of San José. (Herrera)

Mayor Reed and Council Member Herrera proclaimed January 27, 2012 as “International Holocaust Remembrance Day” in the City of San José.

CONSENT CALENDAR

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

2.1 Approval of Minutes

Action: There were none.

2.2 Final adoption of ordinances.

Action: There were none.

2.3 Approval of Council Committee Reports.

- (a) Rules and Open Government Committee Report of January 11, 2012. (Mayor)**
- (b) Transportation and Environment Committee Report of December 5, 2011. (Liccardo)**
- (c) Rules and Open Government Committee Report of December 7, 2011. (Mayor)**
- (d) Rules and Open Government Committee Report of January 4, 2012. (Mayor)**

Documents Filed: (1) Rules and Open Government Committee Report dated January 11, 2012. (2) Transportation and Environment Committee Report dated December 5, 2011. (3) Rules and Open Government Committee Report dated December 7, 2011. (4) Rules and Open Government Committee Report dated January 4, 2012.

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

2.4 Mayor and Council Excused Absence Requests.

Action: There were none.

2.5 City Council Travel Reports.

Action: There were none.

2.6 Report from the Council Liaison to the Retirement Boards.

Action: None provided.

2.7 Approve an ordinance amending Sections 15.08.060, 15.08.070, 15.08.670, 15.08.790, 15.08.1120, 15.08.1140, 15.08.1160, and 15.08.1230 of Chapter 15.08 of Title 15 of the San José Municipal Code to reflect the current organization of the City's Municipal Water System within the Department of Environmental Services, and authorizing the Director of Environmental Services to allow modifications to customer responsibilities for connection of private fire protection pumps to Municipal Water System in certain specified circumstances. CEQA: Categorically Exempt, File No. PP12-009. Council Districts 4 and 8. (Environmental Services)

Documents Filed: Memorandum from Acting Director of Environmental Services Kerrie Romanow, dated January 17, 2012, recommending approval of an ordinance.

Action: Ordinance No. 29031, entitled: "An Ordinance of the City of San José Amending Sections 15.08.060, 15.08.070, 15.08.670, 15.08.790, 15.08.1120, 15.08.1140, 15.08.1160 and 15.08.1230 of Chapter 15.08 of Title 15 of the San José Municipal Code to Reflect the Current Organization of City's Municipal Water System within the Department of Environmental Services, and Authorizing the Director of Environmental Services to Allow Modifications to Customer Responsibilities for Connection of Private Fire Protection Pumps to Municipal Water Distribution System in Certain Specified Circumstances", was passed for publication. (11-0.)

2.8 Adopt a resolution authorizing the City Manager to:

(a) **Execute an amendment to the agreement with ACS Transport Solutions, Inc. (Dallas, Texas) to extend the term of the agreement through December 15, 2012;**

(b) **Execute additional amendments to extend the agreement as required in the event that additional time is needed to complete the project.**

CEQA: Not a Project, File No. PP10-066(a), Purchase Order/Cooperative Purchase of Supplies, Equipment & Professional Services with no changes in the physical environment. (Finance)

Documents Filed: Memorandum from Acting Director of Finance Julia H. Cooper, dated January 9, 2012, recommending adoption of a resolution.

2.8 (Cont'd.)

Action: Resolution No. 76135, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute the Fifth Amendment to the Agreement with ACS Transport Solutions, Inc. for Parking Access Revenue Control and Automatic Vehicle Identification System and Related Services at the San José International Airport", was adopted. (11-0.)

2.9 Direct staff to implement guidelines:

- (a) To halt the purchase and use of expanded polystyrene foam (EPS) food service ware at City facilities; and
- (b) To require City-sponsored events that receive funding or in-kind service from the City to ban the purchase of EPS food service ware.

CEQA: (a) Not a Project, File No. PP10-066(a) Purchase Order/Cooperative Purchase of Supplies, Equipment & Professional Services with no changes in the physical environment; (b) Exempt, File No. PP12-013. (City Attorney's Office) (Rules Committee referral 1/25/12)

Documents Filed: Memorandum from City Attorney Richard Doyle, dated January 27, 2012, offering direction to Staff to implement guidelines.

Motion: Council Member Liccardo moved approval of the Staff recommendation with an amendment as noted below in "Action". Council Member Herrera seconded the motion.

City Attorney Richard Doyle offered further clarification, and Assistant City Manager Ed Shikada offered that vetting will occur between now and a Rules and Open Government meeting in March 2012 prior to final Council action.

Action: On a call for the question, the motion carried unanimously, the direction to Staff to implement guidelines with inclusion of an amendment allowing a six-month period of transition with regard to requiring recyclable/biodegradable foodware for entities that contract with the City and require permission from the City to use City property or facilities was approved. This item will be returning to the Rules and Open Government Committee in March 2012 prior to final action by Council. (11-0.)

2.10 As recommended by the Rules and Open Government Committee on January 25, 2012, reappoint Jeannie LoFranco and Alphonse Arretz to the Project Diversity Screening Committee for terms expiring December 31, 2013. (Mayor) [Rules Committee referral 1/25/12 – Item G(1)(a)]

Documents Filed: Memorandum from City Clerk Dennis Hawkins, dated January 25, 2012, transmitting the recommendations of the Rules and Open Government Committee.

Action: The reappointments of Jeannie LoFranco and Alphonse Arretz to the Project Diversity Screening Committee for terms expiring December 31, 2013, were approved. (11-0.)

2.11 As recommended by the Rules and Open Government Committee on January 25, 2012:

- (a) Approve the District 4 Spring Cleaning and E-Waste Event 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: Exempt, File No. PP12-014. (City Clerk)
[Rules Committee Referral 01/25/12 – Item H(5)]**

Documents Filed: Memorandum from City Clerk Dennis Hawkins, dated January 25, 2012, transmitting the recommendations of the Rules and Open Government Committee.

Action: The District 4 Spring Cleaning and E-Waste Event 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.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

- 3.3 (a) Consider increasing the Marijuana Business Tax rate from 7% of gross receipts to 10% of gross receipts, as allowed under Measure U; and**
- (b) Direct staff to prepare an ordinance to implement the increased Marijuana Business tax rate for Council consideration at a public hearing originally scheduled for January 24, 2012, to take place no later than March 6, 2012.**

**CEQA: Not a Project, File No. PP10-067(a), Increase to rate without changes to, or expansion of services. (Finance)
(Continued from 1/10/12 – Item 3.4)**

Action: Continued to February 14, 2012 per Rules and Open Government Committee.

COMMUNITY & ECONOMIC DEVELOPMENT

Note: Items 4.1 through 4.3 were heard concurrently.

- 4.1 Approve an ordinance amending Chapter 4.46 of Title 4 of the San José Municipal Code and Chapter 4.47 of Title 4 to add sections to partially suspend the collection of the building and structure construction tax and to suspend the commercial-residential-mobile home park building tax for office, research and development uses, data center uses and installation of solar photovoltaic systems. CEQA: Not a Project, File No.PP10-067 (Statutory Exemption, Sec. No. 15273), Rates, Tolls, Fares, and Charges. (Economic Development/Planning, Building and Code Enforcement)**

Documents Filed: (1) Joint memorandum from Mayor Reed and Council Members Chu, Herrera, Kalra and Liccardo, dated January 27, 2012 approving Staff's recommendations with additional direction. (2) Joint memorandum from Director of Economic Development/Chief Strategist Kim Walesh and Director, Planning, Building and Code Enforcement Joseph Horwedel, dated January 17, 2012, recommending approval of an ordinance. (3) Supplemental memorandum from Director of Economic Development/Chief Strategist Kim Walesh and Director, Planning, Building and Code Enforcement Joseph Horwedel, dated January 27, 2012, providing clarification in recommendation language regarding collection of the building and structure construction tax.

Mayor Reed gave opening comments, and Director of Economic Development/Chief Strategist Kim Walesh provided an overview of the recommendations.

Public Comments: Pat Saucedo, San José/Silicon Valley Chamber of Commerce; Eric Schoennauer; Mike Black, on behalf of Barry Swenson Builders, Dennis Martin, and Ross Signorino offered support to the staff's recommendations. David Wall offered that fees should not be relaxed given the current budget crisis.

Mayor Reed provided a slideshow of other Cities' developments.

Motion: Council Member Herrera moved approval of all memorandums covering items 4.1, 4.2 and 4.3. Council Member Pyle seconded the motion.

Action: On a call for the question, the motion carried unanimously, all memorandums were approved, and Ordinance No.29032, entitled: "An Ordinance of the City of San José Amending Chapter 4.46 of title 4 of the San José Municipal Code and Chapter 4.47 of Title 4 to Add Sections to Partially Suspend the Collection of the Building and Structure Construction Tax and to Suspend the Commercial-Residential-Mobilehome Park Building Tax for Office, Research and Development Uses, Data Center Uses and Installation of Solar Photovoltaic Systems", was passed for publication. (11-0.)

- 4.2 (a) **Adopt a resolution amending the North San José Area Development Policy to promote near-term industrial development through a temporary incentive program allowing for reduction in the traffic impact fee for qualifying industrial development completed within a timeframe to be specified in a development agreement.**
- (b) **Approve an ordinance amending Section 14.29.040 of Chapter 14.29 of Title 14 of the San José Municipal Code (North San José Traffic Impact Fee Requirements) to provide that the traffic impact fee shall be paid prior to issuance of a building permit or in accordance with the schedule specified in a development agreement.**

CEQA: Resolution No. 72768 and Addenda thereto. Council Districts 3 and 4. (Economic Development/Planning, Building and Code Enforcement)

Documents Filed: (1) Joint memorandum from Mayor Reed and Council Members Chu, Herrera, Kalra and Liccardo, dated January 27, 2012 approving adoption of a resolution with revisions as noted. (2) Joint memorandum from Director of Economic Development/Chief Strategist Kim Welsh and Director, Planning, Building and Code Enforcement Joseph Horwedel, dated January 17, 2012, recommending adoption of a resolution and approval of an ordinance.

Council Member Chu requested to amend the motion by eliminating the 100,000sf project size requirement to accommodate smaller companies requiring less square footage.

Council Member Liccardo requested to further amend the motion to include offering developers incentives by putting fees up front to show their savings if they have a cash-out program for parking.

Council Member Oliverio recommended an amendment to the motion, that rather than affordable market rate housing development, monies instead be allocated to traffic impact fees use.

All amendments were accepted by Council Members Herrera and Pyle.

Action: On a call for the question, the motion carried unanimously, Resolution No. 76136, entitled: “A Resolution of the Council of the City of San José Amending the North San José Area Development Policy to Add a Temporary Traffic Impact Fee Incentive Program to Promote Near-Term Industrial Development by Allowing for Reduction in the Amount of Traffic Impact Fee Paid by the Developer for Qualifying Industrial Development Completed Within a Timeframe to be Specified in an Agreement with the City of San José and Delegating Authority to the City Manager to Execute Such Agreements with Implementing the Program”, was adopted with Staff to explore (1) elimination of the 100,000sf project size requirement to accommodate smaller companies requiring less square footage, and (2) offering developers incentives by putting fees up front to show their savings if they have a cash-out program for parking, and Ordinance No. 29033, entitled: “An Ordinance of the City of San José Amending Section 14.29.040 of Chapter 14.29 of Title 14 of the San José Municipal Code to Provide that the Traffic Impact Fee Shall be

4.2 (Cont'd.)

Paid Prior to Issuance of a Building Permit or in Accordance with the Schedule Specified in an Agreement with the City of San José”, was passed for publication, with Staff to explore the possibility of allocating the 8.8 million dollars for traffic impact fees use rather than towards affordable market rate housing development. (11-0.)

4.3 (a) Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund:

- (1) Increase the revenue estimate for Licenses and Permits by \$2,112,070;**
- (2) Decrease the Fee Supported Reserve – Planning appropriation by \$138,505;**
- (3) Increase the Personal Services appropriation to the Planning, Building and Code Enforcement Department in the amount of \$1,909,815;**
- (4) Increase the Personal Services appropriation to the Fire Department in the amount of \$141,321; and**
- (5) Increase the 2012-2013 Future Deficit Reserve appropriation by \$199,439.**

(b) Approve the following position additions effective February 6, 2012:

Planning, Building and Code Enforcement Department

Building Fee Program:

<u>Job Code</u>	<u>Job Classification</u>	<u>FTE</u>
3915	Building Inspector/Combo Cert FT	11.00
3919	Building Inspector Supervisor	1.00
3814	Associate Engineer	2.00
4122	Planner I/II	1.00
3844	Senior Architect	1.00
<i>Subtotal Building Fee Program</i>		<i>16.00</i>

Planning Fee Program:

<u>Job Code</u>	<u>Job Classification</u>	<u>FTE</u>
4122	Planner I/II	1.00
<i>Subtotal Planning Fee Program</i>		<i>1.00</i>

Public Works Department

Public Works Fee Program:

<u>Job Code</u>	<u>Job Classification</u>	<u>FTE</u>
3813	Engineer I/II	1.00
<i>Subtotal Public Works Fee Program</i>		<i>1.00</i>

Fire Department

Fire Fee Program:

<u>Job Code</u>	<u>Job Classification</u>	<u>FTE</u>
3814	Associate Engineer	2.00
2322	Hazardous Materials Inspector I/II	1.00
<i>Subtotal Fire Fee Program</i>		<i>3.00</i>

TOTAL 21.00

4.3 Development Services Staffing Needs (Cont'd.)

CEQA: Not a Project, File No. PP10-069, City Organizational and Administrative Activities. (Planning, Building and Code Enforcement/Public Works/Fire/City Manager's Office)

Documents Filed: (1) Joint memorandum from Mayor Reed, Vice Mayor Nguyen, and Council Member Herrera and Council Member Rocha, dated January 27, 2012, recommending approval of staff's recommendations with additional direction to staff. (2) Joint memorandum from Director, Planning, Building and Code Enforcement Joseph Horwedel, Budget Director Jennifer Maguire, Director of Public Works David Sykes and Fire Chief William McDonald, dated January 12, 2012, recommending adoption of appropriation ordinance and funding sources resolution amendments and approval of positions as noted.

Action: On a call for the question, the motion carried unanimously, Ordinance No. 29034, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28928 to Appropriate Monies in the General Fund for the Planning, Building and Code Enforcement Department Personal Services, the Fire Department Personal Services, and the 2012-2013 Future Deficit Reserve; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", and Resolution No. 76137, 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 General Fund", were adopted. (11-0.)

JOINT COUNCIL/REDEVELOPMENT AGENCY

- 9.1 (a) **The City Council and Redevelopment Agency Board adopt resolutions approving the Amended Enforceable Obligation Payment Schedule, which details the obligations of the Redevelopment Agency and the City, as it relates to the Low and Moderate Income Housing Fund, in order to comply with the provisions of Section 34169 of the Health and Safety Code.**
- (b) **The Redevelopment Agency Board adopt a resolution proclaiming that the Redevelopment Agency has not taken any action to forgive the repayment of any loan, advance, or indebtedness owed by the City of San José to the Redevelopment Agency of the City or owed by the Agency to the City between January 1, 2010 and December 31, 2011.**
- CEQA: Exempt, File No. PP12-008. (City Manager’s Office/Redevelopment Agency) (Rules Committee referral 1/25/12)**

Documents Filed: Joint memorandum from City Manager Debra Figone and Redevelopment Agency Managing Director Richard Keit, dated January 25, 2012, recommending approval of resolutions.

City Manager Debra Figone announced the demise of the Redevelopment Agency as of midnight tonight. Deputy City Manager Norberto Dueñas provided an overview of actions needed as a result of the state's decision to dissolve the Redevelopment Agency.

Director of Housing Leslye Corsiglia responded to questions from Council.

Public Comments: David Wall expressed concerns about keeping the North San Pedro project alive and the RDA successor organization.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, Resolution No. 76138, entitled: “A Resolution of the Council of the City of San José Approving the Amended Enforceable Obligation Payment Schedule, Which Details the Obligations of the Redevelopment Agency and the City of San José, as it Relates to the Low and Moderate Income Housing Fund, in Order to Comply with the Provisions of Section 34169 of the Health and Safety Code was adopted; Redevelopment Agency Board Resolution No. 6034, entitled “A Resolution of the Board of Directors of the Redevelopment Agency of the City of San Jose Approving the Amended Enforceable Obligation Payment Schedule, Which Details the Obligations of the Redevelopment Agency and the City of San Jose, as it Relates to the Low and Moderate Income Housing Fund, in Order to Comply with the Provisions of Section 34169 of the Health and Safety Code”, was adopted with modifications to the remaining obligation for the Section 108 Loan, Section H, as noted by Staff; and Redevelopment Agency Board Resolution No. 6035, “A Resolution of the Board of Directors of the Redevelopment Agency of the City of San Jose Declaring that the Redevelopment Agency has not taken any Action to Forgive the Repayment of Any Loan, Advance, or Indebtedness Owed by the City of San Jose to the Redevelopment Agency of the City of San José or Owed by the Agency to the City between January 1, 2010 and December 31, 2011”, was adopted. (11-0.)

- 9.2 It is recommended that the Redevelopment Agency Board adopt a resolution amending the FY 2011-12 Revenue Resolution to reflect a reduction of \$15,756,984; the FY 2011-12 Capital Budget to reflect a reduction of \$5,450,000; the FY 2011-12 Source and Use of Funds Summary to reflect a reduction of \$982,679 in Financing/Other Costs and a reduction of \$392,683 in Obligated Payments; and the FY 2011-12 Appropriations Resolution to reflect a reduction of \$6,825,362, as detailed on Attachments A and B of the staff memorandum. CEQA: Not a Project, File No. PP10-067(b), appropriation actions. (Redevelopment Agency) (Rules Committee referral 1/25/12)**

Documents Filed: Memorandum from Redevelopment Agency Managing Director Richard Keit, dated January 27, 2012, recommending a resolution.

Redevelopment Agency Managing Director Richard Keit spoke on the Redevelopment Agency's accomplishments and the impending transition. He further provided an overview of the amendments to the Agency's 2011-2012 budget.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, Redevelopment Agency Board Resolution No. 6036, entitled "A Resolution of the Board of Directors of the Redevelopment Agency of the City of San Jose Amending the Adopted FY 2011-2012 Revenue Resolution, FY 2011-2012 Capital Budget, FY 2011-2012 Appropriations Resolution, and FY 2011-2012 Source and Use of Funds Summary in Connection with the Dissolution of the Redevelopment Agency", was adopted. (11-0.)

OPEN FORUM

- (1) David Wall suggested a public investigation of the Applegate Johnson settlement and further asked that the City Manager publicly thank the City Attorney for 'bailout' in regard to the EIC 'boondoggle'.
- (2) SK Kohli, a visitor from India, offered his appreciation to the Council for the work they do and suggested it as a model to other countries.

ADJOURNMENT

The Council of the City of San José adjourned at 3:52 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Dennis Hawkins, CMC
City Clerk

rmk/1-31-12MIN