

## MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, FEBRUARY 7, 2012

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 (9:11 a.m.), Kalra (9:15 a.m.), Liccardo (9:07), Oliverio (9:12 a.m.), Pyle, Rocha; Reed.

Absent: Council Members - Nguyen. (Excused)

### STRATEGIC SUPPORT SERVICES

#### 3.2 Accept Labor Negotiations Update.

Employee Relations Deputy Director Gina Donnelly provided a brief report.

Action: The report was accepted. (10-0-1. Absent: Nguyen.)

### PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

### ORDERS OF THE DAY

Upon motion by Council Member Constant, seconded by Council Member Pyle and carried unanimously, the Orders of the Day and the Amended Agenda were approved; the afternoon session was canceled, and Items 2.6, 2.8 and 2.9 were heard during the morning session. (10-0-1. Absent: Nguyen.)

### CEREMONIAL ITEMS

#### 1.1 Presentation of a proclamation celebrating Lunar New Year in the City of San José. (Chu/Nguyen) (Deferred from 01/24/12 – Item 1.1)

Action: Deferred to February 14, 2012.

**1.2 Presentation of a proclamation declaring the month of February 2012 as “American Heart Month” in the City of San José. (Kalra)**

Action: Deferred to February 14, 2012.

**1.3 Presentation of a commendation to the Berryessa Business Association for their efforts to strengthen the small businesses of the Berryessa Community. (Chu)**

Action: Deferred to February 14, 2012.

## **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. (10-0-1. Absent: Nguyen.)

**2.2 Final adoption of ordinances.**

- (a) **ORD. NO. 29021 – Amending various sections of Chapter 2.04 of Title 2 of the San José Municipal Code, amending Section 13.23.210 of Chapter 13.23 of Title 13, and amending Section 14.04.141 of Chapter 14.04 of Title 14, to reflect the reorganization of city services within city departments; and repealing and modifying various sections of Part 2 and Chapter 11.36 of Title 11 relating to parking and traffic control within the old City Hall property due to the transfer of the property.**

Action: Deferred to February 14, 2012.

- (b) **ORD. NO. 29030 – Rezoning certain real property situated on the east side of Quimby Road, approximately 440 feet east of Murillo Road (3770 Quimby Road), from Unincorporated County to A(PD) Planned Development Zoning District to allow up to seven single-family detached residences on a 2.8 gross acre site. PDC10-002**

Action: Deferred to February 14, 2012.

**2.3 Approval of Council Committee Reports**

- (a) **Rules and Open Government Committee Report of January 11, 2012. (Mayor)**

[Deferred from 1/31/12 – Item 2.3(a)]

- (b) **Rules and Open Government Committee Report of January 18, 2012. (Mayor)**

Action: Deferred to February 14, 2012.

- 2.4 (a) Request for an excused absence for Council Member Chu from the Regular Meeting of the Neighborhood Services and Education Committee on February 9, 2012 due to Authorized City Business: League of California Cities Board of Directors Meeting in Palo Alto, CA. (Chu)  
(Rules Committee referral 2/1/12)**

Action: Deferred to February 14, 2012.

**2.6 Report from the Council Liaison to the Retirement Boards.**

Council Member Constant provided a report of the February 2, 2012 Police and Fire Department Retirement Plan Board meeting, including an update on investments from the Chief Investment Officer and the 2011 Pension Actuarial Valuation Report. City Attorney Richard Doyle, City Manager Debra Figone and Council Member Constant provided further clarification.

Due to the complex nature of information provided, Council discussion ensued regarding the best way to disseminate information in addition to the Council Liaison's reports. Mayor Reed recommended that a protocol for handling the information streaming of Retirement Board Meeting actions be brought before the Rules and Open Government Committee.

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

- (a) Approve the District 1 Annual Flag Raising 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: Not a Project. (City Clerk)  
(Rules Committee Referral 01/25/12)**

Action: Deferred to February 14, 2012.

- 2.8 (a) Support the application to the Strategic Growth Council for its Sustainable Communities Planning Grant and Incentives Program Grants.**
- (b) Adopt a resolution required by the Strategic Growth Council as part of their grant application process that:**
- (1) Approves the filing of an application for the development of an Urban Village Master Plan and proposed zoning code revisions and property rezonings ("Proposal") in order to become a more sustainable community;**
  - (2) Certifies that the City of San José will have sufficient funds to develop the Proposal or will secure the resources to do so;**
  - (3) Certifies that the Proposal will comply with any applicable laws and regulations including being consistent with the State's Planning Priorities identified in Government Code section 65041.1;**

**2.8 (Cont'd.)**

- (b) (4) **Certifies that threshold requirements outlined in the grant guidelines, including consideration of Ocean Protection Council Sea Level Rise Guidance will be met;**
- (5) **Agrees to reduce, on as permanent a basis as feasible, greenhouse gas emissions consistent with California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 3850) of the Health and Safety Code); and any applicable regional plan;**
- (6) **Agrees to meet the grant's collaboration requirements of the focus area applicable to the Proposal; and**
- (7) **Authorizes the City Manager, or designee, to conduct on behalf of City all negotiations, and to execute and submit on behalf of City all documents including, but not limited to, applications, agreements, payment requests and so on, which may be necessary for the completion of the aforementioned Master Plan and Zoning revision project and to accept and implement the grant award if awarded.**

**CEQA: Re-use of the Envision San José 2040 EIR, Council Resolution No. 76041. Council Districts 3 and 5. SNI: University Neighborhoods, Thirteenth Street, Five Wounds/Brookwood Terrace. (Planning, Building and Code Enforcement)**

Documents Filed: Memorandum from Director, Planning, Building and Code Enforcement Joseph Horwedel, dated January 17, 2012, recommending an application for Council grant funds and adoption of a resolution.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, Resolution No. 76139, entitled: "A Resolution of the Council of the City of San José Supporting the City's Application to the Strategic Growth Council for its Sustainable Communities Planning Grant and Incentive Program, and Authorizing the City Manager to Submit the Application, Accept and Implement the Grant if Awarded, and Execute all Related Documents", was adopted. (9-0-2. Absent: Kalra, Nguyen.)

**2.9 Adopt a resolution amending Resolution No. 76101 adopted by the City Council on December 13, 2011 to:**

- (a) **Invalidate the ballot tabulation and election noticed for February 28, 2012;**
- (b) **Change the public hearing and ballot tabulation scheduled to be held on February 28, 2012 at 1:30 pm regarding the formation of Maintenance District 24 (The Alameda) to March 27, 2012 at 1:30 pm; and**
- (c) **Direct that notice of the March 27, 2012 hearing and substitute ballots is mailed to all property owners in the proposed district.**

**(Rules Committee referral 2/1/12)**

Documents Filed: Memorandum from City Clerk Dennis Hawkins, CMC, dated February 3, 2012, recommending adoption of a resolution.

**2.9 (Cont'd.)**

Action: Upon motion by Council Member Oliverio, seconded by Council Member Constant and carried unanimously, Resolution No. 76140, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 76101 to Invalidate the February 28, 2012 Election and Change the Public Hearing and Election Date Regarding the Proposed Formation of Maintenance District 24 (The Alameda) to March 27, 2012", was adopted. (9-0-2. Absent: Kalra, Nguyen.)

**2.10 As recommended by the Rules and Open Government Committee on February 1, 2012, reappoint Mike Graves to the Mobile Home Advisory Commission. (Nguyen)  
[Rules Committee referral 2/1/12 – Item G(1)(a)]**

Action: Deferred to February 14, 2012.

**2.11 (a) Appoint Council Member Pyle to the Santa Clara Valley Transportation Authority Board of Directors;  
(b) Appoint Council Member Oliverio to the Santa Clara Valley Transportation Authority Policy Advisory Board – El Camino Real Rapid Transit; and  
(c) Appoint Acting Director Kerrie Romanow as the Alternate to the Santa Clara Valley Water District – Water Commission.**

**[Rules Committee referral 2/1/12 – Item H(4)]**

**(d) Reappoint Council Member Campos and Council Member Liccardo to the Santa Clara Valley Transportation Authority's Downtown/East Valley Policy Advisory Board.**

**(Mayor)**

**[Rules Committee referral 2/1/12 – Item H(6)]**

Action: Deferred to February 14, 2012.

**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 01/10/12 – Item 3.4 and 01/31/12 – Item 3.3)**

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

## COMMUNITY & ECONOMIC DEVELOPMENT

- 4.1 As recommended by the Community and Economic Development Committee on January 23, 2012: Accept this report on streamlining real estate actions to sell surplus property and direct Staff to work with the City Attorney's Office to amend relevant ordinances. (Office of Economic Development)  
[Community and Economic Development Committee referral 01/23/12 – Item D(3)]**

Action: Continued to February 28, 2012 per Rules and Open Government Committee.

## ADJOURNMENT

The Council of the City of San José adjourned at 9:23 a.m.

## CLOSED SESSION

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

Absent: Council Members - Nguyen (Excused).

Upon motion unanimously adopted, Council recessed at 9:30 a.m. to a Closed Session in Room W133 (A) Public Employment/Public Employee Evaluation Pursuant to Government Code Section 54957: Title: City Attorney; Name: Richard Doyle; (B) to confer with Legal Counsel pursuant to Government Code Section 54956.9 subsection (a) with respect to existing litigation: (1) In re: Crescini; Amount of Money or Other Relief Sought: Administrative Appeal; (2) Melin v. City of San José, et al.; Names of Parties Involved: Jim Melin, City of San José and Does 1 through 50, inclusive; Court: Superior Court of California, County of Santa Clara; Case No.: 1-10-CV161902; Amount of Money or Other Relief Sought: Damages according to proof. (3) Lewis v. City of San José, et al.; Names of Parties Involved: David Anthony Lewis, City of San José, San José Police Department, Officer Theodore Lane Davis, and Does 1-10, inclusive; Court: Superior Court of California, County of Santa Clara; Case No.: 1-11-CV191975; Amount of Money or Other Relief Sought: Damages according to proof; (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

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

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.

Minutes Recorded, Prepared and Respectfully Submitted by,

Dennis Hawkins, CMC  
City Clerk

rmk/2-07-12MIN