



## MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, APRIL 10, 2012

The Council of the City of San José convened in regular session at 9:31 a.m. in the Council Chambers at City Hall.

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

Absent: Council Members - All Present.

### 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 9:35 a.m. to a Closed Session in Room W133 (A) to confer with Legal Counsel pursuant to Government Code subsection (c) of Section 54956.9 with respect to anticipated litigation of significant exposure in one (1) matter. (B) to confer with Legal Counsel pursuant to Government Code Section 54956.9 subsection (a) with respect to existing litigation: (1) In re: Kennedy; Amount of Money or Other Relief Sought: Administrative Appeal; (2) Hogle v. City, et al; Names of Parties Involved: Linda Hogle; City of San José, et al; Court: Superior Court of California, County of Santa Clara; Case No.: 1-11-CV213789: Amount of Money or Other Relief Sought: Damages according to proof; (3) McDonough, et al. v. City of San José; Names of Parties Involved: City of San José, Dennis D. Hawkins in his official

## CLOSED SESSION (Cont'd.)

capacity as City Clerk of the City of San José, Barry Garner, in his capacity as Registrar of Voters of the County of Santa Clara, Karen McDonough, Franco Vado, Robert Sapien, Clifford G. Hubbard; Court: Superior Court of California, County of Santa Clara; Case No.: 1-12-CV220781: Amount of Money or Other Relief Sought: petition for writ of mandate; (4) Airport Parkway Two, LLC et al. v. City of San José; Names of Parties Involved: Airport Parkway Two, LLC; Airport Opportunity Fund, LLC; Casino M8TRIX Inc., Garden City, Inc.; Eric Swallow; Peter Lundardi III; Jeanie Lundardi; City of San José; San José Police Department Division of Gaming Control; Richard Teng; San José Police Chief Christopher M. Moore; Court: Superior Court of California, County of Santa Clara; Case No.: 1-12-CV221225: Amount of Money or Other Relief Sought: petition for writ of mandate; (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); 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.

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

By unanimous consent, Council recessed from the Closed Session at 11:57 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**

Pastor Kevin Pasion of Berryessa Community Church provided the Invocation.  
(District 3)

## **PLEDGE OF ALLEGIANCE**

Mayor Reed, accompanied by students from DeVargas Elementary School led the Pledge of Allegiance.

## **ORDERS OF THE DAY**

Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the Orders of the Day and the Amended Agenda were approved. (11-0.)

## **CEREMONIAL ITEMS**

### **1.1 Presentation of a proclamation recognizing the Week of April 8 – 14, 2012 as “National Library Week” in the City of San José. (Chu)**

Action: Mayor Reed and Council Members Campos, Chu and Kalra recognized the Week of April 8 – 14, 2012 as “National Library Week” in the City of San José.

### **1.2 Presentation of a proclamation recognizing the Week of April 8 – 14, 2012 as “Dispatcher Week” in the City of San José in honor of the San José Police and Fire Public Safety Dispatchers who serve 24 hours a day, 365 days a year, helping those in need of emergency assistance. (Mayor)**

Action: Mayor Reed recognized the Week of April 8 – 14, 2012 as “Dispatcher Week” in the City of San José to honor the San José Police and Fire Public Safety Dispatchers.

## 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.**

None provided.

### **2.2 Final Adoption of Ordinances.**

None provided.

### **2.3 Approval of Council Committee Reports.**

**(a) Community and Economic Development Report of February 27, 2012.**

**(b) Transportation and Environment Committee Report of March 5, 2012.**

**(c) Neighborhood Services and Education Committee Report of March 8, 2012.**

**(d) Public Safety, Finance and Strategic Support Committee Report of March 15, 2012.**

Documents Filed: (1) The Community and Economic Development Report dated February 27, 2012; (2) The Transportation and Environment Committee Report, dated March 5, 2012. (3) The Neighborhood Services and Education Committee Report dated March 8, 2012. (4) The Public Safety, Finance and Strategic Support Committee Report dated March 15, 2012.

Public Comments: David Wall offered comments on Committee actions and thanked the City's dispatchers for their hard work and dedication.

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

### **2.4 Mayor and Council Excused Absence Requests.**

None provided.

### **2.5 City Council Travel Reports.**

Council Member Pyle provided an overview of the March 28, 2012 meeting she attended before legislators in Sacramento, and she and Council Member Kalra outlined their contributions before the attendees.

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

None provided.

- 2.7 Adopt a resolution of intention to vacate a portion of S. Monroe Street, 300' north of Tisch Way and setting a public hearing on May 1, 2012 at 1:30 p.m. CEQA: Mitigated Negative Declaration, File No. PDC10-018. Council District 6. (Public Works)**

Documents Filed: Memorandum from Acting Director of Public Works David Sykes, dated March 19, 2012, recommending adoption of a resolution.

Action: Resolution No. 76190, entitled: "A Resolution of the Council of the City of San José Setting a Public Hearing to Consider Whether to Vacate a Portion of Monroe Street, Between Scott Street and Tisch Way", was adopted. (11-0.)

- 2.8 Approve travel by Mayor Reed to Washington, D.C. on April 1 – 2, 2012 to attend the National Forum on Youth Violence Prevention. Source of Funds: United States Department of Justice. (Mayor)  
(Rules Committee referral 4/4/12)**

Documents Filed: Memorandum from Mayor Reed, dated April 2, 2012, requesting authorization to travel.

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

- 2.9 As recommended by the Rules and Open Government Committee on April 4, 2012:**  
**(a) Approve the 7<sup>th</sup> Annual West Valley Senior Walk 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. (Mayor)**

Documents Filed: Memorandum from City Clerk Dennis Hawkins, dated April 5, 2012, transmitting the recommendations of the Rules and Open Government Committee.

Action: The 7<sup>th</sup> Annual West Valley Senior Walk 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.)

## **STRATEGIC SUPPORT SERVICES**

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

City Manager Debra Figone congratulated Vice Mayor Nguyen, Council Member Herrera and Budget Director Jennifer Maguire for being honored by the Silicon Valley /San Jose Business Journal as "2012 Women of Influence", and announced that tonight would begin the first of a series of ten budget meetings to be held in at each district throughout the City to invite community feedback.

## COMMUNITY & ECONOMIC DEVELOPMENT

- 4.1 Adopt a resolution authorizing the Director of Housing to accept Building Equity and Growth in Neighborhoods (BEGIN) funds from the California Department of Housing and Community Development and to negotiate and execute the grant agreements and any amendments or other documents necessary to implement the programs funded by the following BEGIN grants:**
- (a) A \$4,000,000 grant to fund down payment assistance loans to first-time homebuyers purchasing in the Pepper Lane (Phase 1) townhome development.**
  - (b) A \$1,500,000 grant to fund down payment assistance loans to first-time homebuyers purchasing in the proposed Westmount Square single family/townhome development.**

**CEQA: Not a Project, File No. PP10-068(a), Grant Application.  
Council Districts 3 and 4. SNI: 13th Street. (Housing)**

Documents Filed: Memorandum from Director of Housing Leslye Corsiglia, dated March 19, 2012, recommending adoption of a resolution.

Public Comments: David Wall commented that this grant program was designed to benefit developers.

Assistant Director of Housing, Jacky Morales, responded to questions from Council.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, Resolution No. 76191, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Housing to Accept Building Equity and Growth in Neighborhoods Funds from the California Department of Housing and Community Development and to Negotiate and Execute the Grant Agreements and any Amendments or Other Documents Necessary to Implement the Down Payment Assistance Loans for First-Time Home Buyers Purchasing in the Pepper Lane or Westmount Square Developments", was adopted. (11-0.)

## NEIGHBORHOOD SERVICES

- 5.1 Approve an ordinance amending Chapter 9.44 of Title 9 of the San José Municipal Code to regulate outdoor smoking. CEQA: Exempt; File No. PP12-010. (City Attorney's Office)**

Documents Filed: (1) Memorandum from Council Member Kalra, dated April 6, 2012, providing support to the Staff's recommendations. (2) Memorandum from City Attorney Richard Doyle, dated March 23, 2012, recommending approval of an ordinance.

A presentation was provided by Assistant Director of Planning and Code Enforcement Laurel Prevetti, Acting Deputy Director of Planning and Code Enforcement Diane Buchanan and Code Enforcement Administrator Jamie Matthews.

## 5.1 (Cont'd.)

Public Comments: Expressing support to the proposed ordinance, including comments on the hazards of second-hand smoke, issues of non-compliance and commentary on smoking marijuana in public were the following: Jean Salmon, Ellen Prior, Maria Francisco, Joshua Howard (California Apartment Association), Vivian Wilczak, Carol Baker (American Cancer Society), Tom McMahon, Bill Leininger, Larry Yamasaki, Kathleen King (Santa Clara Family Health Foundation), Margo Sidener (Breathe California), Dr. Marty Fenstersheib (Public Health Department), David Wall, Victoria Bourdon, Pastor Jeff Moore II, Elisa Koff-Ginsborg, Vanessa Starr, Gabrielle Antolovich, Greg Miller R.N. and Ross Signorino.

Motion: Council Member Kalra moved approval of this item and urged his colleagues' support. The motion was seconded by Council Member Campos.

A discussion of support among Councilmembers followed.

Action: On a call for the question, the motion carried unanimously, and Ordinance No. 29053, entitled: "An Ordinance of the City of San José Amending Chapter 9.44 of Title 9 of the San José Municipal Code to Regulate Outdoor Smoking", was passed for publication.

(11-0.)

## TRANSPORTATION & AVIATION SERVICES

- 6.1 Approve the following actions to install eight miles of new bike lanes and associated pavement maintenance treatments in the Downtown San José area in support of implementing a Downtown Bike Share system in 2012 using various grant funding sources:**
- (a) Authorize the removal of vehicle travel lanes on specified segments of Almaden Boulevard, Third Street, Fourth Street, Tenth Street and Eleventh Street and installation of bicycle lanes consistent with Envision 2040 goals for developing "complete streets" as described in this memorandum.**
  - (b) Adopt a resolution to repeal Resolution No. 74835 and authorize the installation of bicycle lanes on the following streets in accordance with California Vehicle Code section 21207:**
    - (1) Almaden Boulevard between Grant Street and Santa Clara Street;**
    - (2) Notre Dame Street between Santa Clara Street and St. John Street;**
    - (3) Third Street between Julian Street and Reed Street;**
    - (4) Fourth Street between Julian Street and Reed Street;**
    - (5) Tenth Street between Hedding Street and Keyes Street; and**
    - (6) Eleventh Street between Hedding Street and Keyes Street.**

- 6.1 (c) Adopt a resolution for implementation of new Downtown area bike lane projects and associated pavement maintenance treatments that:**
- (1) Authorizes the City Manager to determine the lowest responsive and responsible bidder, to award a construction contract in an amount not to exceed \$1,897,500, and/or to reject all bids and re-bid the project;**
  - (2) Authorizes the Director of Public Works to decide any timely bid protests, including issues of bidder responsiveness or responsibility.**
- CEQA: Negative Declaration, File No. PP02-115. Downtown Strategy 2000 EIR, File No. GP05-03-01, Resolution No. 72767. Council District 3. (Transportation)**

Documents Filed: (1) Memorandum from Council Member Liccardo, dated April 9, 2012, recommending approval of the Staff's recommendations with modifications. (2) Memorandum from Director of Transportation Hans Larsen, dated March 19, 2012 recommending adoption of resolutions and removal of select vehicle lanes to accommodate bicycle traffic.

Director of Transportation Hans Larsen provided a presentation on the downtown area bike lane project.

Motion: Council Member Liccardo moved approval of the Staff recommendations as indicated below in action. Council Member Herrera seconded the motion.

Public Comments: Offering support and speaking to safety concerns of bicycling and traffic were the following members of the public: Ann Jasper, Emy Mendoza, Corinne Winter (Silicon Valley Bicycle Coalition) Colin Heyne, Rocky Nguyen (SVBC), Aaron Francis (San José Bike Clinic), Carlos Babcock (San José Bicycle/Pedestrian Advisory Committee), David Wall and Ross Signorino.

Action: On a call for the question, the motion carried unanimously, and Resolution No. 76192, entitled: "A Resolution of the Council of the City of San José Designating Bicycle Lanes on Those Portions of Streets Specified Herein Pursuant to the Authority of California Vehicle Code Section 21207; and Repealing Resolution No. 74835" and Resolution No. 76193, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager or Designee to Award a Construction Contract(s) to Implement New Downtown Area Bike Lane Projects and Associated Pavement Maintenance Treatments to the Lowest Responsive and Responsible Bidder in the Amount Not to Exceed \$1,897,500", were adopted, with Staff's recommendations approved with modifications as follows:

1. Continue analysis of the feasibility of a segregated lane or other opportunities in any other roadway that would not require the construction of any physical on-street barriers, but merely "swap" bike lands with the space typically allocated for parked cars; and
2. Report to the Transportation & Environment Committee in approximately one year with the results of any bike-auto traffic accident data before and after the implementation of the 10<sup>th</sup> and 11<sup>th</sup> Street modifications. (11-0.)



## **PUBLIC SAFETY SERVICES**

- 8.1 As recommended by the Public Safety, Finance and Strategic Support Committee on March 15, 2012, accept the Audit of Police Department Secondary Employment. (City Auditor)  
[Public Safety, Finance and Strategic Support referral 3/15/12 – Item D(5)]  
(Deferred from 4/3/12 – Item 8.1)**

Action: Deferred to April 17, 2012 per Administration.

## **REDEVELOPMENT – SUCCESSOR AGENCY**

- 9.1 It is recommended that the City Council, the City Council acting as the Successor Agency to the Redevelopment Agency take the following actions:**
- (a) Adopt 2011-2012 Appropriation Ordinance and Funding Sources Resolution amendments of the City Council, in its capacity as the Successor Agency, in the Redevelopment Obligation Retirement Fund as outlined in Attachment A, subject to the pending Successor Agency Oversight Board approval of the 2011-2012 Successor Agency to the Redevelopment Agency budget to be reviewed April 12th.**
  - (b) Adopt 2011-2012 Appropriation Ordinance and Funding Sources Resolution amendments of the City Council in the Low and Moderate Income Housing Fund as outlined in Attachment B.  
(Successor Agency to the Redevelopment Agency)**

Action: Deferred to April 17, 2012 per Administration.

- 9.2 Adopt a resolution of the City Council, acting as the Successor Agency to the Redevelopment Agency of the City of San Jose, approving the proposed February-June 2012 Administrative Budget of the Successor Agency and directing staff to present such Administrative Budget to the Oversight Board for approval. (Successor Agency to the Redevelopment Agency)  
(Rules Committee referral 4/4/12)**

Documents Filed: Memorandum from Successor Agency Managing Director Richard Keit, dated April 6, 2012, recommending adoption of a resolution.

Successor Agency Staff responded to questions from Council, and City Attorney Richard Doyle clarified issues regarding budgeted support services.

Action: Upon motion by Council Member Herrera, seconded by Council Member Liccardo and carried unanimously, Successor Agency Resolution No. 7005, entitled: “A Resolution of the Council of the City of San José Acting in Its Capacity as the Successor Agency to the Redevelopment Agency of the City of San José approving the February – June 2012 Administrative Budget of the Successor Agency”, was adopted. (11-0.)

## **OPEN FORUM**

1. David Wall referenced the Santa Clara Valley Water District's dispute over paying money into the South Bay Water Recycling Program and the potential for reassessment of the sewer and use charge, and further provided suggestions regarding community gardens.
2. Ross Signorino commented on the difficulties of acquiring business licenses in San José.

## **ADJOURNMENT**

The Council of the City of San José adjourned at 3:40 p.m. in memory of former San José City Council Member David J. Goglio who passed away on March 24, 2012.

Minutes Recorded, Prepared and Respectfully Submitted by,

Dennis Hawkins, CMC  
City Clerk

rmk/04-10-12MIN