



MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, NOVEMBER 4, 2008

The Council of the City of San José convened in regular session at 9:00 a.m. in the Council Chambers at City Hall.

Present: Council Members - Chirco, Chu, Constant, Liccardo, Nguyen, Oliverio, Pyle, Williams; Reed.

Absent: Council Members - Campos, Cortese. (Excused)

Upon motion unanimously adopted, Council recessed at 9:02 a.m. to a Closed Session in Room W133, (A) Public Employee Performance Evaluation Pursuant to Government Code Section 54957: (1) Title: Executive Director of the Redevelopment Agency; Name: Harry S. Mavrogenes. (B) to confer with Counsel – Anticipated Litigation (Claim Not Filed). Significant exposure to litigation pursuant to subsection (b) of Section 54956.9 of the Government Code: Number of matters to be discussed: 1; (C) to confer with Counsel – Existing Litigation Pursuant to Government Code Section 54956.9 subsection (a): (1) Diaz, et al. v. City of San José; Parties Involved: Juan Diaz, Keith Keesling, Christopher Murphy, Gary Weekley, Karen Allen and other employees similarly situated, City of San José; Case No: C07-06424 JW; Amount of Money or other Relief Sought: Damages according to proof; Court: U.S. District Court, Northern District of California. (2) Welch v. City of San José; Names of Parties Involved: Jeffrey Welch, Glen Bishop, Mitchell Witsinski, Robert Culbertson and other employees similarly situated, City of San José; Case No: C08-02132 JW; Court: U.S. District Court, Northern District of California. (3) Vietnamese-American Community of Northern California v. City of San José, et al.; Names of Parties Involved: Vietnamese-American Community of Northern California; City of San José; City Council of San José; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV107082; Amount of Money or other Relief Sought: Plaintiffs seek declaratory and injunctive relief according to proof. (4) La Blanc v. City of San José, et al.; Names of Parties Involved: Julie La Blanc, City of San José, and Does 1 City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) San José Police Officers' Association; Nature of Negotiations: Wages/Salaries, Hours, Working

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CLOSED SESSION REPORT (Cont'd.)

through 100; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV111250; Amount of Money or other Relief Sought: In excess of \$25,000 according to proof. (D) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association; (2) 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 Association of Building, Mechanical and Electrical Inspectors (ABMEI); (3) International Brotherhood of Electrical Workers, Local 332 (IBEW). 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 Brotherhood of Electrical Workers, Local 332 (IBEW); (4) Confidential Employees' Organizations, 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 Confidential Employees' Organization, AFSCME Local 101; (5) City Association of Management Personnel Agreement (CAMP). Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Benefit & Compensation Summary - City of San José and City Association of Management Personnel Agreement; (6) 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 Municipal Employees' Federation, AFSCME Local 101, AFL-CIO. (7) 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 - Association of Maintenance Supervisory Personnel (AMSP) Benefit & Compensation Summary. (8) 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 Association of Engineers & Architects (AEA). How to obtain a copy of existing contract or MOA: web: <http://www.sanjoseca.gov/employeerelations/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 at 1:30 p.m. in the Council Chambers.

Present: Council Members - Chirco, Chu, Constant, Liccardo, Nguyen, Oliverio, Pyle, Williams; Reed.

Absent: Council Members - Campos, Cortese. (Excused)

INVOCATION

The Presentation of the Colors was made by District 13 American Legion Color Guard. The winner of the Almaden Valley Teen Idol contest, Lauren Colvin, sang America the Beautiful. (District 10)

PLEDGE OF ALLEGIANCE

Joined by the American Legion Color Guard, Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Pyle, seconded by Constant and carried unanimously, the Orders of the Day and the Amended Agenda were approved, with Item 3.3 deferred to November 18, 2008, and Ceremonial Item 1.1 added at the request of Council Member Constant.

CEREMONIAL ITEMS

1.1 Presentation of a commendation to Second Harvest Food Bank and Generations Community Wellness with the presentation of a check for \$500 to aid in hunger relief efforts. (Mayor/Constant/Nguyen)

Action: Mayor Reed and Council Members Constant and Nguyen recognized and commended Second Harvest Food Bank and Generations Community Wellness for their dedication and commitment to the community.

CONSENT CALENDAR

2.1 Approval of minutes.

- (a) Regular Minutes of August 19, 2008**
- (b) Regular Minutes of August 26, 2008**
- (c) Regular Minutes of August 5, 2008
(Deferred from 10/28/08 – Item 2.1(a))**
- (d) Regular Minutes of August 12, 2008
(Deferred from 10/28/08 – Item 2.1(b))**

Documents Filed: City Council regular Minutes of August 5 through August 26, 2008.

Action: The regular Minutes of August 5 through August 26, 2008 were approved. (9-0-2. Absent: Campos, Cortese.)

2.2 Final adoption of ordinances.

- (a) **ORD. NO. 28427** – Rezoning certain real property situated on the northwest corner of Tully Road and Kenesta Way (1935 Tully Road) to CN Commercial Neighborhood Zoning District. C07-099

Documents Filed: Proof of Publication of the title of Ordinance No. 28427 executed on October 21, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28427](#) was adopted. (9-0-2. Absent: Campos, Cortese.)

- (b) **ORD. NO. 28428** – Rezoning certain real property situated on the south side of Blossom Hill Road, approximately 300 feet westerly of Snell Avenue to CN Commercial Neighborhood Zoning District. C08-028

Documents Filed: Proof of Publication of the title of Ordinance No. 28428 executed on October 21, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28428](#) was adopted. (9-0-2. Absent: Campos, Cortese.)

- (c) **ORD. NO. 28431** – Amending Chapter 4.76 of Title 4 of the San José Municipal Code by amending Sections 4.76.240 and 4.76.270 to clarify the due date for the initial payment of the business tax and to revise the due date for subsequent payments of the business tax to correspond with the City's new business tax billing system and by amending Section 4.76.290 to clarify the penalty provisions for late payment and by adding a new Section 4.76.295 to authorize the Director of Finance to waive penalties under certain circumstances; and to provide that the current business tax due dates will apply until such time as the new billing system is successfully implemented.

Documents Filed: Proof of Publication of the title of Ordinance No. 28431 executed on October 21, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28431](#) was adopted. (9-0-2. Absent: Campos, Cortese.)

- (d) **ORD. NO. 28436** – Rezoning certain real property situated on the west side of Coleman Avenue between Newhall Street and Brokaw Road from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District. PDC08-050

Documents Filed: Proof of Publication of the title of Ordinance No. 28436 executed on October 21, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28436](#) was adopted. (9-0-2. Absent: Campos, Cortese.)

2.2 **Re-adoption of ordinances:**

- (e) **ORD. NO. 28419 – Amending Section 7.20.520 of Chapter 7.20 of Title 7 of the San José Municipal Code to allow residents who obtained a cat or dog license from another jurisdiction and are annexed into the City to transfer the remainder of the license period.**

Documents Filed: (1) Memorandum from City Clerk Lee Price, dated October 30, 2008, submitting Ordinance 28419 for re-adoption. (2) Proof of Publication of the title of Ordinance No. 28419 executed on October 21, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28419](#) was re-adopted. (9-0-2. Absent: Campos, Cortese.)

- (f) **ORD. NO. 28420 – Rezoning certain real property situated on the east side of Saratoga Avenue, 300 feet southerly of Los Felice Drive to CO Commercial Office Zoning District. C08-041**

Documents Filed: (1) Memorandum from City Clerk Lee Price, dated October 30, 2008, submitting Ordinance 28420 for re-adoption. (2) Proof of Publication of the title of Ordinance No. 28420 executed on October 21, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28420](#) was re-adopted. (9-0-2. Absent: Campos, Cortese.)

- (g) **ORD. NO. 28421 – Rezoning certain real property situated on the west side of Piedmont Road approximately 220 feet north of Suncrest Avenue to A(PD) Planned Development Zoning District. PDC07-021**

Documents Filed: (1) Memorandum from City Clerk Lee Price, dated October 30, 2008, submitting Ordinance 28421 for re-adoption. (2) Proof of Publication of the title of Ordinance No. 28421 executed on October 21, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28421](#) was re-adopted. (9-0-2. Absent: Campos, Cortese.)

- (h) **ORD. NO. 28423 – Rezoning certain real property situated at the east side of Entrada Cedros, approximately 200 feet south of Giuffrida Avenue to A(PD) Planned Development Zoning District. PDC07-012**

Documents Filed: (1) Memorandum from City Clerk Lee Price, dated October 30, 2008, submitting Ordinance 28423 for re-adoption. (2) Proof of Publication of the title of Ordinance No. 28423 executed on October 21, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28423](#) was re-adopted. (9-0-2. Absent: Campos, Cortese.)

2.3 Accept the proposed policy revisions governing grants made through the Office of Cultural Affairs. CEQA: Not a Project. (Economic Development)

Documents Filed: Memorandum from Chief Development Officer Paul Krutko, dated October 6, 2008, recommending adoption of policy revisions for Office of Cultural Affairs grant programs.

Council Member Liccardo pulled this item for clarification on festival funding.

Director of Office of Cultural Affairs Kerry Adams Hapner responded to questions from Council.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Nguyen and carried unanimously, the proposed policy revisions governing grants made through the Office of Cultural Affairs were approved. (9-0-2. Absent: Campos, Cortese.)

2.4 Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund:

- (a) **Establish an appropriation to the Police Department for the 2008-2009 Next Generation “Click It or Ticket” Grant in the amount of \$45,054;**
- (b) **Increase the Earned Revenue Estimate from the State of California by \$45,054.**

CEQA: Not a Project. (Police/City Manager’s Office)

Documents Filed: Joint memorandum from Chief of Police Robert L. Davis and Budget Director Jennifer Maguire, dated October 14, 2008, recommending adoption of appropriation ordinance and funding sources resolution amendments.

Action: [Ordinance No. 28440](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the General Fund for the 2008-2009 Next Generation “Clock It or Ticket” Grant; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”, and [Resolution No. 74653](#), entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 74461 setting forth the Estimated Sources of Funds for the Fiscal Year 2008-2009 to Adjust Revenues in the General Fund”, were adopted. (9-0-2. Absent: Campos, Cortese.)

- 2.5 (a) **Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the Services for Redevelopment Capital Projects Fund (City-side Redevelopment Fund) for 2008-2009:**
- (1) **Increase the estimate for Earned Revenue by \$272,055.**
 - (2) **Establish the appropriation to the Office of Economic Development for the Spartan Keyes Public Art Project (PSM 549) in the amount of \$100,000.**
 - (3) **Establish the appropriation to the Department of Transportation for the South First Street Demonstration Project (PSM 551) in the amount of \$25,055.**
 - (4) **Establish the appropriation to the Department of Public Works for the Improvement District 99-218SJ Deferral of Assessment FY08-09 (PSM 552) in the amount of \$147,000.**
- (b) **Adopt resolutions making certain determinations regarding the related expenditure of Redevelopment Agency funds on certain public improvements in connection with:**
- (1) **The Spartan Keyes Public Art Project as more specifically described in the memorandum from the Redevelopment Agency, dated August 7, 2008.**
 - (2) **The South First Street Demonstration Project as more specifically described in the memorandum from the Redevelopment Agency, dated August 22, 2008.**

CEQA: Spartan Keyes Public Art Project: Not a Project; South First Street Demonstration Project: Resolution No. 72767, File No. PP08-119; Improvement District 99-218 SJ Deferral of Assessment FY08-09 Project: Not a Project. Council Districts 2, 3 and 7. (Public Works/Transportation/Economic Development/City Manager's Office)

Documents Filed: Joint memorandum from Director of Public Works Katy Allen, Director of Transportation James Helmer, Chief Development Officer Paul Krutko and Budget Director Jennifer Maguire, dated October 14, 2008, recommending adoption of appropriation ordinance and funding sources resolution amendments and resolutions.

Action: [Ordinance No. 28441](#), entitled: "An Ordinance of the City of San José Amending Ordinance No. 28349 to appropriate Monies in the Services for Redevelopment Capital Projects Fund for the Spartan Keyes Public Art Project, for the South First Street Demonstration Project, and for the Improvement District 99-218SJ Deferral of Assessment Fiscal Year 2008-2009 Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", [Resolution No. 74654](#), entitled: "Resolution of the Council of the City of San José Amending Resolution No. 74461 Setting forth the Estimated sources of Funds for the Fiscal Year 2008-2009 to Adjust Revenues in the Services for Redevelopment Capital Project Fund", [Resolution No. 74656](#), entitled: "Resolution of the Council of the City of San José Making Certain Determinations Regarding the Expenditure of Redevelopment Agency Funds for Certain

2.5 Action: (Cont'd.)

Public Improvements in the Spartan Keyes Neighborhood of the Strong Neighborhoods Initiative Redevelopment Project Area”, and [Resolution No. 74657](#), entitled: “Resolution of the Council of the City of San José Making Certain Determinations Regarding the Expenditure of Redevelopment Agency Funds for Certain Public Improvements in the Market Gateway Redevelopment Area Along South First Street between San Carlos and San Salvador Streets”, were adopted. (9-0-2. Absent: Campos, Cortese.)

- 2.6 (a) Designate Council Member Liccardo as the City’s representative to the CEOs for Cities meeting on November 5-7, 2008.**
(b) Approve travel by Council Member Liccardo to Chicago, IL on November 5-7, 2008 to represent the City at the CEOs for Cities meeting regarding a national urban agenda. Source of Funds: Mayor/Council Travel Fund. (Liccardo)
(Rules Committee referral 10/22/08)

Documents Filed: Memorandum from Council Member Liccardo, dated October 17, 2008, requesting approval to travel and to represent the City at the CEOs for Cities meeting.

Action: The travel request was approved. (9-0-2. Absent: Campos, Cortese.)

- 2.7 Approve travel by Redevelopment Agency Executive Director Harry Mavrogenes to Orlando, FL on November 11-16, 2008 to participate in the National League of Cities 2008 Congress of Cities and expositions (SNI Award). Source of Funds: Redevelopment Agency. (Redevelopment Agency)**
(Rules Committee referral 10/22/08)

Documents Filed: Memorandum from Executive Director of the Redevelopment Agency Harry S. Mavrogenes, dated October 15, 2008 requesting approval to travel.

Action: : The travel request was approved. (9-0-2. Absent: Campos, Cortese.)

- 2.8 Approve the appointment of David Mills, Program Director of the John S. and James L. Knight Foundation, to serve as a private sector representative on the Work2Future Board of Directors. (Mayor)**
[Rules Committee referral 10/29/08 – Item F(1)]

Documents Filed: Memorandum from City Clerk Lee Price, dated October 30, 2008, submitting approval of the Rules and Open Government Committee for an appointment to the Work2Future Board of Directors.

Action: The appointment of David Mills, Program Director of the John S. and James L. Knight Foundation, to serve as a private sector representative on the Work2Future Board of Directors was approved. (9-0-2. Absent: Campos, Cortese.)

- 2.9 Extend the term of Civil Service Commission Member and Vice Chair Sharon Hightower for up to one year, expiring on or before December 1, 2009. (City Clerk)**
[Rules Committee referral 10/29/08 – Item F(2)]

Documents Filed: Memorandum from City Clerk Lee Price, dated October 30, 2008, submitting approval of the Rules and Open Government Committee to extend the term of Civil Service Commission Member and Vice Chair Sharon Hightower.

Action: Extension of the term of Civil Service Commission Member and Vice Chair Sharon Hightower for up to one year was approved. (9-0-2. Absent: Campos, Cortese.)

STRATEGIC SUPPORT SERVICES

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

Action: City Manager Debra Figone presented an overview of the General Fund fiscal condition and the economy's impact on City revenue projections.

- 3.6 Adopt a resolution calling for a Special Recall Election on March 3, 2009. (City Clerk)**

Documents Filed: (1) Memorandum from City Attorney Doyle, dated October 23, 2008, outlining procedures in the special recall election process. (2) Memorandum from City Clerk Lee Price, dated October 23, 2008, recommending adoption of a resolution calling for a special recall election. (3) Letter from Michael Sweet (McNutt Law Group LLP), dated November 3, 2008, addressing issues related to the scheduling of the special recall election.

Motion: Council Member Chirco moved approval of the Staff's recommendation. The motion was seconded by Council Member Pyle.

3.6 (Cont'd.)

Public Comment: Michael Sweet (McNutt Law Group LLP), representing the Recall Madison Nguyen Committee, spoke in favor of a single election to be held simultaneously for the recall and for the election of Council Member Nguyen's successor. Ross Signorino spoke in opposition to the recall election and the expense it entails. Speaking in support of the recall election and asking that one election be held for both the recall and election for a successor were: Paul Le, Anh Cunningham, Tran Hanh, Que N. Phan, Sam Ho, Ly Tong, Connie Dang, Cuong Dang, Loan Pham, Christine Ho, Tinh Cao, Paul Nguyen, Minh Khanh Pham, Tuan Ly, Vu Ho, Mai Nguyen, Thuc-Vhet-Do, Thuan Nguyen, H.G. Nguyen and Andrew Nguyen.

City Clerk Lee Price responded to questions from Council.

Council Member Williams requested further clarification from City Attorney Doyle on the recall election process. Council discussion followed.

Action: On a call for the question, the motion passed, [Resolution No. 74658](#), entitled: "A Resolution of the Council of the City of San José Calling and Giving Notice of a Recall Election to be Held in District 7 of the City of San José on March 3, 2009 and Requesting Various Services from the County of Santa Clara Registrar of Voters", was adopted. (8-1-2. Noes: Williams. Absent: Campos, Cortese.)

3.2 Report of the Special Rules and Open Government Committee – October 14, 2008 Mayor Reed, Chair

Documents Filed: The Rules and Open Government Committee Report dated October 14, 2008.

Action: Upon motion by Council Member Constant, seconded by Council Member Liccardo and carried unanimously, the Rules and Open Government Committee Report and the actions of October 14, 2008 were accepted. (8-0-3. Absent: Campos, Chu, Cortese.)

3.3 Report of the Rules and Open Government Committee – October 15, 2008 Mayor Reed, Chair

Action: Deferred to November 18, 2008 per Orders of the Day.

3.4 Report of the Rules and Open Government Committee – October 22, 2008 Mayor Reed, Chair

Action: Deferred to November 18, 2008 per City Clerk.

3.7 Adopt a resolution approving a formal Council Policy entitled: "Donation of Surplus Personal Property." CEQA: Not a Project. (Finance)

Action: Deferred to November 18, 2008 per Administration.

**3.8 Report of the Rules and Open Government Committee – October 1, 2008
Mayor Reed, Chair**

Documents Filed: The Rules and Open Government Committee Report dated October 1, 2008.

Action: Upon motion by Council Member Constant, seconded by Council Member Chirco and carried unanimously, the Rules and Open Government Committee Report and the actions of October 1, 2008 were accepted. (8-0-3. Absent: Campos, Chu, Cortese.)

**3.9 Report of the Rules and Open Government Committee – October 8, 2008
Mayor Reed, Chair**

Documents Filed: The Rules and Open Government Committee Report dated October 8, 2008.

Action: Upon motion by Council Member Constant, seconded by Council Member Chirco and carried unanimously, the Rules and Open Government Committee Report and the actions of October 8, 2008 were accepted. (8-0-3. Absent: Campos, Chu, Cortese.)

TRANSPORTATION & AVIATION SERVICES

6.2 Adopt the following 2008-2009 appropriation ordinance amendments in the Airport Maintenance and Operation Fund (523):

- (a) **Increase the Personal Services appropriation in the Public Works Department in the amount of \$166,930.**
- (b) **Increase the Non-Personal/Equipment appropriation in the Public Works Department in the amount of \$22,483.**
- (c) **Increase the Overhead appropriation in the amount of \$29,587.**
- (d) **Decrease the Contingency Reserve in the Airport in the amount of \$219,000. (Airport/Public Works/City Manager's Office)**

Action: Deferred to November 18, 2008 per Administration.

PUBLIC SAFETY SERVICES

8.1 Adopt a resolution authorizing the Director of Public Works to negotiate and execute individual contract change orders in excess of \$100,000 up to a combined amount not to exceed \$1,500,000 for the work specified in the memorandum for the South San José Police Substation construction contract with S. J. Amoroso Construction Co., Inc. (SJA). CEQA: Mitigated Negative Declaration, PP04-304. (Public Works)

Documents Filed: Replacement memorandum from Director of Public Works Katy Allen, dated October 17, 2008, recommending adoption of a resolution.

8.1 (Cont'd.)

Action: Upon motion by Council Member Williams, seconded by Council Member Constant and carried unanimously, [Resolution No. 74660](#), entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Public Works to Negotiate and Execute Individual Change Orders in Excess of \$100,000, up to a combined amount not to exceed \$1,500,000, for certain specified work for the South San José Police Substation", was adopted. (8-0-3. Absent: Campos, Chu, Cortese.)

OPEN FORUM

Ross Signorino offered his congratulations to the Council and Redevelopment Agency for their success in selling bonds during these financially difficult times.

ADJOURNMENT

The Council of the City of San José adjourned at 2:57 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

rmk/11-04-08MIN

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