



MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, MAY 06, 2014

The Council of the City of San José convened in Regular Session at 9:07 a.m. in the Council Chambers at City Hall.

Present: Council Members - Campos, Chu, Constant, Herrera (9:10 a.m.), Kalra (9:12 a.m.), Khamis, Liccardo (9:10 a.m.), Nguyen, Oliverio (9:15 a.m.), Rocha; Reed.

Absent: Council Members - All Present.

STRATEGIC SUPPORT SERVICES

3.2 Accept Labor Negotiations Update.

There was no report.

CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:08 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: Title: Independent Police Auditor; Name: Judge LaDoris Cordell. (B) to confer with Legal Counsel pursuant to Government Code Section 54956.9 Subsection (c) with respect to initiation of litigation in one (1) matter. (C) to confer with Legal Counsel pursuant to Government Code Section 54956.9(d)(1) with respect to existing litigation: (1) Binkovich v. Barthelmy, et al. Names of Parties Involved: Aleksander Binkovich, City of San José, Officer Barthelmy, Officer Grondahl, Officer Panighetti, Officer Craig, Officer Jabob and Officer Bollendorf; Court: U.S. District Court, Northern District of California, San José Division; Case No: C 11-03774 PSG; Amount of Money or Other Relief Sought: Damages According to Proof. (2) Friends of the Willow Glen Trestle v. City, et al; Names of Parties Involved: Friends of the Willow Glen Trestle, an unincorporated association; City of San José and City Council of the City of San José and Does 1-10; Court: Superior Court of California, County of Santa Clara; Case No: 1-14-CV-260439;

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CLOSED SESSION (Cont'd.)

Amount of Money or Other Relief Sought: Declaratory and injunctive relief. (3) San José Police Officers' Association v. City, et al. Names of Parties Involved: San José Police Officers' Association, City of San José, Board of Administration for Police and Fire Department Retirement Plan of City of San José and Does 1-100; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-225926; Amount of Money or Other Relief Sought: Declaratory and injunctive relief. (4) San José Retired Employees Association, et al. v. City, et al; Names of Parties Involved: San José Retired Employees Association, Howard E. Fleming, Donald S. Macrae, Frances J. Olson, Gary J. Richert and Rosalinda Navarro, City of San José Does 1 – 50, Board of Administration for the Federated City Employees Retirement System; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-233660; Amount of Money or Other Relief Sought: Declaratory Relief and Verified Petition for Writ of Mandate. (5) Sapien, et al. v. City of San José, et al. Names of Parties Involved: Robert Sapien, Marty Kathleen McCarthy, Thanh Ho, Randy Sekany, Ken Heredia, City of San José, Debra Figone in her official as City Manager of the City of San José, Does 1-15, The Board of Administration for the 1961 San José Police and Fire Department Retirement Plan; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-225928; Amount of Money or Other Relief Sought: Challenge to Measure B. (6) Harris, et al. v. City of San José, et al. Names of Parties Involved: Teresa Harris, Jon Reger, Moses Serrano, Suzann Stauffer, City of San José, Debra Figone in her official as City Manager of the City of San José, The Board of Administration for the 1975 Federated City Employees' Retirement Plan, Does 1-15; Court: Superior Court of California, County of Santa Clara; Case: 1-12-CV-226570; Amount of Money or Other Relief Sought: Challenge to Measure B. (7) Mukhar, et al. v. City of San José, et al. Names of Parties Involved: John Mukhar, Dale Dapp, James Atkins, William Buffington, Kirk Pennington, City of San José, Debra Figone in her official as City Manager of the City of San José, The Board of Administration for the 1975 Federated City Employees' Retirement Plan, Does 1-15; Court: Superior Court of California, County of Santa Clara; Case: 1-12-CV-226574; Amount of Money or Other Relief Sought: Challenge to Measure B. (8) AFSCME, et al. v. City of San José, et al. Names of Parties Involved: American Federation of State, County and Municipal Employees, Local 101 on behalf of its members, City of San José, The Board of Administration for the Federated City Employees' Retirement Plan; Court: Superior Court of California, County of Santa Clara; Case: 1-12-CV-225928; Amount of Money or Other Relief Sought: Challenge to Measure B. (9) American Federation of State, County and Municipal Employees, et al. v. City. Names of Parties Involved: American Federation of State, County and Municipal Employees and City of San José; Court: State of California Public Employment Relations Board; Case No: CE-924-M; Amount of Money or Other Relief Sought: Damages According to Proof. (10) OE#3 v. City of San José. Names of Parties Involved: Operating Engineers' Local Union No. 3 and City of San José. Court: State of California Public Employment Relations Board; Case No: CE-900-M; Amount of Money or Other Relief Sought: Damages According to Proof. (11) IAFF Local 230 v. City of San José. Names of Parties Involved: International Association of Firefighters Local 230 and City of San José. Court: State of California Public Employment Relations Board; Case No: CE-941-M; Amount of Money or Other

CLOSED SESSION (Cont'd.)

Relief Sought: Damages According to Proof. (12) IAFF Local 230 v. City of San José. Names of Parties Involved: International Association of Firefighters Local 230 and City of San José. Court: State of California Public Employment Relations Board; Case No: SF-CE-969-M. (13) IFPTE Local 21 v. City of San José. Names of Parties Involved: International Federation of Professional and Technical Engineers Local 21 and City of San José. Court: State of California Public Employment Relations Board; Case No: SF-CE-996-M; Amount of Money or Other Relief Sought: Damages According to Proof. (D) 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: Salaries, Hours, Working Conditions, etc; Name of Existing Wages 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. Web: <http://www.sanjoseca.gov/?nid=186>; Telephone for Employee Relations: 408-535-8150.

CLOSED SESSION (Cont'd.)

By unanimous consent, Council recessed from the Closed Session at 11:00 a.m. and reconvened to Regular Session at 1:34 p.m. in the Council Chambers.

Present: Council Members - Campos, Chu, Constant, Herrera, Kalra, Khamis, Liccardo, Nguyen, Oliverio (1:46 p.m.), Rocha; Reed.

Absent: Council Members - All Present.

INVOCATION

Yei Tochtli Mitlaphilli, Calpulli Tonalehqueh presented the Invocation. (District 5)

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Herrera, seconded by Vice Mayor Nguyen and carried unanimously, the Orders of the Day and the Amended Agenda were approved. (10-0-1. Absent: Oliverio.)

CEREMONIAL ITEMS

1.1 Presentation of a proclamation declaring the Month of May 2014 as “Asian Pacific American Heritage Month” in the City of San José. (Chu)

Action: Deferred to May 20, 2014 per Council Member Chu.

1.2 Presentation of a proclamation for “Letter Carriers’ Food Drive Day” in the City of San José. (Kalra)

Mayor Reed and Council Members Kalra and Chu recognized “Letter Carriers’ Food Drive Day” in San José.

1.3 Presentation of a proclamation declaring May 4, 2014 through May 10, 2014 as “Municipal Clerks Week” in the City of San José. (Mayor)

Mayor Reed recognized the week of May 4, 2014 through May 10, 2014 as “Municipal Clerks Week” and acknowledged the hardworking efforts of the City Clerk and her Staff.

CONSENT CALENDAR

Upon motion by Vice Mayor Nguyen, 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.

There were none.

2.2 Final adoption of ordinances.

- (a) **ORD. NO. 29404 – Rezoning certain real property situated on the northwest corner of Tully Road and Capitol Expressway on an approximately 13.52 gross-acre site from the IP Industrial Park Zoning District to the CG Commercial General Zoning District.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29404 executed on April 25, 2014, submitted by the City Clerk.

Action: Ordinance No. 29404 was adopted. (11-0.)

2.3 Approval of Council Committee Reports.

- (a) **Neighborhood Services and Education Committee Report of April 10, 2014. (Nguyen)**
(b) **Rules and Open Government Committee Report of April 9, 2014. (Mayor)**
(c) **Rules and Open Government Committee Report of April 16, 2014. (Mayor)**

Documents Filed: (1) The Neighborhood Services and Education Committee Report dated April 10, 2014. (2) The Rules and Open Government Committee Reports dated April 9, 2014 and April 16, 2014.

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

- (d) **Public Safety, Finance, and Strategic Support Committee Report of April 17, 2014. (Constant)**

Action: Deferred to May 13, 2014 per City Clerk.

2.4 Mayor and Council Excused Absence Requests.

There was no report.

2.5 City Council Travel Reports.

There was no report.

2.6 Report from the Council Liaison to the Retirement Boards.

There was no report.

STRATEGIC SUPPORT SERVICES

3.1 Report of the City Manager, Edward Shikada (Verbal Report).

City Manager Edward K. Shikada announced the appointment of Pamela Antil as Assistant City Manager and thanked Interim Assistant City Manager Norberto Dueñas for his service during the recruitment.

City Manager Edward K. Shikada reported that an information memorandum was sent out May 6, 2014 with updates regarding the Patton Boggs Federal Legislative and Regulatory action relevant to general local government interests.

- 3.3 (a) Accept status report on the City's efforts to submit information requested by Google Fiber for its consideration of selecting San José for the future installation of a Google Fiber network.**
- (b) Adopt a resolution authorizing the City Manager or his designee to execute a master Network Hut License Agreement with Google Fiber, and to execute Network Hut Site Terms there under for individual sites following City Council approval of such individual sites.**

CEQA: Not a Project, File No. PP10-066, Agreements and Contracts. (City Manager)

Action: Deferred to May 13, 2014 per Administration.

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.1 (a) Conduct a Public Hearing concerning an economic development subsidy to be provided to Prospect Silicon Valley or "Prospect SV," in connection with a below-market lease, pursuant to California Government Code Section 53083.**
- (b) Adopt a resolution authorizing the City Manager, or his designee, to execute a below-market sublease, for an initial term of five (5) years, plus two (2) three (3) year extension options, with Prospect SV, for approximately 23,492 square feet of space in real property located at 1608 Las Plumas Avenue, known as the San José Environmental Innovation Center, or "EIC," for purposes of operating a clean technology demonstration center.**

CEQA: Negative Declaration for the San José Environmental Innovation Center, File No. PP09-138. (Economic Development)

Action: Deferred to May 13, 2014 per Administration.

4.2 Adopt resolutions:

- (a) **Authorizing the City Manager to negotiate and execute a continuation agreement to the Catering Management Services Agreement at the Fourth Street Garage Banquet Center with San José Fairmont Lessee, LLC, the successor in interest to Light Tower Associates, L.P. (aka the Fairmont) for an additional term through May 14, 2014, and making other changes thereto including but not limited to reducing the minimum guarantee due the City for the additional term from \$212,000 to \$101,200, and reducing the minimum guarantee currently owed the City for the term that expired on February 28, 2013, by an amount not to exceed \$36,125.**
- (b) **Authorizing the City Manager to negotiate and execute an agreement with the San José Fairmont Lessee, LLC as the exclusive contractor to provide catering management services at the Fourth Street Garage Banquet Center and City Hall, for a term of two years, with the option of up to four additional two-year terms at the City's discretion, commencing on May 15, 2014.**
- (c) **Revising the Schedule of Fees for Use of City Hall and the Plaza and superseding Resolution No. 75379, to be effective May 15, 2014.**

CEQA: Not a Project, File No. PP10-066(a), Purchase of Supplies, Equipment & Professional Services with no changes in the physical environment. Council District 3. (Public Works)

Action: Deferred to May 13, 2014 per Administration.

TRANSPORTATION & AVIATION SERVICES

- 6.1 (a) **Report on bids and award of a construction contract for the 7333 - 2013 Relinquishment Pavement Project, Federal Project No. STPL 5005 (120), to the lowest responsive bidder, Bay Cities Paving and Grading, Inc. in the amount of \$12,018,386.**
 - (b) **Approve a ten percent contingency in the amount of \$1,201,839.**
- CEQA: Exempt, File No. PP11-035. (Public Works)**

Documents Filed: (1) Memorandum from Council Member Rocha, dated May 6, 2014, recommending acceptance of the Staff recommendations, directing Staff to compose and send a letter to Senator Beall informing him of the actions taken by the City of San José as a result of the passage of AB1670. (2) Memorandum from Director of Public Works David Sykes, dated April 14, 2014, recommending award of the contract to the lowest responsive bidder with related contingency.

Mayor Reed opened the floor for public testimony.

Public Comments: Ross Signorino emphasized the besides paving, more pedestrian striping for safety is needed around schools. Frances Herbert, from the Office of Senator Beall, provided comments about AB1670 which allowed the relinquishment for the corridors of Monterey Road, Alum Rock Avenue and The Alameda for improvements.

6.1 (Cont'd.)

Motion: Council Member Rocha moved approval of his memorandum dated May 6, 2014, recommending acceptance of the Staff recommendations, and to direct Staff to compose and send a letter to Senator Beall informing him of the actions taken by the City of San José as a result of the passage of AB1670. Council Member Campos seconded the motion.

Deputy Director of Transportation Kevin O'Connor responded to Council questions.

Action: On a call for the question, the motion carried unanimously, the memorandum from Council Member Rocha, dated May 6, 2014 was approved, the report on bids and the award of a construction contract for the 7333 - 2013 Relinquishment Pavement Project, Federal Project No. STPL 5005 (120), to the lowest responsive bidder, Bay Cities Paving and Grading, Inc. in the amount of \$12,018,386, with related contingency, was approved. Staff was directed to compose and send a letter to Senator Beall informing him of the actions taken by the City of San José as a result of the passage of AB 1670. (11-0.)

OPEN FORUM

Ross Signorino thanked Vice Mayor Nguyen for a book that she presented to him.

ADJOURNMENT

The Council of the City of San José was adjourned at 1:57 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Toni J. Taber, CMC
City Clerk

smd/05-07-14 MIN

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