

MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, FEBRUARY 5, 2013

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, Chu, Constant, Kalra, Khamis, Liccardo, Nguyen, Oliverio, Rocha; Reed.

Absent Council Members Herrera. (Excused)

STRATEGIC SUPPORT SERVICES

3.2 **Accept Labor Negotiations Update.**

Office of Employee Relations Senior Executive Analyst, Jennifer Schembri provided an overview of proposal items from the San José Police Officer's Association.

Documents Filed: Memorandum dated February 1, 2013, from Carroll, Burdick & McDonough LLP, representing the San José Police Officer's Association, regarding negotiations.

Public Comments: Jon Max Reger expressed his frustration with the City losing valuable employees.

Action: The Labor Negotiations Update was accepted.

CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:05 a.m. to a Closed Session in Room W133 (A) Public Employee Performance Evaluation Pursuant to Government Code Section 54957: Title: City Attorney; Name: Rick Doyle; (B) to confer with Legal Counsel pursuant to Government Code subsection (c) of Section 54956.9 with respect to anticipated litigation: Number of matter(s) to be discussed: two (2); (C) to confer with Counsel pursuant to Government Code subsection (a) of Section 54956.9 with respect to

CLOSED SESSION (Cont'd.)

existing litigation: Kurz, Eric and Jennifer v. Santa Clara Valley Transportation Authority, et al.; Names of Parties Involved: Eric Kurz; Jennifer Kurz; Santa Clara Valley Transportation Authority; County of Santa Clara; State of California; State of California Department of Transportation; City of San José; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV-117081; 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 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.; Web: <http://www.sanjoseca.gov/?nid=186>; Telephone for Employee Relations: 408-535-8150.

2.2 Final adoption of ordinances.

None provided.

2.3 Approval of Council Committee Reports.

- (a) **Rules and Open Government Committee Report of May 2, 2012. (Mayor)**
- (b) **Rules and Open Government Committee Report of May 9, 2012. (Mayor)**
- (c) **Rules and Open Government Committee Report of May 16, 2012. (Mayor)**
- (d) **Rules and Open Government Committee Report of May 23, 2012. (Mayor)**
- (e) **Rules and Open Government Committee Report of May 30, 2012. (Mayor)**
- (f) **Ad Hoc Committee on Economic Competitiveness Committee Report of January 7, 2013. (Mayor)**
- (g) **Public Safety, Finance and Strategic Support Committee Report of January 24, 2013. (Constant)**

Documents Filed: (1) Ad Hoc Committee on Economic Competitiveness Committee Report dated January 7, 2013. (2) Public Safety, Finance and Strategic Support Committee Report of January 24, 2013.

Action: The Council Committee reports (f) and (g) were approved, and Items (a) - (e) were deferred per Orders of the Day. (10-0-1. Absent: Herrera.)

- ## **2.4 (a) Request for excused absences for Council Member Constant from the Regular Meetings of the Rules and Open Government Committee on February 6, 2013, April 3, 2013, June 5, 2013, August 7, 2013, October 2, 2013, and December 4, 2013 due to Authorized City Business: Santa Clara County LAFCO Meetings at the Santa Clara County Office. (Constant)**

Documents Filed: Memorandum from Council Member Constant, dated January 18, 2013, requesting excused absences due to Authorized City Business.

Action: The absences were excused. (10-0-1. Absent: Herrera.)

2.5 City Council Travel Reports.

Council Member Campos provided a report on his attendance at the League of California Cities – Latino Caucus Board Retreat.

2.6 Report from the Council Liaison to the Retirement Boards.

None provided.

STRATEGIC SUPPORT SERVICES

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

City Manager Debra Figone thanked those who worked to bring Virgin America Airlines to the San José International Airport, and welcomed Sophie Kijas who is visiting San José from Australia as part of an international professional development exchange program.

3.3 Accept City Attorney report on the status of the litigation and administrative complaint matters related to Measure B (The Sustainable Retirement Benefits and Compensation Act). CEQA: Not a Project; File No. PP10-069(a), Staff Reports/Assessments/Annual Reports. (City Attorney's Office)

Documents Filed: Memorandum from City Attorney Richard Doyle, dated January 17, 2013, providing an update on litigation and administrative complaint matters related to Measure B.

City Attorney Richard Doyle provided an overview of his report and responded to questions from Council.

Public Comments: Paula Martinez cited the actions of the City Council for employees' low morale and inability to fill key positions.

Action: Upon motion by Council Member Constant, seconded by Vice Mayor Nguyen and carried unanimously, the City Attorney's report on the status of the litigation and administrative complaint matters related to Measure B (The Sustainable Retirement Benefits and Compensation Act), was accepted. (10-0-1. Absent: Herrera.)

3.4 As recommended by the Public Safety, Finance and Strategic Support Committee on January 24, 2013, accept the 2011-12 Annual Performance Audit of Team San José's Management of the City's Convention and Cultural Facilities. (City Auditor)

Action: Deferred to February 12, 2013 per Orders of the Day.

COMMUNITY & ECONOMIC DEVELOPMENT

4.1 Approve the report on bids and award of a construction contract for 4628 - Commodore Park to the low bidder, Suarez & Munoz Construction, Inc., in the amount of \$2,057,000, and approve a seven and one-half percent contingency in the amount of \$154,275. CEQA: Mitigated Negative Declaration, File No. PP03-04-134. Council District 4. (Public Works)

Documents Filed: Memorandum from Director of Public Works David Sykes, dated January 14, 2013, recommending acceptance of the report.

4.1 (Cont'd.)

Action: Upon motion by Council Member Council Member Chu, seconded by Council Member Chu and carried unanimously, the report on bids and award of a construction contract for 4628 - Commodore Park to the low bidder, Suarez & Munoz Construction, Inc., in the amount of \$2,057,000, with related contingencies, was approved. (10-0-1. Absent: Herrera.)

ENVIRONMENTAL & UTILITY SERVICES

- 7.1 Conduct a public hearing on the applications of the following companies for Commercial Solid Waste and Recyclables Collection Franchises for the non-exclusive collection and transport of residential clean-out material and construction and demolition debris; approve the ordinances granting the franchises; and approve the Commercial Solid Waste and Recyclables Collection Franchise Agreements for the non-exclusive collection and transport of Residential Clean-Out Material and Construction and Demolition Debris for a term from April 1, 2013 to June 30, 2014 with the option of three one-year extensions:**
- (a) Think Truong dba AWR Dumpsters; and**
 - (b) Bernardini Enterprises, Inc. dba Chip It Recycling.**
- CEQA: Exempt; File No. PP08-228. (Environmental Services)**

Documents Filed: (1) Memorandum from Environmental Services Director Kerrie Romanow, dated January 14, 2013, recommending a public hearing be held and agreements be accepted. (2) Proof of Publication of Notice of Public Hearing, executed on January 18, 2013 submitted by the City Clerk.

Jeff Anderson, Environmental Services Specialist, responded to questions from Council.

Mayor Reed opened the public hearing.

Public Comment: Jim Piazza expressed environmental concerns and complained that there are multiple sets of rules for the various companies involved.

Mayor Reed closed the public hearing.

Action: Upon motion by Council Member Liccardo, seconded by Vice Mayor Nguyen, and carried unanimously, Ordinance No. 29206, entitled: “An Ordinance of the City of San José Granting a Commercial Solid Waste and Recyclables Collection Franchise to Think Truong DBA AWR Dumpsters”; and Ordinance No. 29207, entitled: “An Ordinance of the City of San José Granting a Commercial Solid Waste and Recyclables Collection Franchise to Bernardini Enterprises, Inc. DBA Chip It Recycling”, were passed for publication. (10-0-1. Absent: Herrera.)

PUBLIC SAFETY SERVICES

- 8.1 As recommended by the Public Safety, Finance and Strategic Support Committee on January 24, 2013, accept the report related to the impact of cardroom gambling on crime in the City of San José for the period July 1, 2011 to June 30, 2012. (Police)**

Documents Filed: Memorandum from Acting City Clerk Toni Taber, dated January 29, 2013, transmitting the recommendations of the Public Safety, Finance and Strategic Support Committee.

Sergeant David Fong, Division of Gaming Control, responded to questions from Council. Council discussion followed.

Motion: Council Member Constant moved approval of the report, with direction to staff to work towards a more well-defined report for next year. The motion was seconded by Vice Mayor Nguyen.

Council discussion continued with direction to staff as outlined below in “Action”.

Action: On a call for the question, the motion carried unanimously, and the report related to the impact of cardroom gambling on crime in the City of San José for the period of July 1, 2011 to June 30, 2012, was accepted, with Staff directed to narrow the focus to allow for greater relevance on next year’s report. (10-0-1. Absent: Herrera.)

OPEN FORUM

Forrest Williams urged the City leaders to work towards the elimination of graffiti from the City of San José.

ADJOURNMENT

The Council of the City of San José adjourned at 2:53 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Toni J. Taber, CMC
Acting City Clerk

rmk/2-05-13MIN