

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, MARCH 19, 2013

The Council of the City of San José convened in Regular Session at 9:38 a.m. in the Council Chambers at City Hall.

Present: Council Members - Campos, Chu, Khamis, Nguyen, Rocha; Reed.

Absent: Council Members - Constant, Herrera, Kalra, Liccardo, Oliverio. (Excused)

STRATEGIC SUPPORT SERVICES

3.2 Accept Labor Negotiations Update.

There was no Staff presentation.

CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:39 a.m. to a Closed Session in Room W133 (A) to confer with Legal Counsel pursuant to Government Code Section 54956.9, Subsection (a) with respect to existing litigation: (1) Deisenroth v. City; Names of Parties Involved: Lorie Deisenroth, City of San José; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-224197; Amount of Money or Other Relief Sought: Damages according to proof. (2) 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 1-10; Court: Superior Court of California, County of Santa Clara; Case No: 112CV225926; Amount of Money or Other Relief Sought: Declaratory and injunctive relief. (3) Sapien, et al. v. City of San José, et al. Names of Parties Involved: Robert Sapien, Mary Kathleen McCarthy, Thanh Ho, Randy Sekany, Ken Heredia, City of San José, Debra Figone in her official capacity a 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: 112CV225928; Amount of Money or Other

CLOSED SESSION (Cont'd.)

Relief Sought: Challenge to Measure B. (4) 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 capacity 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 No: 112CV226570; Amount of Money or Other Relief Sought: Challenge to Measure B. (5) 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 capacity 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 No: 112CV226574; Amount of Money or Other Relief Sought: Challenge to Measure B. (6) 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, Debra Figone, in her capacity as City Manager of the 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 No: 112CV225928; Amount of Money or Other Relief Sought: Challenge to Measure B. (B) to confer 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,

CLOSED SESSION (Cont'd.)

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/employeerelations/moa.asp>; Telephone for Employee Relations: 408-535-8150.

By unanimous consent, Council recessed from the Closed Session at 11:17 a.m. and reconvened to Regular Session at 1:33 p.m. in the Council Chambers.

Present: Council Members - Campos, Chu, Herrera, Kalra, Khamis, Nguyen, Oliverio, Rocha.

Absent: Council Members - Constant, Liccardo; Reed. (Excused)

INVOCATION

Youth Poetry Voices, Movimiento de Arte y Cultura Latino Americana presented the Invocation. (District 3)

PLEDGE OF ALLEGIANCE

Vice Mayor Nguyen led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Herrera, seconded by Council Member Khamis and carried unanimously, the Orders of the Day and the Amended Agenda were approved. (8-0-3. Absent: Constant, Liccardo; Reed.)

CEREMONIAL ITEMS

1.1 Presentation of a proclamation recognizing March 25, 2013 as "Greek Independence Day" in the City of San José. (Constant)

Action: Dropped.

1.2 Presentation of a proclamation declaring March 20, 2013 as “Nowruz–Persian/Iranian New Year” in the City of San José. (Khamis)

Vice Mayor Nguyen and Council Member Khamis recognized March 20, 2013 as Nowruz–Persian/Iranian New Year” in the City of San José.

1.3 Presentation of a commendation to the Association for Viet Arts (AVA), which, as the first nonprofit Vietnamese arts organization in the Bay Area, has fostered excellence in Vietnamese American performing, visual, and literary arts and enriched the cultural landscape of this region. (Nguyen)

Action: Deferred to April 16, 2013 in the evening.

1.4 Presentation of a commendation to the Pacific Coast Farmers’ Market Association for providing economic opportunities for California farmers and food producers, local access to farm fresh products, support for local businesses and community organizations, and education regarding food, nutrition and the sustainability of California agriculture, for the past 25 years. (Herrera)

Vice Mayor Nguyen and Council Member Herrera recognized and commended the Pacific Coast Farmers’ Market Association.

CONSENT CALENDAR

Upon motion by Council Member Herrera, seconded by Council Member Khamis and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (8-0-3. Absent: Constant, Liccardo; Reed.)

2.1 Approval of Minutes.

There were none.

2.2 Final adoption of ordinances.

- (a) **ORD. NO. 29219 – Retroactively extending the Business Tax Amnesty and Business Improvement District Assessment Amnesty Programs (Ordinances Nos. 29166 and 29167, respectively) from March 29, 2013 up through and including May 31, 2013.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29219 executed on March 8, 2013, submitted by the City Clerk.

Action: Ordinance No. 29219 was adopted. (8-0-3. Absent: Constant, Liccardo; Reed.)

- 2.2 (b) **ORD. NO. 29220** – Amending Chapter 4.76 of Title 4 of the San José Municipal Code to add a new Section 4.76.748 to exempt San José Police Officers and Reserve Officers engaged in secondary employment while in their police uniforms from the City’s Business Tax and providing for the exemption from payment of the Business Tax and Business Tax Emption Processing Fee to apply retroactively to January 1, 2009.

Documents Filed: Proof of Publication of the Title of Ordinance No. 29220 executed on March 8, 2013, submitted by the City Clerk.

Action: Ordinance No. 29220 was adopted. (8-0-3. Absent: Constant, Liccardo; Reed.)

2.3 **Approval of Council Committee Reports.**

- (a) **Ad Hoc Committee on Economic Competitiveness Report of February 4, 2013. (Mayor)**
(c) **Rules and Open Government Committee Report of January 30, 2013. (Mayor)**

Documents Filed: (1) The Ad Hoc Committee on Economic Competiveness Report dated February 4, 2013. (2) The Rules and Open Government Committee Report dated January 30, 2013.

Action: The Committee Reports were approved. (8-0-3. Absent: Constant, Liccardo; Reed.)

- (b) **Rules and Open Government Committee Report of January 23, 2013. (Mayor)**

Action: Deferred to March 26, 2013.

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

There were none.

2.5 **City Council Travel Reports.**

There were none.

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

There were none.

2.7 Adopt a resolution:

- (a) **Authorizing an alternative competitive process for the sale of the property at Sunny Oaks Drive and Blossom Hill Road, APN: 464-23-056.**
- (b) **Approving an agreement between the City and J Jesus Magana, for sale of the property in the amount of \$135,000.**
- (c) **Authorizing the City Manager or her designee to execute the sale agreement, the deed and all other documents necessary to complete the transaction.**

CEQA: Exempt, File No. PP99-06-119. Council District 10. (Economic Development)

Documents Filed: Memorandum from Director of Economic Development/Chief Strategist Kim Walesh, dated February 25, 2013, recommending adoption of a resolution.

City Attorney Richard Doyle and City Manager Debra Figone responded to questions from Council Member Khamis.

Action: Upon motion by Council Member Khamis, seconded by Council Member Kalra and carried unanimously, Resolution No. 76574, entitled: "A Resolution of the Council of the City of San José Authorizing An Alternative Competitive Process for the Sale of the Property at Sunny Oaks Drive and Blossom Hill Road, Approving an Agreement with J. Jesus Magana for Sale of the Property in the Amount Of \$135,000 and Authorizing the City Manager or her Designee to Execute the Sale Agreement, The Deed and All Other Documents Necessary To Complete the Transaction", was adopted. (8-0-3. Absent: Constant, Liccardo; Reed.)

2.8 Adopt a resolution:

- (a) **Approving an agreement between the City and Kevin Vu, the adjoining property owner, for sale of the property identified as APN 481-17-020 and located at 126 South King Road in the amount of \$50,000.**
- (b) **Authorizing the City Manager or her designee to execute the sale agreement, the deed, and all other documents necessary to complete the transaction.**

CEQA: Exempt, File No. PP10-040. Council District 5. (Economic Development)

Documents Filed: Memorandum from Director of Economic Development/Chief Strategist Kim Walesh, dated February 25, 2013, recommending adoption of a resolution.

Action: Resolution No. 76575, entitled: "A Resolution of the Council of the City of San José Approving an Agreement with Kevin Vu for Sale of the Property Identified as APN 481-17-020 and Located at 126 South King Road in the Amount of \$50,000 and Authorizing the City Manager or Her Designee to Execute the Sale Agreement, The Deed and All Other Documents Necessary To Complete the Transaction", was adopted. (8-0-3. Absent: Constant, Liccardo; Reed.)

- 2.9 Approve travel by Council Member Campos to Pasadena, CA on April 4 – 5, 2013 to attend the League of California Cities’ Transportation, Communication & Public Works Policy Committee Meeting. Source of Funds: Mayor & Council Travel Fund. (Campos)**

Documents Filed: Memorandum from Council Member Campos, dated March 7, 2013, requesting approval of travel.

Action: The travel for Council Member Campos was approved. (8-0-3. Absent: Constant, Liccardo; Reed.)

- 2.10 Approve travel by Council Member Campos to Pasadena, CA on April 4 – 5, 2013 to attend the League of California Cities’ Transportation, Communication & Public Works Committee Meeting as Vice Chair and Women’s Caucus. Source of Funds: Mayor & Council Travel Fund. (Herrera)**

Documents Filed: Memorandum from Council Member Herrera, dated March 11, 2013, requesting approval of travel.

Action: The travel for Council Member Herrera was approved. (8-0-3. Absent: Constant, Liccardo; Reed.)

- 2.11 Appoint John Adams to the Advisory Commission on Rents (Landlord position) to a term expiring June 30, 2013. (City Clerk)**

Documents Filed: Memorandum from Acting City Clerk Toni Taber, CMC, dated March 13, 2013, transmitting the recommendations of the Rules and Open Government Committee.

Action: John Adams was appointed to the Advisory Commission on Rents to a term expiring June 30, 2013. (8-0-3. Absent: Constant, Liccardo; Reed.)

- 2.12 As recommended by the Rules and Open Government Committee on March 13, 2013:**

- (a) Approve the District 10 Leadership Group Summit Event as a Council-Sponsored Special Event.**
- (b) Approve expending funds and accept donations from various individuals, businesses, and community groups to support the event.**

CEQA: Not a Project. (Khamis)

Documents Filed: Memorandum from Acting City Clerk Toni Taber, CMC, dated March 13, 2013, transmitting the recommendations of the Rules and Open Government Committee.

Action: The District 10 Leadership Group Summit Event as a Council-Sponsored Special Event was approved and acceptance of donations from various individuals, businesses

and community groups to support this event was authorized. (8-0-3. Absent: Constant, Liccardo; Reed.)

STRATEGIC SUPPORT SERVICES

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

City Manager Debra Figone highlighted the good news concerning the 43 new San José Police Officers that graduated from the Police Academy on March 15, 2013.

City Manager Debra Figone congratulated City Staff and the private sector partners for creating the wickedly fast free Wi-Fi in Downtown San José.

COMMUNITY & ECONOMIC DEVELOPMENT

4.1 Adopt a resolution authorizing the City Manager to execute the following agreements:

- (a) An Incentive Agreement between the City of San José and Samsung Semiconductor, Inc. outlining the City and State incentives to be provided to Samsung in coordination with the development of the proposed Research and Development (R&D) Center in North San José.**
- (b) A Capital Equipment and Assistance Agreement with Samsung Semiconductor, Inc., in which the City will provide an amount not to exceed \$500,000 for the acquisition of production and assembly equipment to be installed at Samsung Semiconductor's new R&D facility in San José.**
- (c) Utility Users Tax Reimbursement Agreement with Samsung Semiconductor, Inc., that will provide funding in an amount equal to 50% of the City's 5% of net new utility user taxes received from Samsung Semiconductor for 10 consecutive years in an amount not to exceed \$500,000.**

CEQA: Statutorily Exempt, File No. PP10-066(a), Equipment Acquisition. Council District 4. (Economic Development)

Action: Deferred to March 26, 2013 per Administration.

ENVIRONMENTAL & UTILITY SERVICES

- 7.1 (a) Adopt a resolution authorizing the City Manager to negotiate and execute an agreement with Pacific Gas and Electric, along with all related documents necessary to effectuate the program, to receive funding in the amount of \$1,126,440 for the term beginning April 1, 2013 through December 31, 2014 for the Silicon Valley Energy Watch (SVEW) program.**
- (b) Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund for fiscal year 2012-2013:**
 - (1) Increase the appropriation to the Environmental Services Department for Personal Services by \$54,000.**
 - (2) Increase the appropriation to the Environmental Services Department for Non-personal/Equipment by \$60,000.**
 - (3) Increase the Estimate for Revenue from Local Agencies by \$114,000.**

CEQA: Not a Project, File No. PP10-066(e), services that involve no physical changes to the environment. (Environmental Services/City Manager's Office)

7.1 (Cont'd.)

Documents Filed: Memorandum from Director of Environmental Services Kerrie Romanow and Budget Director Jennifer A. Maguire, dated February 26, 2013, recommending adoption of a resolution and appropriation ordinance and resolution amendments.

Action: Upon motion by Council Member Kalra, seconded by Council Member Chu and carried unanimously, Resolution No. 76576, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement With Pacific Gas and Electric, Along With All Related Documents Necessary to Effectuate the Program, To Receive Funds in the Amount of \$1,126,440 for the Term Beginning April 1, 2013 Through December 31,2014 for the Silicon Valley Energy Watch Program", Ordinance No. 29227, entitled: "An Ordinance of the City of San José Amending Ordinance No. 29102 to Appropriate Monies in the General Fund for the Environmental Services Department Personal Services and Non-Personal/Equipment; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption" and Resolution No. 76577, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 76302 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2012-2013 To Adjust Revenues in the General Fund", were adopted. (8-0-3. Absent: Constant, Liccardo; Reed.)

REDEVELOPMENT – SUCCESSOR AGENCY

9.1 Adopt a resolution:

- (a) **Authorizing, subject to the approval of the Oversight Board of the Successor Agency (the "Oversight Board") and State Department of Finance ("DOF"), the execution and delivery, in substantially final form, of an Amended and Restated Reimbursement Agreement (the "Reimbursement Agreement") with JPMorgan Chase Bank, NA ("JPMorgan") to extend the terms of the letters of credit (the "Letters of Credit") relating to:**
- (1) **Redevelopment Agency of the City of San José Merged Area Redevelopment Project Revenue Bonds, 1996 Series A and 1996 Series B (collectively, "1996 Bonds").**
 - (2) **Redevelopment Agency of the City of San José Merged Area Redevelopment Project Taxable Revenue Bonds, Series 2003 A (Subordinate Tax Allocation) and Redevelopment Agency of the City of San José Merged Area Redevelopment Project Revenue Bonds, 2003 Series B (Subordinate Tax Allocation (collectively, "2003 Bonds").**

- 9.1 (b) Authorizing, subject to the approval of the Oversight Board and DOF, the execution and delivery, in substantially final form, of an Amended Letter Agreement regarding fees and charges for the Letters of Credit provided by JPMorgan under the Reimbursement Agreement in the amount of 2.80% of the aggregate outstanding face amounts of the Letters of Credit, assuming that two of the three ratings assigned by Fitch, Moody's or Standard & Poor's on the senior lien Redevelopment Agency of the City of San José Merged Area Redevelopment Project Tax Allocation Bonds are not withdrawn, suspended or otherwise become unavailable.
- (c) Authorizing, subject to the approval of the Oversight Board and DOF, the execution and delivery, in substantially final form, of a Second Supplemental Indenture of Trust relating to the 1996 Bonds between the Successor Agency and U.S. Bank National Association, as Trustee (the "1996 Trustee").
- (d) Authorizing, subject to the approval of the Oversight Board and DOF, the execution and delivery, in substantially final form, of a First Supplemental Indenture of Trust relating to the 2003 Bonds between the Successor Agency, U.S. Bank National Association as Trustee (the "2003 Trustee") and the 1996 Trustee.
- (e) Appointing U.S. Bancorp ("U.S. Bancorp") as Remarketing Agent for the 1996 Series B Bonds and Citigroup Global Markets Inc. ("Citigroup") as Remarketing Agent for the 2003 Series B, in each case to replace Bank of America Merrill Lynch.
- (f) Authorizing, subject to the approval of the Oversight Board and DOF, the execution and delivery, in substantially final form, of Amended and Restated Remarketing Agreements with Citigroup and U.S. Bancorp with respect to the 1996 Bonds and JPMorgan and Citigroup with respect to the 2003 Bonds.
- (g) Authorizing, the execution and delivery, in substantially final form, of a Remarketing Memorandum with respect to the 1996 Bonds and 2003 Bonds.
- (h) Authorizing the Executive Officer of the Successor Agency, the Director of Finance of the City of the City of San José, or their designee, to take any actions and execute any and all documents necessary to complete this transaction.

CEQA: Not a Project, File No. PP10-066, Agreements/Contracts. (Finance)

Documents Filed: (1) Memorandum from Director of Finance Julia H. Cooper, dated March 1, 2013, recommending adoption of a resolution. (2) Supplemental memorandum from Director of Finance Julia H. Cooper, dated March 19, 2013, providing more detail with respect to the remarketing memorandum.

City Manager Debra Figone noted for the record that Item (h) recommends authorizing the Director of Finance to be appointed, however she has already made that appointment but will bring it back for Council ratification.

Director of Finance Julia H. Cooper and Assistant Director of Finance Arn Andrews presented the report and responded to Council questions and concerns.

9.1 (Cont'd.)

Action: Upon motion by Council Member Oliverio, seconded by Council Member Herrera and carried unanimously, Successor Agency Resolution No. 7020, entitled: “A Resolution of the Successor Agency to the Redevelopment Agency of the City of San José Approving and Authorizing the Negotiation, Execution and Delivery of Amended and Restated Reimbursement Agreement and Remarketing Agreements; Amendments to Certain Financing Documents; Approving a Remarketing Memorandum, and Other Related Actions in Order To Provide for the Delivery of Extensions to Existing Credit Facilities for Four Series of Merged Area Redevelopment Project Revenue Bonds”, was adopted. (8-0-3. Absent: Constant, Liccardo; Reed.)

ADJOURNMENT

The Council of the City of San José was adjourned at 2:09 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Toni J. Taber, CMC
Acting City Clerk

smd/03-19-13 MIN

Access the video, the agenda and related reports for this meeting by visiting the City's website at <http://www.sanJoseca.gov/city> or <http://www.sanJoseca.gov/civiccenter.ty>. For information on any ordinance that is not hyperlinked to this document, please contact the Office of the City Clerk at (408) 535-1266.

PUBLIC HEARINGS

- 11.2 Conduct an Administrative Hearing and consider an Appeal of the Planning Commission's decision to approve a Conditional Use Permit to allow the expansion of an existing cemetery site in the R-1-8 Residential Zoning District, on two parcels consisting of 0.20 and 0.18 gross acres, located on the east side of Alexander Avenue, approximately 260 feet southerly of Madden Avenue (60 and 80 Alexander Avenue) (Roman Catholic Bishop of San José, Owner). CEQA: Exempt.
CP12-038 – District 5**

Action: Deferred to March 26, 2013 per Administration.