

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, OCTOBER 29, 2013

The Council of the City of San José convened in Regular Session at 9:33 a.m. in the Council Chambers at City Hall.

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

Absent: Council Members - All Present.

STRATEGIC SUPPORT SERVICES

3.2 Accept Labor Negotiations Update.

No report provided.

CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:35 a.m. to a Closed Session in Room W133 (A) regarding Public Employment/Public Employee Appointment Pursuant to Government Code Section 54957: Department: Office of the City Manager; Title: City Manager; (B) to confer with Legal Counsel pursuant to Government Code Section 54956.9, Subsection (d)(1) with respect to existing litigation. (1) In re: Claim of Blatz; Amount of Money or Other Relief Sought: Administrative Appeal; (2) to confer with Legal Counsel pursuant to Government Code Section 54956.9(d)(1): Housing Authority of the County of Santa Clara and Housing Authority of the City of San José v. the United States; Names of Partie(s) Involved: Housing Authority of the County of Santa Clara, Housing Authority of the City of San José, the United States; Amount of Money or Other Relief Sought: Damages According to Proof; (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

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

CLOSED SESSION (Cont'd.)

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: City of San José – Association of Maintenance Supervisory Personnel (AMSP) Benefit & Compensation Summary; (4) 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; (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.

By unanimous consent, Council recessed from the Closed Session at 10:45 a.m. and reconvened to Regular Session at 1:33 p.m. in the Council Chambers.

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

Absent: Council Members - All Present.

INVOCATION

Nori Herras, representing Billy DeFrank LGBT Center of Silicon Valley, presented the Invocation.

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Vice Mayor Nguyen, seconded by Council Member Herrera and carried unanimously, the Orders of the Day and the Amended Agenda were approved, with the adjournment honoring Edna Odette Morrow postponed to a future date. (11-0.)

CEREMONIAL ITEMS

1.1 Presentation of a proclamation declaring the Month of October as “Filipino American History Month” in the City of San José. (Chu)

Mayor Reed, Council Members Campos Chu and Kalra recognized the Month of October as “Filipino American History Month” in the City of San José.

1.2 Presentation of proclamation declaring the month of November 2013 as “Pancreatic Cancer Awareness Month” in the City of San José. (Oliverio)

Mayor Reed and Council Members Constant and Oliverio recognized the month of November 2013 as “Pancreatic Cancer Awareness Month” in the City of San José.

CONSENT CALENDAR

2.1 Approval of Minutes.

None provided.

2.2 Final Adoption of Ordinances.

None provided.

2.3 Approval of Council Committee Reports.

- (a) **Rules and Open Government Committee Report of October 9, 2013. (Mayor)**
- (b) **Neighborhood Services and Education Committee Report of October 10, 2013. (Nguyen)**
- (c) **Transportation and Environment Committee Report of October 7, 2013, (Liccardo)**

Documents Filed: (1) Rules and Open Government Committee Report of October 9, 2013. (2) Neighborhood Services and Education Committee Report of October 10, 2013. (3) Transportation and Environment Committee Report of October 7, 2013.

Action: The Committee reports were accepted. (11-0.)

- ### **2.4**
- (a) **Request for an excuse absence for Councilmember Constant from the Executive Session and the Regular and Evening City Council Meeting on October 22, 2013, due to a Family Emergency. (Constant)**
 - (b) **Request for an excuse absence for Councilmember Constant from the Rules and Open Government Committee Meeting on October 23, 2013, due to a Family Emergency. (Constant)**

Documents Filed: Memoranda from Council Member Constant dated October 17, and October 23, 2013, requesting excused absences due to a family emergency.

Action: The requests for excused absences were approved. (11-0.)

2.5 City Council Travel Reports.

Mayor Reed reported on his trip to Washington D.C. to discuss pension reform.

2.6 Report from the Council Liaison to the Retirement Boards.

None provided.

- ### **2.7**
- (a) **Consent to Assignment of the Airport Retail Concession Agreement (the “Concession Agreement”) between the City and Host International, Inc. to WDFG North America, LLC. (“WDFG”); and**
 - (b) **Approve the Third Amendment to the Concession Agreement providing for WDFG’s assumption of the Agreement and removing two undeveloped concession locations.**

CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment. (Airport)

Documents Filed: Memorandum from Director of Aviation Kimberly Aguirre, dated October 7, 2013, recommending consent to assignment of an airport retail concession agreement, and approval of the third amendment to the agreement.

2.7 (Cont'd.)

Action: The Consent to Assignment of the Airport Retail Concession Agreement (the “Concession Agreement”) between the City and Host International, Inc. to WDFG North America, LLC. (“WDFG) and approval of the Third Amendment to the Concession Agreement providing for WDFG’s assumption of the Agreement and removing two undeveloped concession locations, were approved. (11-0.)

2.8 Approve travel by Councilmember Campos to Orlando, FL on November 22 – 24, 2013, to attend the NALEO’s National Policy Institute on Emergency Response and Management. Source of Funds: National Association of Latino Elected and Appointed Officials and any remaining funds will be paid by District 5 Council Funds. (Campos)

Documents Filed: Memorandum from Council Member Campos, dated October 21, 2013, requesting authorization to travel on authorized City business.

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

2.9 Approve the proposed designation of Councilmember Rose Herrera, as the voting delegate at the November 16, 2013 Annual Business Meeting for the National League of Cities. CEQA: Not a Project, File No. PP10-069, City Organizational & Administrative Activities. (City Manager’s Office)

Documents Filed: City Council Action Request from Director, Intergovernmental Relations Betsy Shotwell, dated October 29, 2013, regarding the 2013 National League of Cities Voting Delegate at the Annual Business Meeting.

Action: The Designation of Council Member Herrera as the voting delegate at the November 16, 2013 Annual Business Meeting for the National League of Cities, was approved. (11-0.)

2.10 As recommended by the Rules and Open Government Committee on October 23, 2013 and outlined in the attached memo previously submitted to the Rules and Open Government Committee:

- (a) Approve the “Pink Ribbons, Inc.” movie screening as a City Council sponsored Special Event; and**
- (b) Approve and accept donations from various individuals, businesses or community groups to support the event.**

Documents Filed: Memorandum from Acting City Clerk Toni Taber, dated October 24, 2013, transmitting the recommendations of the Rules and Open Government Committee.

Action: The “Pink Ribbons, Inc.” movie screening 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.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

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

City Manager Debra Figone reported on the City of San José's co-sponsorship of the 20th Annual Santa Clara County Domestic Violence Conference.

- 3.3 (a) **Adopt a resolution authorizing the City Attorney to negotiate and execute a fifth amendment to the agreement with Meyers, Nave, Riback, Silver & Wilson (Meyers, Nave) for legal services in connection with employment, labor, and pension reform, increasing the contract amount by \$650,000 for a total amount not to exceed \$2,750,000, subject to appropriation of funds as recommended below, and extending the term through June 30, 2014.**
- (b) **Adopt the following Appropriation Ordinance amendments in the General Fund:**
- (1) **Increase the city-wide appropriation to the City Attorney's Office for Fiscal Reform Plan Outside Legal Counsel by the amount of \$650,000;**
 - (2) **Decrease the Fiscal Reform Plan Implementation Earmarked Reserve by the amount of \$650,000.**

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

Documents Filed: Joint memorandum from City Attorney Richard Doyle and Budget Director Jennifer Maguire, dated October 7, 2013, recommending adoption of a resolution and appropriation ordinance amendments.

Mayor Reed provided comments regarding the contract.

Council Member Chu remarked that the complicated nature of this issue did not lend itself to being decided upon by voters, and the expense of these legal actions was unnecessary.

City Manager Debra Figone responded to questions.

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Herrera, and carried, Resolution No. 76834, entitled: "A Resolution of the Council of the City of San José Authorizing the City Attorney to Negotiate and Execute a Fifth Amendment to the Agreement with Meyers, Nave, Riback, Silver & Wilson to Provide Legal Services Relating to Employment, Labor and Pension Reform"; and Ordinance No. 29330, entitled: "An Ordinance of the City of San José Amending Ordinance No. 29271 to Appropriate Monies in the General Fund for the Fiscal Reform Plan Outside Legal Counsel; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", were adopted. (8-3. Noes: Campos, Chu, Kalra.)

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.1 Consideration of an ordinance rezoning the property located on the southeast corner of South Bascom Avenue and Woodard Road (3702 South Bascom Avenue) from the CP Commercial Pedestrian Zoning District to the CN Commercial Neighborhood Zoning District (Andarys Enterprise Inc, Owner). (Planning, Building and Code Enforcement)**
C13-031 – District 9

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement Department on Project File No. C13-031, dated October 7, 2013. (2) Proof of Publication of Notice of Public Hearing, executed on March 11, 2013, submitted by the City Clerk.

Mayor Reed opened the public hearing.

Public Comment: A. Andary, representing Andary's Enterprise, offered support to the proposed rezoning.

Mayor Reed closed the public hearing.

Action: Upon motion by Council Member Rocha, seconded by Council Member Constant, and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, and Ordinance No. 29331, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the Southeast Corner of South Bascom Avenue and Woodard Road on a 0.73 Gross-Acre Site (3702 South Bascom Avenue) from the CP Commercial Pedestrian Zoning District to the CN Commercial Neighborhood Zoning District", was passed for publication. (11-0.)

- 4.2 Accept the Annual Status Report on the Citywide Capital Improvement Program. CEQA: Not a Project, File No. PP10-069(a), Annual Reports. (Public Works)**

Heard Jointly With Item 7.1

Documents Filed: Memorandum from Director of Public Works David Sykes, dated October 7, 2013, recommending acceptance of the Annual Status Report.

Action: Upon motion by Council Member Herrera, seconded by Vice Mayor Nguyen, and carried unanimously, the Annual Status Report on the Citywide Capital Improvement Program was accepted. (10-0-1. Absent: Chu.)

ENVIRONMENTAL & UTILITY SERVICES

- 7.1 As recommended by the Transportation and Environment Committee on October 7, 2013, accept the Semiannual Status Report on the San José-Santa Clara Regional Wastewater Facility Capital Improvement Program for the period January through June 2013. CEQA: Not a Project, File No. PP10-069(a), Staff Reports/Annual Reports. (Environmental Services)**

Heard Jointly With Item 4.2

Documents Filed: (1) Memorandum from Acting City Clerk Toni Taber, dated October 16, 2013, transmitting the recommendations of the Transportation and Environment Committee. (2) Letter from Chairperson Chuck Reed, the Treatment Plant Advisory Committee, dated October 10, 2013, stating concurrence with the Staff recommendation.

Director of Public Works David Sykes and Assistant Director of the Environmental Services Ashwini Katak offered a presentation on the Semiannual Status Report on the San José-Santa Clara Regional Wastewater Facility Capital Improvement Program and responded to questions from Council. Assistant Director of Transportation Jim Ortbal responded to questions regarding CIP funding.

Action: Upon motion by Council Member Herrera, seconded by Vice Mayor Nguyen, and carried unanimously, the Semiannual Status Report on the San José-Santa Clara Regional Wastewater Facility Capital Improvement Program for the period January through June 2013 was accepted. (10-0-1. Absent: Chu.)

PUBLIC SAFETY SERVICES

- 8.1 Recommendation: Approve the response to the Santa Clara County Civil Grand Jury Reports entitled “Law Enforcement Public Complaint Procedures.” CEQA: Not a Project, File No. PP10-069(a), Staff Reports/Assessments/Annual Reports/Information Memos. (Police)**

Documents Filed: Memorandum from Acting Chief of Police Larry Esquivel, dated October 11, 2013, recommending approval of the response to the Grand Jury’s report.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Herrera and carried unanimously, the response to the Santa Clara County Civil Grand Jury Reports entitled “Law Enforcement Public Complaint Procedures” was approved. (10-0-1. Absent: Chu.)

NOTICE OF CITY ENGINEER’S PENDING DECISION ON FINAL MAPS

In accordance with Sec. 19.16.140d of the San José Municipal Code, this is notice of the City Engineer's receipt of the following Final Maps for review:

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/Units</u>	<u>Type</u>
10207	Southwest corner of Montecito Vista Drive & Montecito Vista Way	7	Lennar Homes of California Inc.	106 Lots/ 100 Units	MFA

ADJOURNMENT

The Council of the City of San José adjourned at 2:46 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Toni J. Taber, CMC
Acting City Clerk

rmk/10-29-13MIN