

# CITY COUNCIL AGENDA

**DECEMBER 11, 2012**

## SYNOPSIS

PETE CONSTANT  
ASH KALRA  
SAM LICCARDO  
KANSEN CHU  
XAVIER E. CAMPOS

DISTRICT 1  
DISTRICT 2  
DISTRICT 3  
DISTRICT 4  
DISTRICT 5

CHUCK REED MAYOR

PIERLUIGI OLIVERIO  
MADISON NGUYEN, VICE MAYOR  
ROSE HERRERA  
DONALD ROCHA  
NANCY PYLE

DISTRICT 6  
DISTRICT 7  
DISTRICT 8  
DISTRICT 9  
DISTRICT 10

*The City of San José is committed to open and honest government and strives to consistently meet the community's expectations by providing excellent service, in a positive and timely manner, and in the full view of the public.*

Welcome to the San José City Council meeting!

This Agenda contains both a Consent Calendar section for routine business items that require Council approval, and general business items arranged to correspond with San José's City Service Areas (CSAs). City Service Areas represent the policy-making level for strategic planning, policy setting, and investment decisions in the critical functions the City provides to the community. They are:

- **Strategic Support Services** — The internal functions that enable the CSAs to provide direct services to the community in an effective and efficient manner.
- **Community & Economic Development** — Manage the growth and change of the community in order to create and preserve healthy neighborhoods and ensure a diverse range of employment and housing opportunities.
- **Neighborhood Services** — Serve, foster, and strengthen community by providing access to lifelong learning and opportunities to enjoy life.
- **Transportation & Aviation Services** — A safe and efficient transportation system that contributes to the livability and economic health of the City; and provide for the air transportation needs of the community and the region at levels that is acceptable to the community.
- **Environment and Utility Services** — Manage environmental services and utility systems to ensure a sustainable environment for the community.
- **Public Safety Services** — Commitment to excellence in public safety by investing in neighborhood partnerships as well as prevention, enforcement, and emergency preparedness services.

You may speak to the City Council about any discussion item that is on the agenda, and you may also speak during Open Forum on items that are not on the agenda and are within the subject matter jurisdiction of the City Council. If you wish to speak to the City Council, please refer to the following guidelines:

- **Fill out a Yellow Speaker's Card and submit it to the City Clerk seated at the front table. Do this before the meeting or before the item is heard.** This will ensure that your name is called for the item(s) that you wish to address, and it will help ensure the meeting runs smoothly for all participants.
- When the Council reaches your item on the agenda, Mayor Reed will open the public hearing and call your name. Please address the Council from the podium, which is located to the left of the City Clerk's table.
- Each speaker generally has two minutes to speak per item. The amount of time allotted to speakers may vary at the Mayor's discretion, depending on the number of speakers or the length of the agenda.
- To assist you in tracking your speaking time, there is a display on the podium. The green light turns on when you begin speaking; the yellow light turns on when you have 30 seconds left; and the red light turns on when your speaking time is up.

Please be advised that, by law, the City Council is unable to discuss or take action on issues presented during Open Forum. According to State Law (the Brown Act) items must first be noticed on the agenda before any discussion or action.

**The San José City Council meets every Tuesday at 1:30 p.m. and Tuesday at 7 p.m. as needed, unless otherwise noted. If you have any questions, please direct them to the City Clerk's staff seated at the tables just below the dais. Thank you for taking the time to attend today's meeting. We look forward to seeing you at future meetings.**

Agendas, Staff Reports and some associated documents for City Council items may be viewed on the Internet at [www.sanjoseca.gov/clerk/agenda.asp](http://www.sanjoseca.gov/clerk/agenda.asp). Council Meetings are televised live and rebroadcast on Channel 26.

All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at the Office of the City Clerk at San José City Hall, 200 E. Santa Clara Street, Council Wing, 2<sup>nd</sup> Floor, San José, CA 95113 at the same time that the public records are distributed or made available to the legislative body. Any draft contracts, ordinances and resolutions posted on the Internet site or distributed in advance of the Council meeting may not be the final documents approved by the City Council. Contact the Office of the City Clerk at (408) 535-1260 or [CityClerk@sanjoseca.gov](mailto:CityClerk@sanjoseca.gov) for the final document.

To request an accommodation or alternative format under the Americans with Disabilities Act for City-sponsored meetings, events or printed materials, please call (408) 535-1260 or (408) 294-9337 as soon as possible, but at least three business days before the meeting.

On occasion the City Council may consider agenda items out of order.

- **Call to Order and Roll Call**  
9:32 a.m. - Closed Session, Call to Order in Council Chambers  
**Absent Council Members: None.**  
  
1:35 p.m. - Regular Session, Council Chambers, City Hall  
**Absent Council Members: None.**  
  
7:00 p.m. Evening Session, Council Chambers, City Hall  
**The evening session was cancelled.**
- **Invocation (Mayor)**  
Tahir Anwar, South Bay Islamic Association, presented the Invocation.
- **Pledge of Allegiance**  
Mayor Reed led the Pledge of Allegiance.
- **Orders of the Day**  
The Orders of the Day and the Amended Agenda were approved, with Item 3.4 deferred to January 15, 2013

- **Closed Session Report**  
**Mayor Reed disclosed the following Closed Session actions of December 11, 2012:**
- A. **Public Employment/Public Employee Appointment Pursuant to Government Code Section 54957:**  
  
**Department: City Clerk's Office.**  
**Title: Toni Taber, Acting City Clerk.**

## **1. CEREMONIAL ITEMS**

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- 1.1 Presentation of a commendation to S.E.A. Medical Systems, Inc., for their continued service and development as a vibrant and prosperous business and community partner in the City of San José. (Chu)  
**Mayor Reed and Council Member Chu recognized and commended S.E.A. Medical Systems, Inc.**
- 1.2 Presentation of a commendation to the following supporters for their dedication and commitment to the Dr. Martin Luther King, Jr., Association of Santa Clara Valley community forums co-sponsored by Council Member Kansen Chu, Sam Van Zandt, Dr. Agi Schenley, Robert Lopez, Robert O'Donnell, and Hector Oropeza. (Chu)  
**Deferred to January 15, 2013.**
- 1.3 Presentation of a commendation to the Responsible Landlords Engagement Initiative team for their efforts to encourage and motivate landlords and new investors to commit to maintain their properties in good standing. (Pyle)  
**Mayor Reed and Council Members Pyle and Kalra recognized and commended the Responsible Landlords Engagement Initiative team.**
- 1.4 Presentation of a commendation to the San José Park Ranger Program for their 40<sup>th</sup> Anniversary. (Pyle)  
**Mayor Reed and Council Member Pyle recognized and commended the San José Park Ranger Program.**
- 1.5 Presentation of a commendation to City Clerk Dennis D. Hawkins for his excellence and years of service to the City of San José. (Mayor/Council Members)  
**Mayor Reed and the Council Members recognized and commended City Clerk Dennis D. Hawkins.**

## 2. CONSENT CALENDAR

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### 2.1 Approval of Minutes.

There were none.

### 2.2 Final Adoption of Ordinances.

**Recommendation:** Final adoption of ordinances.

- (a) ORD. NO. 21981 – Amending Chapter 4.16 of Title 4 of the San José Municipal Code to amend Section 4.16.260 and add a new Section 4.16.290 to provide the Director of Finance discretion to determine the disposition of surplus property of nominal value and to delegate authority to the Police Chief for the disposition of police service dogs and police firearms.

**Ordinance No. 21981 adopted.**

- (b) ORD. NO. 29182 – Rezoning certain real property situated on the southwest corner of Saratoga Avenue and Kiely Boulevard (403 Saratoga Avenue) to the CN-Commercial Neighborhood Zoning District. C12-021

**Ordinance No. 21982 adopted.**

### 2.3 Approval of Council Committee Reports.

**Recommendation:** Approval of Council Committee Reports.

- (a) Transportation and Environment Committee Report of November 5, 2012.  
(Liccardo)
- (b) Neighborhood Services and Education Committee Report of November 8, 2012.  
(Pyle)
- (c) Public Safety, Finance and Strategic Support Committee Report of November 15, 2012. (Constant)

**Approved.**

### 2.4 Mayor and Council Excused Absence Requests.

There were none.

### 2.5 City Council Travel Reports.

**Mayor Reed and Council Member Rocha presented highlights of their trip to Washington D.C. with the Silicon Valley Advocacy Group. Council Member Constant provided details of his trip to San Diego, California to attend the International Foundation of Employee Benefits Conference.**

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

**Council Member Constant presented a summary of the Police and Fire Retirement Board Meeting.**

## 2. CONSENT CALENDAR

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### 2.7 Funding for a Downtown Homeless Outreach and Engagement Program.

**Recommendation:** Approve a Housing Trust Fund grant of up to \$260,000 to EHC LifeBuilders for the implementation of a San José Downtown Homeless Outreach and Engagement program. CEQA: Not a Project, File No. PP10-066 (e), Agreements/Contracts. (Housing)  
(Deferred from 11/27/12 – Item 2.10)

**Approved.**

### 2.8 Lease of Airport Premises with SJJC Airline Services.

**Recommendation:** Approve a Lease of Airport Premises with SJJC Airline Services, LLC, for ramp and office space in support of its commercial airline fueling operations, retroactive from October 1, 2012 through September 30, 2014. CEQA: Not a Project, File No. PP10-066(f), Lease of existing space for same use. (Airport)

**Approved.**

### 2.9 Actions Related to the American Recovery and Reinvestment Act - Retrofit California Program.

**Recommendation:**

- (a) Adopt a resolution authorizing the City Manager to execute the First Amendment to Retrofit California Sub-Awardee Agreement between the Association of Bay Area Governments and the City of San José to accept the Federal Department of Energy grant increase of \$38,479, for a total grant of \$788,479.
- (b) Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund:
  - (1) Increase the estimated Revenue from the Federal Government – Recovery Act, in the amount of \$38,479; and
  - (2) Increase the City-wide Appropriation to the Environmental Services Department, Recovery Act – Retrofit California in the amount of \$38,479.

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

**Deferred to December 18, 2012 per Administration.**

### 2.10 Actions Related to the Silicon Valley Energy Watch Program.

**Recommendation:** Approve a Change Order General Conditions Amendment to the Master Service Agreement with Pacific Gas and Electric (PG&E) to extend the term through March 31, 2013 for the Silicon Valley Energy Watch Program. CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment. (Environmental Services)

**Deferred to December 18, 2012 per Administration.**

## 2. CONSENT CALENDAR

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### 2.11 Grant Applications for the Coyote Creek Trail and Thompson Creek Trail.

**Recommendation:** Adopt a resolution:

- (a) Authorizing the City Manager, or designee, to submit two grant applications in an amount not to exceed \$350,000 each to the State of California Natural Resources Agency under the Environmental Enhancement and Mitigation Program (EEMP) grant with no local match required to supplement existing funding for:
  - (1) Coyote Creek Trail (Tasman Drive to Montague Expressway); and
  - (2) Thompson Creek Trail (Quimby Road to Aborn Court).
- (b) Certifying that City agrees to comply with assurances in the EEMP application as set forth in this memorandum and the proposed resolution;
- (c) Certifying that the City has or will have sufficient funds to operate and maintain the completed projects; and
- (d) Delegating the authority to the City Manager, or designee, to accept any grant funding and conduct all negotiations, execute and submit all documents, including, but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of the projects.

CEQA: Mitigated Negative Declaration, File No. PP03-07-230 (Coyote Creek Train) and File No. PP04-283 (Thompson Creek Trail). (Parks, Recreation and Neighborhood Services)

**Resolution No. 76506 adopted.**

### 2.12 Actions Related to the 2013-2014 Hazardous Vegetation Commencement Report.

**Recommendation:** Adopt a resolution:

- (a) Accepting and confirming the 2013-2014 Hazardous Vegetation Commencement Report compiled by the Santa Clara County Department of Agriculture and Resource Management;
- (b) Declaring that those certain noxious or dangerous seasonal and recurrent weeds, growing or likely to be growing, and refuse, situated or likely to be situated, on those properties identified in the report are a nuisance; and
- (c) Directing the Santa Clara County Department of Agriculture and Resource Management to mail notices of a public hearing before the City Council, on January 8, 2013 at 1:30 p.m., on the report to property owners of affected real properties, pursuant to Chapter 9.12 of Title 9 of the San José Municipal Code and the Weed Abatement Agreement between the City of San José and the County of Santa Clara.

CEQA: Exempt, File No. PP08-245. (Planning, Building and Code Enforcement)

**Resolution No. 76507 adopted.**

## 2. CONSENT CALENDAR

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### 2.13 Annual Development In-Lieu Fee Reports.

**Recommendation:** Accept the Fiscal Year 2011 – 2012 Annual Development In-Lieu Fee Report regarding in-lieu fees collected by the City from developers in lieu of construction of public improvements. CEQA: Not a Project, File No. PP10-069(a), Staff Reports. (Public Works)

**Accepted.**

### 2.14 Summary Vacation of a Portion of a Sanitary Sewer Easement Located at the Southeast Corner of Great Oaks Parkway and Cottle Road.

**Recommendation:** Adopt a resolution summarily vacating a portion of a 26-foot wide sanitary sewer easement lying on the property owned by Village Oaks Retail, LLC, located on the northerly portion of lot four and lot six created as part of Tract 9952 and more specifically the boundaries of said lots (APN 706-07-009, 011). CEQA: Hitachi Campus and Mixed-Use Transit Village Project EIR, File No. PDC04-031, Resolution No. 72772. (Public Works)

**Resolution No. 76508 adopted.**

### 2.15 Mayor Reed's Travel to Des Moines, Iowa.

**Recommendation:** Approve travel by Mayor Reed to Des Moines, Iowa on November 8 – 9, 2012 to meet with Governor Terry Branstad and the Taxpayers Association of Central Iowa. Source of Funds: Mayor's Office Fund (airfare to Iowa; return trip will be paid for with personal funds), Taxpayers Association of Central Iowa. (Mayor)  
[Rules Committee referral 12/05/12 – Item G(2)]

**Approved.**

**Noes: Campos, Kalra.**

## 3. STRATEGIC SUPPORT SERVICES

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

**City Manager Debra Figone reported that she will circulate an information memorandum to the Council pertaining to the current retirement forecast from Cheiron. City Manager Debra Figone noted that the last forecast from Cheiron was in February 2012.**

### 3.2 Labor Negotiations Update

**Recommendation:** Accept Labor Negotiations Update.

**Heard at 9:30 a.m.**

**No Report.**

### **3. STRATEGIC SUPPORT SERVICES**

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#### **3.3 Certification of Election Results – November 6, 2012.**

**Recommendation:** Adopt a resolution declaring the results of the November 6, 2012 Municipal Election pursuant to Elections Code Section 15400. (City Clerk)  
(Rules Committee referral 11/28/12)

**Resolution No. 76509 adopted.**

#### **3.4 Board and Commission Program Workplan.**

**Recommendation:** Approve the Board and Commission Program work plan. (City Clerk)  
(Rules Committee referral 11/28/12)

**Deferred to January 15, 2013 per Orders of the Day.**

#### **3.5 Authorization to Pay Reward.**

**Recommendation:** Authorize the City Clerk to expend \$10,000 in payment of a reward for assistance in the arrest and conviction of the perpetrator of a violent crime. CEQA: Not a Project, File No. PP10-069, City organizational and administrative activities. (City Clerk)  
(Rules Committee referral 11/28/12)

**Dropped.**

### **4. COMMUNITY & ECONOMIC DEVELOPMENT**

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#### **4.1 Sale of a Portion of City-Owned Property on Emory Street.**

**Recommendation:** Adopt a resolution:

- (a) Declaring 28,990 square feet of vacated street on Emory Street, surplus to the needs of the City;
- (b) Approving an agreement between the City of San José and Bellarmine College Preparatory (Bellarmine) for sale of the property in the amount of \$325,000; and
- (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: Mitigated Negative Declaration, File No. PDC07-072. (Economic Development)  
(Deferred from 12/4/12 – Item 4.2)

**Deferred to December 18, 2012 per Administration.**

## **4. COMMUNITY & ECONOMIC DEVELOPMENT**

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### **4.2 Rezoning Real Property Located on the East Side of Cottle Road Between Raleigh Road and Coronado Avenue.**

**Recommendation:** Consideration of an ordinance rezoning the real property located on the east side of Cottle Road between Raleigh Road and Coronado Avenue from IP(PD) Planned Development Zoning District to the CN – Commercial Neighborhood Zoning District on an 8.26-acre site (Village Oaks Retail, LLC). CEQA: Envision San José 2040 General Plan Final Program EIR, File No. PP09-011, Resolution No. 76041.

C12-030 – District 2. (Planning, Building and Code Enforcement)

**The memorandum from Council Member Kalra, dated December 10, 2012, was approved: including Staff directed to carefully consider the following factors when assessing the application for a Conditional Use Permit:**

- (1) Whether the presence of a gas station will negatively impact the goals of having an Urban Village that is both easily accessible and pedestrian and bicycle friendly.**
- (2) The impact that a gas station will have in terms of its orientation with Cottle Road and other streets and stacking of vehicles, which could create additional traffic and air pollution.**
- (3) The immediate and ongoing environmental impacts that may result from the infrastructural requirements for a gas station, including the impact from installing underground storage tanks.**
- (4) The number of pumps that would be permitted.**
- (5) Deleted.**

**Ordinance No. 29189 passed for publication.**

**Noes: Nguyen, Rocha.**

### **4.3 Rezoning Real Property Located on the Southeast Side of Alum Rock Avenue.**

**Recommendation:** Consideration of an ordinance rezoning the real property located on the southeast side of Alum Rock Avenue, approximately 150 feet northeasterly of Sunnyslope Avenue (4700 Alum Rock Avenue) as R-1-8(PD) Planned Development Zoning District to allow for the demolition of two (2) single-family detached homes and development of up to three (3) new single-family detached homes on a 0.66 gross-acre site (House, Dolly S Trustee, Owner). CEQA: Exempt.

PDC11-008 – District 5. (Planning, Building and Code Enforcement)

**Ordinance No. 29190 passed for publication.**

**Noes: Nguyen, Rocha.**

## **4. COMMUNITY & ECONOMIC DEVELOPMENT**

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### **4.4 Rezoning Real Property located at the Northwest Corner of Lincoln Avenue and Auzerais Avenue.**

**Recommendation:** Consideration of an ordinance rezoning the real property located at the northwest corner of Lincoln Avenue and Auzerais Avenue (393 Lincoln Avenue) from LI Light Industrial to CIC Combined Industrial/Commercial on a 0.44 gross acre site (Anthony and Madalyn Kralyevich, trustee, owner). CEQA: Envision San José 2040 General Plan Final Program EIR, File No. PP09-011, Resolution No. 76041. C12-015 – District 6. (Planning, Building and Code Enforcement)

**Ordinance No. 29191 passed for publication.**

### **4.5 Development Agreement with Riverview Apartment Development, LLC.**

**Recommendation:** Consideration of an ordinance to approve a Development Agreement with Riverview Apartment Development, LLC (Irvine Company) to reconfigure a previously approved residential project in the North San José Area Development Policy area subject to performance by IAC for payment of contributions, commencement of construction and subsequent occupancy per deadlines of performance to construct a modified design at the northwest corner of North First Street and River Oaks Place. (Wyse Technology Investments, Inc., Owner). CEQA: North San José Area Development Policy Update EIR, File No. GP04-T-03, EIR Resolution No. 72768 and Addenda thereto. Planning Commission recommends approval (5-0-2; Kamkar and O'Halloran). DA12-003 – District 4. (Planning, Building and Code Enforcement)

**Ordinance No. 29192 passed for publication.**

## **5. NEIGHBORHOOD SERVICES**

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## **6. TRANSPORTATION & AVIATION SERVICES**

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## **7. ENVIRONMENTAL & UTILITY SERVICES**

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## **8. PUBLIC SAFETY SERVICES**

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### **8.1 Actions Related to the Cardiac and Automatic External Defibrillators for the Fire Department.**

**Recommendation:**

- (a) Approve an award to purchase Cardiac and Automatic External Defibrillators to Physio-Control, Inc. (Redmond, WA) for a total cost not to exceed \$1,521,792, including equipment accessories, five-year maintenance and support service, wireless transmission technology; training, testing, delivery, and sales tax, and authorize the City Manager to execute the purchase order.
- (b) Authorize the City Manager to execute purchase orders as required for ongoing maintenance and support and purchase additional quantities of Cardiac and Automatic External Defibrillator equipment, subject to the appropriation of funds.

CEQA: Not a Project, File No. PP10-066(a), Purchase Order for the purchase of supplies and equipment with no change in the physical environment. (Finance)

**Approved.**

## **9. REDEVELOPMENT – SUCCESSOR AGENCY**

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### **9.1 Amendment to the Promissory Note with Urban Markets.**

**Recommendation:** Approve an amendment to the Promissory Note with Urban Markets, LLC (Developer) which, among other things, reduces the loan amount and modifies the repayment terms. (Successor Agency)

(Rules Committee referral 11/28/12)

**Approved.**

**Noes: Campos, Kalra.**

- **Open Forum**

- (1) **Robert Pineda voiced concerns with the Staff at Grace Baptist.**
- (2) **Ross Signorino congratulated and thanked Council Member Pyle for her leadership and dedicated community service to the resident of the City of San José.**

- **Adjournment**

**The Council of the City of San José was adjourned at 4:18 p.m. in memory of Anthony (Tony) Di Maggio, owner and operator of Tony Di Maggio's Pizza since 1977, who passed away on November 25, 2012, after a lifetime of public service to the residents of the City of San José. (Nguyen)**

## 10. GENERAL PLAN PUBLIC HEARINGS ON CONSENT CALENDAR

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No General Plan Public Hearing at this time.

## 11. PUBLIC HEARINGS

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(To be heard by the City Council at 7:00 p.m.)

### 11.1 Public Hearings on Consent Calendar.

No Public Hearings on Consent Calendar at this time.

### 11.2 Rezoning Real Property Located at the Southeast Corner of Mabury Road and Educational Park Drive.

**Recommendation:** Consideration of an ordinance rezoning the real property located at the southeast corner of Mabury Road and Educational Park Drive (12710 Mabury Road) from A Agricultural Zoning District to A(PD) Planned Development Zoning District to allow up to 20 single family detached homes on a 3.42 gross acre site (Sabatino Murphy A Jr Trustee & Et Al, Owner). CEQA: Mitigated Negative Declaration.

PDC12-010 – District 4

**Dropped. To Be Renoticed.**

### 11.3 Ordinance Amending Titles 13 and 20 to Amend the Tree Removal Requirements for Single-Family Residences.

**Recommendation:**

- (a) Approve an ordinance of the City of San José amending Chapter 13.32 of Title 13 of the San Jose Municipal Code, and amending Sections 20.100.140 and 20.100.220 of Chapter 20.100 of Title 20, to modify the tree removal requirements for single-family residences in order to streamline permitting processes and further implement the Community Forest Goal and Policies set forth within the Envision San Jose 2040 General Plan, to modify permit recordation requirements for tree removal and certain other permits, and to make other technical, non-substantive, or formatting changes within those chapters and sections of Title 13 and Title 20; and

*(Item continued on the next page)*

## 11. PUBLIC HEARINGS

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### 11.3 Ordinance Amending Titles 13 and 20 to Amend the Tree Removal Requirements for Single-Family Residences. (Cont'd.)

**Recommendation:**

- (b) Adopt a Resolution setting forth the tree species to be placed on the unsuitable tree list as eligible for the modified tree removal requirements for single-family residences.

CEQA: Final Program EIR for Envision San José 2040 General Plan, File No. PP12-098, EIR Resolution No. 76041.

Citywide

**Deferred to December 18, 2012 per the Rules and Open Government Committee.**