



MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, SEPTEMBER 18, 2012

The Council of the City of San José convened in Regular Session at 9:35 a.m. in the Council Chambers at City Hall.

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

Absent: Council Members - All Present.

STRATEGIC SUPPORT SERVICES

3.2 Accept Labor Negotiations Update.

There was no Staff presentation.

CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:36 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) City, et al. v. County of Santa Clara, et al.; Names of Parties Involved: City of San José, a Municipal Corporation, as Successor Agency to the Redevelopment Agency of the City of San José, Vinod K. Sharma; individually, and in his official capacity as Santa Clara County Director of Finance, County of Santa Clara, and Does 1 through 100, inclusive; Court: Superior Court of California, County of Santa Clara; Case No: 34-2012-80001190; Amount of Money or Other Relief Sought: Petition for Peremptory Writ of Mandate and Complaint for Declaratory Relief, Injunctive Relief and Damages Sought; (2) Valentine v. City of San José, et al.; Name(s) of Parties Involved: Kim Valentine, City of San José, a Public Entity; Officer Niemeyer, an individual; Officer Liu, an individual; Officer Kurrle, an individual; Sgt. Chris Monahan, an individual, and Does 1-50, inclusive; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV182895; Amount of Money or Other Relief Sought: Damages according to proof; (3) Rosa Melissa v. County

CLOSED SESSION (Cont'd.)

of Santa Clara, City of San José, et al.; Name(s) of Parties Involved: Melissa Rosa, County of Santa Clara, City of San José, and Does 1-50, inclusive; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV181775; Amount of Money or Other Relief Sought: Damages according to proof; (4) City v. San Jose Police Officers' Association, et al.; Names of Parties Involved: City of San José, San Jose Police Officers' Association; San Jose Firefighters, IAFF Local 230; Municipal Employees' Federation, AFSCME, Local 101; City Association of Management Personnel, IFPTE, Local 21; Court: United States District Court, Northern District of California, Case No.: C12-02904 LHK; Amount of Money or Other Relief Sought: Validation of Measure B; (B) 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: 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.; (C) to confer with Chief of Police regarding potential threat to public services or facilities pursuant to Government Code Section 54957(a). 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 11:20 a.m. and reconvened to Regular Session at 1:34 p.m. in the Council Chambers.

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

Absent: Council Members - All Present.

INVOCATION

Jessi Kaur of the Sikh Gurdwara provided the Invocation.

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the Orders of the Day and the Amended Agenda were approved. (11-0.)

CEREMONIAL ITEMS

1.1 Presentation of a proclamation declaring September 19, 2012 as “It Can Wait – No Texting While Driving Pledge Day” in the City of San José. (Mayor)

Mayor Reed proclaimed September 19, 2012 “It Can Wait – No Texting While Driving Pledge Day” in the City of San José.

1.2 Presentation of a proclamation recognizing September 22, 2012 as “National Gymnastics Day” in the City of San José. (Mayor)

Action: Dropped per Administration.

- 1.3 Presentation of a commendation to the San José Police Officers Association and San José Police Department Bureau of Field Operations Administration personnel Adriene O'Dell and Michelle Martinez for establishing a Victim's Fund for the three Jimenez children who were orphaned on July 23rd in a tragic and senseless act of domestic violence. (Pyle)**

Mayor Reed and Council Member Pyle offered a commendation to San José Police Officers Association and San José Police Department Bureau of Field Operations Administration personnel Adriene O'Dell and Michelle.

- 1.4 Presentation of a commendation to San José Action Sports (formally Save Our Skate Park) for their community support and fundraising efforts for the Lake Cunningham Regional Skate Park. (Herrera)**

Mayor Reed and Council Member Herrera presented a commendation to San José Action Sports for their community support and fundraising efforts for the Lake Cunningham Regional Skate Park.

- 1.5 Presentation of a proclamation recognizing the Week of September 17 – 23, 2012 as “Constitution Week” in the City of San José. (Mayor)**

Mayor Reed recognized the Week of September 17 – 23, 2012 as “Constitution Week” in the City of San José.

CONSENT CALENDAR

Upon motion by Council Member Pyle, 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.**

None provided.

- 2.2 Final Adoption of Ordinances.**

Recommendation: Final adoption of ordinances.

- (a) ORD. NO. 29139 – Amend Chapters 3.28, the 1975 Federated Employees Retirement Plan, and 3.36, the 1961 Police and Fire Department Retirement Plan, of the San José Municipal Code to add Sections 3.28.115 and 3.36.325, respectively, regarding the role of the boards of administration in personnel matters.

Action: Deferred to September 25, 2012 per City Attorney's Office.

2.3 Approval of Council Committee Reports.

None provided.

- 2.4 (a) Request for an excused absence for Council Member Constant from the Regular Meeting of the Rules and Open Government Committee on September 12, 2012 due to illness of a family member. (Constant)**
- (b) Change the status of an absence from the Council Meeting on August 28, 2012 for Council Member Constant from excused to unexcused, and discontinue further excused absences due to medical leave for the remainder of September. (Constant)**

Documents Filed: (1) Memorandum from Council Member Constant, dated September 10, 2012, requesting an excused absence. (2) Memorandum from Council Member Constant, dated September 4, 2012, requesting a change of status and discontinuing further excused absences due to medical leave for the remainder of September.

Action: The absence for September 12, 2012 was excused, and status of absences for August/September were approved. (11-0.)

2.5 City Council Travel Reports.

None provided.

2.6 Report from the Council Liaison to the Retirement Boards.

None provided.

- 2.7 Approve a Third Amendment to the Advertising Concession Agreement between the City of San José and Clear Channel Outdoor, Inc. d/b/a Clear Channel Airports at Norman Y. Mineta San José International Airport to combine the minimum capital investment requirements of the various advertising categories, provide Clear Channel with office/storage space at no additional charge in support of its operations at the Airport and resolve all claims against the City relating directly or indirectly to the Minimum Annual Guarantee payable to the City under the terms of the Agreement. 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 William F. Sherry, dated August 27, 2012, recommending approval of an amendment.

Action: A Third Amendment to the Advertising Concession Agreement between the City of San José and Clear Channel Outdoor, Inc. d/b/a Clear Channel Airports at Norman Y. Mineta San José International Airport with related contingencies, was approved. (11-0.)

- 2.8 Approve an ordinance of the City of San José amending San José Municipal Code Sections 6.64.045 and 6.64.055 creating definitions for Accessible and Clean Fuel Vehicle for Police Taxi Permits and amending sections 6.64.160, 6.64.180, 6.64.360 and 6.64.390 of Chapter 6.64 of Title 6 relating to Accessible and Clean Fuel Vehicles. CEQA: Not a Project, File No. PP10-068, General Procedure & Policy Making. (Police)**

Documents Filed: Memorandum from Chief of Police Chris Moore, dated August 27, 2012, recommending approval of an ordinance.

Action: Ordinance No. 29144, entitled: “An Ordinance of the City of San José Amending Chapter 6.64 of Title 6 of the San José Municipal Code to Add New Sections Creating Definitions of an Accessible Vehicle and Clean Fuel Vehicle for Police Taxi Permits and Amending Sections 6.64.160, 6.64.180, 6.64.360 and 6.64.390 Related to Accessible and Clean Fuel Vehicles and Grounds for Denial of Applications”, was passed for publication. (11-0.)

- 2.9 (a) Approve an agreement between the County of Santa Clara and the City of San José related to the application of microsurfacing on specified roads in previous unincorporated pockets in conjunction with annexation by City in the amount of \$250,000.**
- (b) Approve an agreement between the County of Santa Clara and the City of San José related to the application of slurry seal on specified roads in previous unincorporated pockets in conjunction with annexation by City in the amount of \$142,453.**

CEQA: Exempt, File No. PP11-035. (Transportation)

Documents Filed: Memorandum from Director of Transportation Hans Larsen, dated September 18, 2012, requesting approval of agreements between the County of Santa Clara and the City of San José.

Action: Agreements between the County of Santa Clara and the City of San José (a) related to the application of microsurfacing on specified roads in previous unincorporated pockets in conjunction with annexation by City in the amount of \$250,000; and (b) related to the application of slurry seal on specified roads in previous unincorporated pockets in conjunction with annexation by City in the amount of \$142,453, were approved. (11-0.)

- 2.10 Approval of the First Amendment to the agreement with the San José Downtown Property Owners Association and the San José Downtown Association to authorize implementation of an Enhanced Security Pilot Program through the use of the San José Police Department Secondary Employment Program as part of the Downtown Property and Business Improvement District from the date of approval by City Council to December 31, 2012. CEQA: Not a Project, File No. PP10-066, Agreements. Council District 3. (Transportation)**

Documents Filed: Memorandum from Director of Transportation Hans Larsen, dated August 27, 2012, recommending approval of an amendment to the agreement.

2.10 (Cont'd.)

Action: The First Amendment to the agreement with the San José Downtown Property Owners Association and the San José Downtown Association to authorize implementation of an Enhanced Security Pilot Program through the use of the San José Police Department Secondary Employment Program as part of the Downtown Property and Business Improvement District from the date of approval by City Council to December 31, 2012, was approved. (11-0.)

2.11 Approve a master agreement with RMC Water and Environment to develop a Master Plan for the South Bay Water Recycling Program for a total compensation not-to exceed amount of \$2,400,000, and for a term upon execution of the agreement through June 30, 2014. CEQA: Not a Project, File No. PP10-066(a), Agreements and Contracts for purchase of professional services. (Environmental Services)

Documents Filed: (1) Memorandum from Acting Director, Environmental Services, Kerrie Romanow, dated July 25, 2012, recommending approval of a master agreement. (2) Letter from Chairperson Chuck Reed, the Treatment Plant Advisory Committee, dated August 2, 2012, stating concurrence with the Staff recommendation.

Action: The master agreement with RMC Water and Environment to develop a Master Plan for the South Bay Water Recycling Program for a total compensation not-to exceed amount of \$2,400,000, with related contingencies, was approved. (11-0.)

2.12 (a) Approve the Team San Jose performance measures for 2012 – 2013.

(b) Adopt a resolution authorizing the City Manager to:

- (1) Execute the Third Amendment to the Management Agreement between the City of San Jose and Team San Jose to reflect changes to calculations for Performance Measures related to Gross Operating Profit and Gross Operating Revenue, and to clarify which costs are the responsibility of the General Purpose Parking Fund and Convention and Cultural Affairs Fund; and**
- (2) Negotiate and execute an amendment to the Memorandum of Understanding regarding parking operations at the Convention Center garage.**

CEQA: Not a Project, File No. PP10-066 (e), Agreements/Contracts. Council District 3. (Economic Development)

Action: Deferred to September 25, 2012 per Administration.

2.13 As recommended by the Rules and Open Government Committee on September 12, 2012, adopt a resolution amending the Rules for the Conduct of City Council and City Council Committee Meetings and superseding Resolution No. 76184. CEQA: Not a Project. (City Clerk)

Action: Deferred to September 25, 2012 per Administration.

2.14 As recommended by the Rules and Open Government Committee on September 12, 2012:

- (a) Approve the Meadowfair Neighborhood Clean-up as a City-sponsored Special Event; and**
- (b) Approve and accept donations from various individuals, businesses, or community groups to support the event.**

CEQA: Not a Project. (City Clerk)

Documents Filed: Memorandum from City Clerk Dennis Hawkins, dated September 13, 2012, transmitting the recommendations of the Rules and Open Government Committee.

Action: The District 8 Meadowfair Neighborhood Clean-up 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

3.3 Approve an ordinance amending Titles 1, 2 and 4 of the San José Municipal Code to:

- (a) Provide for personal liability for the payment of unpaid taxes by certain responsible parties;**
- (b) Provide, where not otherwise in conflict or specified in the Municipal Code, that the Director of Finance has authority to promulgate and publish regulations related to the administration, collection and enforcement of City taxes;**
- (c) Clarify the hotel operator's and service supplier's obligation to hold City's taxes in trust for City's benefit;**
- (d) Provide that the Director of Finance's decision following a tax assessment hearing is final and conclusive in order to expedite the resolution of disputes;**
- (e) Set forth the responsibility of successor hotel operators for unpaid taxes;**
- (f) Clarify the definition of operator for purposes of the Transient Occupancy Tax; and**
- (g) Clarify that payment of a disputed City tax is required prior to filing a lawsuit to challenge the tax.**

CEQA: Not a Project; File No. PP10-068c, Municipal Code or Policy. (City Attorney's Office)

Documents Filed: Memorandum from City Attorney Richard Doyle, dated September 6, 2012, recommending approval of an ordinance.

3.3 (Cont'd.)

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, Ordinance No. 29145, entitled: “An Ordinance of the City of San José Amending Chapter 1.08 of Title 1 of the San José Municipal Code to Add a New Section 1.08.015.5 to Provide for Personal Liability for Unpaid City Taxes by Certain Responsible Parties; Amending Section 2.04.2020 of Chapter 2.04 of Title 2 to Provide, Where not Otherwise in Conflict or Specified in the Municipal Code, that the Director of Finance has the Authority to Promulgate and Publish Regulations Related to the Administration, Collection and Enforcement of City Taxes, and Amending and Repealing Various Sections in Chapters 4.52, 4.68, 4.70, 4.72, 4.74 and 4.82 of Title 4 of the San José Municipal Code to (1) Clarify the Hotel Operator’s and Utility Service Supplier’s Obligation to Hold Certain Taxes Collected on City’s Behalf in Trust for City’s Benefit; (2) Provide that the Director of Finances’ Decision Following a Tax Assessment Hearing Conducted Under the Provisions of Chapters 4.68, 4.72 and 4.74 is Final and Conclusive; (3) Set Forth the Responsibility of Successor Hotel Operators for Unpaid Taxes; (4) Clarify the Definition of Operator for Purposes of the Transient Occupancy Taxes; and (5) Clarify that Payment of a Disputed City Tax is Required Prior to Filing a Lawsuit to Challenge the Tax”, was passed for publication. (11-0.)

Note: Items 3.4, 3.5, 3.6 and 3.7 were heard concurrently.

3.4 **Adopt a resolution approving the terms of an agreement on Sick Leave Payout between the City and the Association of Engineers and Architects (Unit 41/42 and Unit 43), International Federation of Professional and Technical Engineers, Local 21 (AEA), effective September 30, 2012. CEQA: Not a Project, File No. PP10-069(b), Personnel Related Decisions. (City Manager’s Office)**

Documents Filed: Memorandum from Deputy City Manager Alex Gurza, dated September 4, 2012, recommending approval of terms of an Agreement.

Council Member Constant expressed concerns that it would only affect new employees.

Deputy City Manager Alex Gurza responded to questions, and clarified that the issue of current employees is still on the table.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried, Resolution No. 76432, entitled: “A Resolution of the Council of the City of San José, approving an Agreement with the Association of Engineers and Architects, International Federation of Professional and Technical Engineers, Local 21, Unit 041/042 and Unit 043, Regarding Sick Leave Payout, Effective September 30, 2012”, was adopted. (10-1. Noes: Constant.)

- 3.5 Adopt a resolution approving the terms of an agreement on Sick Leave Payout between the City and the Association of Maintenance Supervisory Personnel, International Federation of Professional and Technical Engineers, Local 21 (AMSP), effective September 30, 2012. CEQA: Not a Project, File No. PP10-069(b), Personnel Related Decisions. (City Manager’s Office)**

Documents Filed: Memorandum from Deputy City Manager Alex Gurza, dated September 4, 2012, recommending approval of terms of an Agreement.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried, Resolution No. 76433, entitled: “A Resolution of the Council of the City of San José, approving an Agreement with the Association of Maintenance Supervisory Personnel (AMSP), Regarding Sick Leave Payout, Effective September 30, 2012”, was adopted. (10-1. Noes: Constant.)

- 3.6 Adopt a resolution approving the terms of an agreement on Sick Leave Payout between the City and the City Association of Management Personnel, International Federation of Professional and Technical Engineers, Local 21 (CAMP), effective September 30, 2012. CEQA: Not a Project, File No. PP10-069(b), Personnel Related Decisions. (City Manager’s Office)**

Documents Filed: Memorandum from Deputy City Manager Alex Gurza, dated September 4, 2012, recommending approval of terms of an Agreement.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried, Resolution No. 76434, entitled: “A Resolution of the Council of the City of San José, approving an Agreement Between the City of San José and the City Association of Management Personnel, International Federation of Professional and Technical Engineers, Local 21 (CAMP), Regarding Sick Leave Payout, Effective September 30, 2012”, was adopted. (10-1. Noes: Constant.)

- 3.7 Adopt a resolution approving the compensation and benefit change related to Sick Leave Payout for executive management and professional employees in Unit 99, and other unrepresented employees (Units 81/82), effective September 30, 2012. CEQA: Not a Project, File No. PP10-069(b), Personnel Related Decisions. (City Manager’s Office)**

Documents Filed: Memorandum from Deputy City Manager Alex Gurza, dated September 4, 2012, recommending approval of terms of an Agreement.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried, Resolution No. 76435, entitled: “A Resolution of the Council of the City of San José, approving Compensation and Benefit Changes for Executive Management and Professional Employees in Unit 99 and Other Unrepresented Employees (Units 81 and 82), Regarding Sick Leave Payout, Effective September 30, 2012”, was adopted. (10-1. Noes: Constant.)

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.1 Hold a public hearing on the FY 2011-2012 Consolidated Annual Performance Evaluation Report and approve the document for submittal to the U.S. Department of Housing and Urban Development by the September 28, 2012 deadline. CEQA: Not a Project, File No.PP10-069(a), Annual Report. (Housing)**

Documents Filed: (1) Memorandum from Director of Housing Leslye Corsiglia, dated August 30, 2012, providing recommendations for a public hearing and approval of the report. (2) Supplemental memorandum from Director of Housing Leslye Corsiglia, dated September 17, 2012, summarizing public comments and revisions made to the draft document. (3) Consolidated Annual Performance Evaluation Report (CAPER) draft, prepared by the City of San José Housing Department, submitted September 18, 2012. (4) Proof of Publication of Notice of Public Hearing, executed on August 27, 2012 submitted by the City Clerk.

Public Comment: Mayor Reed opened the public hearing. There was no testimony from the floor. Mayor Reed closed the public hearing.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Pyle, and carried unanimously, the FY 2011-2012 Consolidated Annual Performance Evaluation Report was approved for submittal to the U.S. Department of Housing and Urban Development by the September 28, 2012 deadline. (11-0.)

- 4.2 (a) Hold a public hearing on an Amended Citizen Participation Plan; and
(b) Adopt a resolution approving the Amended Citizen Participation Plan.
CEQA: Not a Project, PP10-068, General Procedure and Policy Making. (Housing)**

Documents Filed: (1) Memorandum from Director of Housing Leslye Corsiglia, dated August 30, 2012, providing recommendations for a public hearing and adoption of a resolution. (2) Supplemental memorandum from Director of Housing Leslye Corsiglia, dated September 17, 2012, summarizing public comments and revisions made to the draft document. (3) Proof of Publication of Notice of Public Hearing, executed on August 27, 2012 submitted by the City Clerk.

Public Comment: Mayor Reed opened the public hearing. There was no testimony from the floor. Mayor Reed closed the public hearing.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera, and carried unanimously, Resolution No. 76436, entitled: “A Resolution of the Council of the City of San José Approving the Amended Citizen Participation Plan”, was adopted. (11-0.)

- 4.3 Consideration of an ordinance rezoning the real property located on the south side of Summerside Drive between McLaughlin and Lucretia Avenues (2055 Summerside Drive) from the R-M(PD) Planned Development Zoning District to the A(PD) Planned Development Zoning District to allow for the development of up to 103 multi-family attached residences at an existing multi-family residential complex on a 3.52 gross acre portion of a 25.8 gross acre site (Summerwood Investments Et Al, Owner; Peninsula West LLC, Developer). SNI: Tully/Senter. CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval.**
PDC08-067 – District 7

Documents Filed: (1) Memorandum from Planning Commission Secretary Joseph Horwedel, dated August 27, 2012, transmitting the Planning Commission recommendation. (2) Proof of Publication of Notice of Public Hearing, executed on July 27, 2012, submitted by the City Clerk.

Public Comment: Mayor Reed opened the public hearing. There was no testimony from the floor. Mayor Reed closed the public hearing.

Assistant Director of Planning, Building and Code Enforcement Laurel Prevetti responded to questions from Council.

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Pyle, and carried unanimously, the recommendation of the Planning Commission was approved, and Ordinance No. 29146, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the North Side of Summerside Drive Between McLaughlin and Lucretia Avenues, from the R-M(PD) Planned Development Zoning District to the A(PD) Planned Development Zoning District”, was passed for publication, and Resolution No. 76437, entitled: “A Resolution of the Council of the City of San José Adopting the Summerwind Apartments Expansion Mitigated Negative Declaration, for which an Initial Study was Prepared, all in Accordance with the California Environmental Quality Act, as Amended, and Adopting a Related Mitigation and Monitoring Program”, was adopted. (11-0.)

- 4.4 Approve an ordinance amending Section 4.46.036 of Chapter 4.46 and Section 4.47.089 of Chapter 4.47 of Title 4 of the City of San Jose Municipal Code to suspend the collection of a portion of construction taxes on downtown high rise developments for a specified period. CEQA: Not a Project, File No. PP10-069, City Administrative Activities. Council District 3. (Planning, Building and Code Enforcement)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated August 29, 2012, recommending adoption of an ordinance.

Assistant Director of Planning, Building and Code Enforcement Laurel Prevetti, responded to questions from Council.

4.4 (Cont'd.)

Council Member Kalra requested further clarification on the item.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera, and carried, Ordinance No. 29147, entitled: “An Ordinance of the City of San José Amending Section 4.46.036 of Chapter 4.46 and Section 4.47.089 of Chapter 4.47 of Title 4 to Suspend the Collection of a Portion of Construction Taxes on Downtown High Rise Developments”, was passed for publication. (10-1. Noes: Kalra.)

4.5 **Approve a first amendment to the design-build contract with Hunt Construction Group for the Convention Center Expansion and Renovation Project to increase the maximum total compensation for agreed-upon additional work by \$10,000,000 for a total not to exceed \$127,000,000. CEQA: Resolution No. 72767 and Addenda thereto, File No. PP08-002. (Public Works)**

Documents Filed: Memorandum from Director of Public Works David Sykes, dated August 27, 2012, recommending approval of a first amendment.

Action: Upon motion by Council Member Constant, seconded by Council Member Herrera and carried unanimously, a first amendment to the design-build contract with Hunt Construction Group for the Convention Center Expansion and Renovation Project to increase the maximum total compensation with related contingencies, was approved. (11-0.)

4.6 **Conduct a public meeting to receive public comment on a proposal for annexation and formation of Zone I into Maintenance District 15 (Silver Creek Valley). CEQA: Mitigated Negative Declaration, File No. PDC09-010. District 8. (Public Works)**

Documents Filed: Memorandum from Director of Public Works David Sykes, dated August 27, 2012, recommending proposal of an annexation.

Action: Upon motion by Council Member Herrera, seconded by Council Member Constant and carried unanimously, a public meeting was approved for proposal of annexation and formation of Zone I into Maintenance District 15 (Silver Creek Valley). (11-0.)

- 4.7 Conduct a public meeting to receive public comment on a proposal to annex territory into Maintenance District 19 (River Oaks Area Landscaping). CEQA: North San José Development Policy Update EIR, Resolution No. 72768. Council District 4. (Public Works)**

Documents Filed: Memorandum from Director of Public Works David Sykes, dated August 27, 2012, recommending proposal of an annexation.

Action: Upon motion by Council Member Constant, seconded by Council Member Herrera and carried unanimously, a public meeting to receive comment on a proposal to annex territory into Maintenance District 19 (River Oaks Area Landscaping) was approved. (11-0.)

TRANSPORTATION & AVIATION SERVICES

- 6.1 (a) Adopt a resolution:**
- (1) Revising the Airport Fuel Flowage Fees, Ground Transportation Fees and Charges, Federal Inspection Facility Use Fee, Ground Handling Services/ Support Services Permit Fees and Miscellaneous Airport Cost Recovery Fees effective ~~October~~ November 1, 2012;**
 - (2) Establishing an Airport Ground Transportation Application Fee, an Airport Mobile Food Truck and Ice Cream Truck Permit Fee, Film Venue Fee and Conference Room Rate Structure effective October 1, 2012;**
 - (3) Establishing a Trip Fee for Blended Hotel/Motel and Off-Airport Parking Operators retroactive to July 1, 2011;**
 - (4) Re-adopting all other Airport Fees, Rates and Charges; and**
 - (5) Repealing Resolution No.75809.**
- (b) Approve an ordinance amending Sections 25.08.320, 25.08.330, 25.08.340, and 25.08.360 of Part 3 of Chapter 25.08 of Title 25 the San José Municipal Code to establish minimum requirements, rates and charges for the operation at and use of the Norman Y. Mineta San Jose International Airport by certificated passenger and cargo air carriers that are not regularly scheduled to land at the Airport.**
- (c) Approve an ordinance of the City of San José Amending Sections 25.10.010 and 25.10.030 of Chapter 25.10 of Title 25 of the San José Municipal Code to clarify the application requirements for ground transportation providers.**
- CEQA: Statutorily Exempt, File No. PP10-067(a), CEQA Guidelines Section 15273, Rates/Tolls/Fares/Charges (Recommendation A); Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment (Recommendation B-C). (Airport)**

6.1 (Cont'd.)

Documents Filed: Memorandum from Director of Aviation William F. Sherry, dated August 27, 2012, recommending adoption of a resolution and approval of ordinances.

Director of Aviation William F. Sherry provided corrections to the Agenda as indicated in Item (a)(1), page 14.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, Ordinance No. 29148, entitled: "An Ordinance of the City of San José Amending Sections 25.08.320, 25.08.330, 25.08.340 and 25.08.360 of Part 3 of Chapter 25.08 of Title 25 of the San Jose Municipal Code to Establish Minimum Requirements, Rates and Charges for the Operation at and Use of the Norman Y. Mineta San José International Airport by Certificated Passenger and Cargo Air Carriers that are Not Regularly Scheduled to Land at the Airport", and Ordinance No. 29149, entitled: "An Ordinance of the City of San José Amending Sections 25.10.010 and 25.10.030 of Chapter 25.10 of Title 25 of the San José Municipal Code to Clarify the Requirements for Applications for Ground Transportation Providers", passed for publication; and Resolution No. 76438, entitled: "A Resolution of the Council of the City of San José Establishing Fees, Rates and Charges at the Norman Y. Mineta San José International Airport, and Repealing Resolution No. 76809", was adopted. (11-0.)

6.2 Adopt a Resolution:

- (a) (1) **Authorizing the City Manager to negotiate and execute an agreement with Taxi San José to manage the Airport On-Demand Ground Transportation Dispatch Services for a three-year term from October 1, 2012 through September 30, 2015, with space rent to the City in an annual amount of \$90,752.16.**
- (2) **Authorizing the City Manager to exercise one (1) two-year option to extend the Agreement on the same terms and conditions and at the City's sole discretion.**
- (b) **Approve an ordinance amending San José Municipal Code Section 25.08.750 and following to allow permits rather than agreements for ground transportation providers of on-demand services at the Airport.**

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

Documents Filed: (1) Joint memorandum from Mayor Reed and Council Member Liccardo and Rocha, dated September 14, 2012, approving staff recommendations with amendments. (2) Joint memorandum from Council Member Kalra, Chu and Campos, dated September 14, 2012, approving staff recommendations with amendments. (3) Memorandum from Director of Aviation William F. Sherry, dated August 27, 2012, recommending adoption of a resolution and approval of an ordinance. (4) Supplemental memorandum from City Attorney Richard Doyle, dated September 14, 2012, providing further clarification. (5) "San José Airport Dispatch Services: Petition Against Contract Renewal for TSJ and Proposed Fee Increase", dated September 17, 2012, provided by the San José Airport Taxi Drivers Association.

6.2 (Cont'd.)

Director of Aviation William F. Sherry provided opening comments.

Public Comments: Offering support to the Staff's recommendations, and to memoranda from Mayor Reed and the Council members, and offering concerns regarding open competition were: John Holway, Erland Cole, Percy Richard, Mark Resurreccion, Dave Logan, Ray Duque, Samatar, Kirpal Bajwa, Rahul Malik, Larry Silva, Saranpal S. Bains, Seyoum Asrat, Durrani Iqbac, Kindie Setegne, Karan Deep, Shakur Buni, Mekonnen Inoldegered, Kebede Kaba, Bikram Jeet Singh, Jesse Singh, Said Ali, Tony Alexander, Fiseha Bizuneh, Catherine Burnette, Ibrahim Mohamed, Amjid Malik, Ali Robleh, Abdikarim Jama, Kirpal Basati, Lakhbir Pooni and Mohamed Omar.

Motion: Council Member Rocha moved approval of the Staff recommendations, with modifications as outlined in the memorandum he coauthored with Mayor Reed and Council Member Liccardo. Council Member Liccardo seconded the motion.

City Auditor Sharon Winslow-Erickson responded to questions from Council.

Council Member Herrera requested to amend the motion to direct Staff to take a look at reallocating the 300 airport permits equally, among all companies that qualify, with certain contingencies. Council Member Rocha declined to accept the amendment.

Council Member Herrera said that she would highly support acceleration of the audit.

Vice Mayor Nguyen requested to amend the motion, to direct Staff to perform an audit to look at the allocations of the permits and to determine the effectiveness of the permit allocation as outlined below in "Action". Council Members Rocha and Liccardo accepted the amendment to the motion.

Council Member Kalra offered a substitute motion and moved approval to accept the Staff recommendation with amendments as outlined in the memorandum he coauthored with Council Members Chu and Campos. The substitute motion was seconded by Council Member Chu.

On a call for the question, the substitute motion failed. (4-7. Noes: Constant, Liccardo, Nguyen, Oliverio, Pyle, Rocha; Reed.)

Action: On a call for the question, the original motion carried, Ordinance No. 29150, entitled: "An Ordinance of the City of San José Amending Chapter 25.01 of Title 25 of the San José Municipal Code to Add New Sections Creating Definitions of an Airport Access Permit and Approved Methodology for Adjusting Airport Access Permits and Amending Section 25.08.750 of Part 7 of Chapter 25.08 and Adding Sections 25.08.751, 25.08.752, 25.08.753, 25.08.745, 25.08.755, 25.08.756 and 25.08.757 Creating a Permit and Other Requirements for Taxicabs in the On Demand System at the Airport", was passed for publication; Resolution No. 76439, entitled: "A Resolution of the Council of

6.2 (Cont'd.)

the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with Taxi San José for On-Demand Ground Transportation Dispatch Services and to Exercise Options to Extend the Agreement”, was adopted, with modifications as recommended in the joint memorandum from Mayor Reed and Council Members Liccardo and Rocha, dated September 14, 2012, as follows: (1) Terms of contract extended from 3 years to 24 months; (2) Issue a new RFP for on-demand ground dispatch service before the conclusion of the term; (3) Direct the City Auditor to conduct an audit of the existing service model to determine if we are getting the results that were expected as outlined in the Taxi Service Model and the Taxi San José contract with audit results being presented to the Transportation and Environment Committee; and (4) Direct staff to explore options for lowering the amount of monthly rent for the newly constructed staging lot building; said options may include extending the length of the payment schedule from 10 years to 20 or 30 years. Additionally, when performing audit, staff to perform analysis of airport permit allocation/ distribution, and include direction to staff to include an audit provision in the negotiated contract. (7-4. Noes: Campos, Chu, Herrera, Kalra.)

REDEVELOPMENT SUCCESSOR AGENCY

9.1 Adopt resolutions by the City Council acting in its capacity as the Successor Agency to the Redevelopment Agency Board approving:

- (a) The Recognized Obligation Payment Schedule for July 1 - December 31, 2012 (ROPS 2); and**
- (b) The Recognized Obligation Payment Schedule for January 1 – June 30, 2013 (ROPS 3).**

(Deferred from 8/21/12 – Item 9.2, 8/28/12 – Item 9.1 and 9/11/12 – Item 9.1)

Action: Deferred to September 25, 2012 per Administration.

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 pending decision on the following Final Maps:

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/Units</u>	<u>Type</u>	<u>Proposed Decision</u>
10109	South of Village Square, enclosed by Cortona Drive, Classico Avenue, and Ruby Avenue	8	Shapell Homes	36 Lots / 35 Units	SFDR/ Commercial	Approve

OPEN FORUM

Fatima de Guzman representing ACE Community Group, addressed safety problems in the 7 Trees neighborhood and stressed a need for speed bumps and increased police presence.

ADJOURNMENT

The Council of the City of San José was adjourned at 4:13 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Dennis Hawkins, CMC
City Clerk

rmk/9-18-12MIN