

MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, OCTOBER 23, 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.

No report was provided.

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 subsection (c) of Section 54956.9 with respect to anticipated litigation: Number of matter(s) to be discussed: three (3); (B) to confer with Legal Counsel pursuant to Government Code Section 54956.9, Subsection (a) with respect to existing litigation: (1) Hoang, Tony v. Nguyen, et al.; Names of Parties Involved: Tony Hoang; Phuong Nguyen; City of San José, and Does 1 to 100; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV-187455; Amount of Money or Other Relief Sought: Damages According to Proof; (2) Nguyen v. City, et al; Names of Parties Involved: Hanh Nguyen, Jenny Nguyen, City of San José, Matthew Brackett, and Does 1 through 10; Court: Superior Court of California, County of Santa Clara; Case No: 1-11-CV-210649; Amount of Money or Other Relief Sought: Damages According to Proof; (3) City of San José v. Micrel International Corporation; Names of Parties Involved: City of San José; Micrel International Corporation and Does, inclusive; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-223515; Amount of Money or Other Relief Sought: Unpaid sewer connection fees and penalties; (4) San José Construction, Inc., v.

CLOSED SESSION (Cont'd.)

City of San José; Names of Parties Involved: San José Construction Co, Inc., City of San José; Office of Equality Assurance; the Redevelopment Agency of the City of San José; Nina Grayson; Teresa La Vrar; and Does 1 through 20; Court: Superior Court of California, County of Santa Clara; Case No: 1-11-CV-212946; Amount of Money or Other Relief Sought: Claim for equitable indemnity; (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 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.; Web: <http://www.sanjoseca.gov/?nid=186>; Telephone for Employee Relations: 408-535-8150.

(D) to confer with Legal Counsel pursuant to Government Code Section 54956.9, subsection (c) with respect to anticipated litigation pertaining to the Successor Agency to the Redevelopment Agency of the City of San José in two (2) matters.

CLOSED SESSION (Cont'd.)

By unanimous consent, Council recessed from the Closed Session at 11:01 a.m. and reconvened to Regular Session at 1:32 p.m. in the Council Chambers.

Present: Council Members - Campos, Chu, Constant, Herrera (2 p.m.), Kalra, Liccardo, Nguyen, Oliverio (1:46 p.m.), Pyle, Rocha; Reed.

Absent: Council Members - All Present.

INVOCATION

Ann Brownell of the Amanda Network spoke on the need to end bullying.

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Vice Mayor Nguyen, seconded by Council Member Pyle, and carried unanimously, the Orders of the Day and the Amended Agenda were approved, with the evening session to begin at 6:00 p.m. and deferral of the adjournment in memory of Isaiah "Ike" White Jr. to October 30, 2012. (9-0-2. Absent: Herrera, Oliverio.)

CEREMONIAL ITEMS

1.1 Presentation of a proclamation declaring City of San José's participation in the 2012 Combined Giving Campaign from October 9 through November 9, 2012. (Transportation)

Mayor Reed acknowledged the City of San José's participation in the 2012 Combined Giving Campaign from October 9 through November 9, 2012

1.4 Presentation of a commendation declaring the Week of October 14 – 20, 2012 as "Freedom from Bullies Week" in the City of San José. (Campos)

Mayor Reed and Council Members Campos and Kalra declared the Week of October 14 – 20, 2012 as "Freedom from Bullies Week" in the City of San José.

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

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

CONSENT CALENDAR

Upon motion by Vice Mayor Nguyen, seconded by Council Member Pyle and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (11-0.)

2.1 Approval of Minutes.

Action: None provided.

2.2 Final Adoption of Ordinances.

Action: None provided.

2.3 Approval of Council Committee Reports.

Action: None provided.

2.4 Mayor and Council Excused Absence Requests.

Action: None provided.

2.5 City Council Travel Reports.

Action: None provided.

2.6 Report from the Council Liaison to the Retirement Boards.

Action: None provided.

- 2.7 (a) **Approve a Second Amendment to the Agreement for audit services with Macias, Gini, & O’Connell LLP and the City of San José to provide audit services to the San José Diridon Development Authority (Audit of Financial Statements for FY 2011-2012) in an amount not to exceed \$14,250, and authorization to exercise future options through FY 2013-2014, subject to annual appropriation of funds by the City Council for a total contract amount not to exceed \$2,770,435.**
- (b) **Adopt the following Appropriation Ordinance amendments in the San José Diridon Development Authority Fund:**
- (1) **Increase the Non-Personal/Equipment appropriation by \$14,250; and**
- (2) **Decrease the Ending Fund Balance by \$14,250.**
- CEQA: Not a Project, File No. PP10-067(b), Appropriation Ordinance. (City Auditor/ City Manager’s Office)**

Documents Filed: Joint memorandum from City Auditor Sharon Erickson and Budget Director Jennifer Maguire, dated October 10, 2012, recommending approval of a second amendment to an agreement and adoption of appropriation ordinance amendments.

Action: Ordinance No. 29164, entitled: “An Ordinance of the City of San José Amending Ordinance No. 29102 to Appropriate Monies in the San José Diridon Development Authority Fund for the Non-Personal/Equipment Appropriation; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”, was adopted. (11-0.)

- 2.8 **Approve a Continuation and First Amendment to the Grant Agreement with the Emergency Housing Consortium extending the term through October 31, 2012, and adding \$46,446.70 from the City's Rapid Re-housing Program for a new total contract amount of \$2,673,440.70. CEQA: Not a Project, File No. PP10-066(a), Agreements for activities involving no physical changes to the environment. (Housing)**

Documents Filed: Memorandum from Director of Housing Leslye Corsiglia, dated October 1, 2012, recommending approval of a contract amendment.

Public Comments: Erica McCuller questioned the source of funding.

Mayor Reed directed Ms. McCuller’s question to Assistant City Manager Ed Shikada for follow-up.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Herrera, and carried unanimously, a Continuation and First Amendment to the Grant Agreement with the Emergency Housing Consortium extending the term through October 31, 2012, and adding \$46,446.70 from the City's Rapid Re-housing Program for a new total contract amount of \$2,673,440.70, was approved. (11-0.)

2.9 Adopt a resolution to:

- (a) **Amend the City of San José Pay Plan effective October 23, 2012, to create the following classification:**
 - (1) **CADD Technician (3716)**
- (b) **Amend the City of San José Pay Plan effective October 23, 2012, to delete the following obsolete classes:**
 - (1) **Alarm Technician (2233)**
 - (2) **Aquatics Coordinator, Therapeutics PT (6148)**
 - (3) **Director, General Services U (1648)**
 - (4) **Police Artist (2244)**
 - (5) **Principal Budget Analyst U (1659)**
 - (6) **Senior Facility Sound & Light Technician (3230)**
 - (7) **Tree Maintenance Leadworker (3416)**

CEQA: Not a Project, File No. PP10-068(b), Municipal Code, Title 3. (Human Resources)

Documents Filed: Memorandum from Deputy City Manager Alex Gurza, dated September 27, 2012, recommending adoption of a resolution.

Action: Resolution No. 76458, entitled: “A Resolution of the Council of the City of San José Amending the City of San José Pay Plan for Various Job Classifications”, was adopted. (11-0.)

2.10 Approval of an Agreement between the City of San José and Valley Transportation Authority (VTA) for the construction, operation, and maintenance of the City of San José – VTA fiber communications within the VTA LRT duct bank on First Street and East Tasman Avenue. CEQA: EIR Resolution Nos. 60197 and 63179, File No. PP08-154. (Transportation)

Documents Filed: City Council Action Request from Director of Transportation Hans Larsen, dated October 23, 2012, recommending appraisal of an agreement.

Action: An Agreement between the City of San José and Valley Transportation Authority (VTA) for the construction, operation, and maintenance of the City of San José – VTA fiber communications within the VTA LRT duct bank on First Street and East Tasman Avenue was approved. (11-0.)

- 2.11 Approve a Letter Agreement consenting to the contribution of additional cash equity by certain partners of the Fairmont Hotel ownership group and that the contributing partners will be entitled to the return of such cash equity and a preferred return pursuant to the terms of that certain Operation, Ownership and Participation Agreement dated March 28, 1996, as amended. CEQA: Not a Project, File No. PP10-066, Agreements. (City Manager's Office)**

Documents Filed: Memorandum from Assistant City Manager Ed Shikada, dated October 18, 2012, recommending approval of a Letter Agreement.

Action: A Letter of Agreement consenting to the contribution of additional cash equity by certain partners of the Fairmont Hotel ownership group with related contingencies, was approved. (11-0.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

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

The City Manager discussed the Study Session to be held on October 29, 2012 to seek feedback and input from the City Council on how to address homeless encampments in San José.

3.6 (a) Adopt a resolution to:

- (1) Authorize the elimination of three vacant Fire Battalion Chief positions and the addition of three Fire Division Chief positions.**
- (2) Eliminate the stand-by pay practice for the Assistant Fire Chief and Deputy Fire Chief classifications and the previous stand-by pay practice for the Fire Division Chief classification.**
- (3) Amend the City of San José City Pay Plan effective November 1, 2012 to make the following pay range adjustments:**
 - (a) Increase the pay range for Assistant Fire Chief from \$104,609.77 to 163,065.82 to \$114,024.65 to \$177,741.74;**
 - (b) Increase the pay range for Deputy Fire Chief from \$97,260.32 to 151,502.43 to \$106,013.75 to \$165,137.64;**
 - (c) Increase the top range for Fire Division Chief from \$124,074.94 to \$153,852.93; and,**
 - (d) Increase the pay range for Assistant Police Chief from \$104,609.77 to 163,065.82 to \$117,685.93 to 183,448.95.**

- 3.6 (b) Adopt the following 2012-2013 appropriation ordinance amendments in the General Fund:**
- (1) Increase in the amount of \$66,000 in the Fire Department Personal Services appropriation; and**
 - (2) Decrease in the amount of \$66,000 in the Fire Department Non-Personal/Equipment appropriation.**
- (c) Direct the City Attorney to evaluate and prepare an amendment to Part 2 of Chapter 3.36 of Title 3 of the San José Municipal Code to exclude from membership in the Police and Fire Department Retirement Plan an Assistant Fire Chief, Deputy Fire Chief, Fire Division Chief, or Assistant Police Chief who has no prior service credit applicable to that plan.**
- CEQA: Not a Project, File No. PP10-068(b), Municipal Code, Title 3 and File No. PP10-067(b), Appropriation Ordinance. (City Manager's Office)**
(Deferred from 10/16/12 – Item 3.4)

Documents Filed: Replacement memorandum from City Manager Debra Figone, dated October 18, 2012, recommending adoption of a resolution with revisions from the original recommendation.

Fire Chief William McDonald provided a correction to agenda item (a)(1) and offered an introduction to the staffing configuration. Extensive Council discussion followed.

Council Member Constant expressed reservations about having three Division Chiefs and potential overlapping.

Council Member Kalra recommended taking a closer look at the pay scales department-wide, top-to-bottom, to make the City of San José more competitive.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried, Ordinance No. 29165, entitled: “An Ordinance of the City of San José Amending Ordinance No. 29102 to Appropriate Monies in the General Fund for the Fire Department Personal Services Appropriation; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”, and Resolution No. 76459, entitled: “A Resolution of the Council of the City of San José Eliminating Vacant Battalion Chief Positions; Adding Fire Division Chief Positions; Amending the Pay Plan; and Eliminating the Stand-By Pay practice for Fire Management Classifications”, was adopted, with agenda language in (a) (1) to be corrected to “Authorize the elimination of three vacant *Fire Captain* positions and the addition of three Fire Division Chief positions”, were adopted. Noes: Kalra. (10-1.)

- 3.7 Approve an ordinance authorizing the Director of Finance to administer a Business Tax Amnesty Program which forgives taxpayers who pay certain past due business taxes from liability for the remaining past due business taxes, interest, and penalties;**
- (a) Approve an ordinance authorizing a Business Improvement District Assessment Amnesty Program for the Downtown and Japantown Business Improvement Districts to run concurrently with the Business Tax Amnesty Program;
Ordinance No. 29167 passed for publication adopted.**
- (c) Adopt the following 2012-2013 Appropriation Ordinance and Funding Sources Resolution Amendments in the General Fund:**
- (1) Increase the revenue estimate for Business Tax by \$300,000; and**
 - (2) Increase the Finance Department Non-Personal/Equipment appropriation by \$300,000.**

**CEQA: Not a Project; File No. PP10-068(b), Municipal Code or Policy.
(Finance/City Manager's Office)**

Documents Filed: Joint memorandum from Assistant Director of Finance Julia H. Cooper and Budget Director Jennifer Maguire, dated October 9, 2012, recommending approval of ordinances and an appropriation ordinance and funding sources resolution amendments.

Motion: Council Member Constant moved approval of the Staff recommendation, with modifications as outlined below in "Action". Council Member Herrera seconded the motion.

Action: On a call for the question, the motion carried unanimously, Ordinance No. 29166, entitled: "An Ordinance of the City of San José to Provide for a Business Tax Amnesty Program Which Forgives Taxpayers Who Pay Certain Past Due Business Taxes From Liability For Remaining Past Due Business Taxes, Interest, and Civil and Criminal Penalties", was passed for publication, with changes to the second reading adding that anyone availing themselves to this program will not be eligible for future amnesty; Ordinance No. 29167, entitled: "An Ordinance of the City of San José to Provide for a Business Improvement District Assessment Amnesty Program Which Forgives Businesses that Pay Certain Past Due Assessments from Liability for Interest and Penalties", was passed for publication; and Ordinance No. 29168, entitled: "An Ordinance of the City of San José Amending Ordinance No. 29102 to Appropriate Monies in the General Fund for the Finance Department Non-Personal/Equipment Appropriation; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption"; and Resolution No. 76460, 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. (11-0.)

COMMUNITY & ECONOMIC DEVELOPMENT

4.1 Adopt a resolution:

- (a) **Declaring 1,090 square feet of Cherry Avenue, east of Almaden Expressway, surplus to the needs of the City;**
- (b) **Approving an agreement between the City and Arcadia Development Company (Arcadia) for sale of the property in the amount of \$24,000; 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: Almaden Ranch Retail Center EIR (Resolution No. 76168). Council District 9. (Economic Development)

Documents Filed: Memorandum from Director of Economic Development/Chief Strategist Kim Walesh, dated October 9, 2012, recommending adoption of a resolution.

Action: Upon motion by Council Member Rocha, seconded by Council Member Herrera and carried unanimously, Resolution No. 76461, entitled: "A Resolution of the Council of the City of San José Declaring Certain City-Owned Property Located on Cherry Avenue, East of Almaden Expressway as Surplus to the Needs of the City, Approving an Agreement with Arcadia Development Company for Sale of the Property in the Amount of \$24,000, and Authorizing the City Manager or Her Designee to Execute Certain Documents Necessary to Complete the Transaction", was adopted. (11-0.)

4.2 Accept the "San José Convention Center & Team San José Benchmarking Analysis" Report produced by the City of San José's hospitality industry advisor, Convention, Sports and Leisure, LLC.

- (a) **The Staff recommendations were accepted with addition to negotiation principles in the contract to include reducing the operating deficit by using Convention and Cultural Affairs Fund 536 monies for long-term capital needs.**
- (b) **Direct the City Manager to negotiate a new Agreement with Team San José consolidating the two existing Agreements the City currently has with Team San José and to extend the term for no more than 5 years for a new termination date of June 30, 2018, with options for renewal.**

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

Documents Filed: Memorandum from Director of Economic Development/Chief Strategist Kim Walesh, dated October 9, 2012, recommending acceptance of a report and negotiation of a new agreement.

Director of Economic Development/Chief Strategist Kim Walesh offered a presentation on the "San José Convention Center & Team San José Benchmarking Analysis", and she and Director of Aviation William F. Sherry responded to questions from the Mayor and Council.

4.2 (Cont'd.)

Motion: Council Member Constant moved approval of the report, with direction to Staff to provide more focus toward negotiation principles in the contract to include reducing the operating deficit by using Convention and Cultural Affairs Fund 536 monies for long-term capital needs. Council Member Liccardo seconded the motion.

Action: On a call for the question, the motion carried unanimously, the “San José Convention Center & Team San José Benchmarking Analysis” Report produced by the City of San José’s hospitality industry advisor, Convention, Sports and Leisure, LLC., was accepted. Staff was directed to provide more focus and attention to negotiation principles to include reducing the operating deficit by using Convention and Cultural Affairs Fund 536 monies for long-term capital needs. (11-0.)

4.3 **Consideration of an ordinance of the City of San José to amend Section 17.72.530 of Chapter 17.72 of Title 17 of the San José Municipal Code to require certain drainage into landscaped areas; to amend Section 20.95.020 of Chapter 20.95 of Title 20 of the San José Municipal Code to extend stormwater requirements to certain small projects and detached single-family home projects; and to make other clarifying or minor technical amendments to those sections. CEQA: Pursuant to Section 15168 of the CEQA Guidelines, the City of San José has determined that this activity is within the scope of the Envision San José 2040 General Plan Program approved previously. The Final Program Environmental Impact Report (EIR) for the Envision San José 2040 General Plan entitled, “Envision San José 2040 General Plan,” for which findings were adopted by City Council Resolution No. 76041 on November 1, 2011, adequately describes the activity for the purposes of CEQA. The project does not involve new significant effects beyond those analyzed in this Final EIR. Therefore, the City of San José may take action on the project as being within the scope of the Final EIR, File No. PP12-078. Planning Commission recommends approval (5-0-2; Commissioners Cahan and Kamkar absent). (Planning, Building and Code Enforcement)**

Documents Filed: (1) Memoranda from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated September 28, 2012 and October 12, 2012, regarding consideration of an ordinance. (2) Correspondence from Myron Crawford, Berg & Berg Developers, IN., dated October 20, 2012, regarding special land use categories. (3) Proof of Publication of Notice of Public Hearing, executed on September 21, 2012 submitted by the City Clerk.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, Ordinance No. 29169, entitled: “An Ordinance of the City of San José to Amend Section 17.72.530 of Chapter 17.72 of Title 17 of the San José Municipal Code to Require Certain Drainage into Landscaped Areas and to Amend Section 20.95.020 of Chapter 20.95 of Title 20 of the San José Municipal Code to Extend Stormwater Requirements to Certain Small Projects and Detached Single-Family Residences, and Making Other Clarifying or Minor Technical Amendments to Those Sections”, was passed for publication. (10-0-1. Absent: Constant.)

PUBLIC HEARINGS

- 11.3 Consideration of an ordinance rezoning the real property located on the west side of Wilson Avenue, approximately 200 feet southerly of The Alameda (45 Wilson Avenue) from the LI Light Industrial Zoning District to the CG Commercial General Zoning District on an approximately 1.04 gross acre site (W.C.V. #51, LLC, c/o William C. Vancleff, Owner). CEQA: San José 2040 General Plan EIR Resolution No. 76041. Planning Director recommends approval.
C12-017 – District 6**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C12-017, submitted June 26, 2012, recommending approval. (2) Proof of Publication of Notice of Public Hearing, executed on September 21, 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 Oliverio seconded by Council Member Herrera, and carried unanimously, the Staff's recommendation was approved, and Ordinance No. 29170, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the West Side of Wilson Avenue, Approximately 200 Feet Southerly of the Alameda, on a 1.04 Gross-Acre Site (45 Wilson Avenue) to the CG Commercial General Zoning District", was passed for publication. (11-0.)

STRATEGIC SUPPORT SERVICES

- 3.8 Council discussion and possible action on a City position regarding the following Propositions and Measures on the November 6, 2012 California General Election Ballot:**

Documents Filed: (1) Memorandum from Council Member Kalra, dated October 22, 2012, in support of Prop 39. (2) Memorandum from Council Member Kalra, dated October 22, 2012, in support of Prop 34 and 36. (3) Memorandum from Council Member Constant, dated October 22, 2012, proposing possible actions for the California General Election Ballot. (4) Memorandum from Director, Intergovernmental Relations Betsy Shotwell, dated October 10, 2012, providing information and possible actions for Propositions and Measures on the California General Election Ballot. (5) Recommendations provided by SAFE California Campaign, dated October 23, 2012.

Public Comments: Jerry Mungai asked which proposals would be relevant in restoring City services; John Vanek, Perla Flores (Community Solutions), and Ruth Silver Taube urged a "No" vote on Prop 35, citing that it is not effectively victim-centered; Joe Dietzgen and Terry McCaffrey, Amnesty International, urged the passage on Proposition 34 to eliminate the death penalty; Ross Signorino offered support to Measure D and Proposition 34.

3.8 (Cont'd.)

Mayor Reed suggested that the debate for each proposition item be limited to five minutes each.

Motion: Council Member Constant moved approval that each item be simply read and voted on with no discussion. Council Member Liccardo seconded the motion.

Action: On a call for the question, the motion carried to forego discussion/debate of each proposition, and move directly to the vote. (7-4. Noes: Campos, Kalra, Pyle, Rocha.)

(a) **Measure D (Minimum Wage);**

Motion: Council Member Constant moved approval for an oppose position to Measure D, citing that there are flaws in the measure and it is poorly crafted. Council Member Liccardo seconded the motion.

Substitute Motion: Council Member Kalra moved approval for the City to offer a position of support to Measure D. Council Member Chu seconded the motion.

On a call for the question, the substitute motion failed. (5-6. Noes: Constant, Herrera, Liccardo, Oliverio, Pyle; Reed.)

The original motion returned to the floor. On a call for the question the motion carried, with an oppose position recommended for Measure D. (6-5. Noes: Campos, Chu, Kalra, Nguyen, Rocha.)

The vote was reopened at 9:00 p.m. upon request by Council Member Pyle, requesting that her vote be changed to “abstain”, recanting her earlier votes on Measure D.

Action: On a call for the question, the motion failed on the final vote regarding the passage of Measure D, thereby no position was adopted. (5-5-0-1. Noes: Constant, Herrera, Liccardo, Oliverio; Reed. Abstain: Pyle.)

(b) **Measure E (Cardroom Gaming).**

Motion: Council Member Rocha moved approval that no position be taken by the City on Measure E. Council Member Herrera seconded the motion.

Action: On a call for the question, the motion carried, “no position” was taken on Measure E (Cardroom Gaming). (7-4. Noes: Chu, Constant, Liccardo, Nguyen.)

3.8 (Cont'd.)

(c) **Proposition 32 (Political Contributions by Payroll Deduction, Contributions to Candidates).**

Motion: Council Member Kalra moved approval for an oppose position to Proposition 32. The motion was seconded by Council Member Campos.

Council Member Constant offered a substitute motion and moved approval for a support position to Proposition 32. The motion failed due to lack of a second.

Action: On a call for the question, the original motion carried, with an “oppose” position for Proposition 32 approved. (7-2-0-2. Noes: Constant; Reed. Abstain: Herrera, Oliverio.)

(d) **Proposition 34 (Death Penalty);**

Motion: Council Member Pyle moved approval for a position of support to Proposition 34. Vice Mayor Nguyen seconded the motion.

Action: On a call for the question, the motion carried, a position to support Proposition 34 (Death Penalty), was adopted. (9-1-0-1. Noes: Reed; Abstain: Oliverio.)

(e) **Proposition 35 (Human Trafficking);**

Motion: Council Member Rocha moved approval that no position be taken by the City on Proposition 35. Council Member Herrera seconded the motion.

Action: On a call for the question, the motion carried unanimously, and “no position” was taken on Proposition 35 (Human Trafficking). (11-0.)

(f) **Proposition 36 (Three Strikes Law, Repeat Felony Offenders, Penalties);**

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried, a position to support Proposition 36 (Three Strikes Law, Repeat Felony Offenders, Penalties) was adopted. (8-1-0-2. Noes: Constant. Abstain: Oliverio; Reed.)

(g) **Proposition 39 (Tax Treatment for Multistate Businesses, Clean Energy, and Energy Efficiency Funding).**

Action: Upon motion by Council Member Liccardo, seconded by Vice Mayor Nguyen and carried, a support position for Proposition 39 (Tax Treatment for Multistate Businesses, Clean Energy, and Energy Efficiency Funding) was adopted. (7-1-0-3. Noes: Reed. Abstain: Constant, Herrera, Oliverio.)

The Council of the City of San José adjourned the afternoon session at 4:35 p.m.

RECESS/RECONVENE

The City Council recessed from Closed Session at 4:35 p.m. and reconvened at 6:03 p.m. in the Council Chambers, City Hall.

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

Absent: Council Members - All Present.

CEREMONIAL ITEM

1.3 Presentation of a commendation to the San José Country Club commemorating its 100th Year Anniversary. (Campos)

Mayor Reed and Council Members Campos and Pyle acknowledged the San José Country Club in commemorating its 100th Year Anniversary.

1.6 Presentation of a commendation to the Blossom Valley All-Stars for representing San José and winning the 2012 Pony Baseball Mustang League World Series. (Pyle)

Mayor Reed and Council Members Kalra and Pyle commended the Blossom Valley All-Stars for representing San José and winning the 2012 Pony Baseball Mustang League World Series.

1.7 Presentation of a commendation to the Almaden Little League All-Stars for representing San José and winning championship flags at the District 12 and Section 5 tournaments. (Pyle)

Mayor Reed and Council Member Pyle commended the Almaden Little League All-Stars for representing San José and winning championship flags at the District 12 and Section 5 tournaments.

1.2 Presentation of a commendation to San José resident Robert Sotelo for his act of heroism in rescuing a woman from her East San José home. (Campos)

Mayor Reed and Council Member Campos commended San José resident Robert Sotelo for his act of heroism in rescuing a woman from her East San José home.

STRATEGIC SUPPORT SERVICES

- 3.3**
- (a) Accept the proposed structural improvements to the City's Boards and Commissions program.**
 - (b) Accept the recommendations regarding the proposed elimination or consolidation of Commissions.**
 - (c) Direct the City Clerk and City Attorney to return to the Council by December 2012 with draft revisions to the Municipal Code and Council Policies.**
- (City Clerk)**

Documents Filed: (1) Joint memorandum from Mayor Reed, Vice Mayor Nguyen and Council Member Herrera, dated October 19, 2012, recommending approval of the Staff's recommendations with amendments as noted; (2) Joint memorandum from Council Member Pyle, Rocha, Liccardo and Kalra, dated October 11, 2012, recommending approval of the Staff report with modifications and direction; (3) Memorandum from Council Member Chu, dated October 19, 2012, recommending approval of Staff's recommendations with amendments as noted; (4) Memorandum from City Clerk Dennis Hawkins, dated September 14, 2012, outlining Structural Improvements and Potential Consolidation or Elimination of Boards and Commissions; (5) Supplemental memorandum from City Clerk Dennis Hawkins, dated October 19, 2012, providing additional information and alternatives for the Council's consideration; (6) Director of Housing Leslye Corsiglia, dated October 23, 2012, providing information on the Mobile Home Advisory Commission vote on Commission Consolidation. (7) Presentation from City Clerk Dennis Hawkins, dated October 23, 2012, on the consolidation of Boards and Commissions; (8) Letter from Jean Lee, Chair, on behalf of the San José Public Library Commission, dated October 18, 2012, rejecting eliminations and consolidation efforts as outlined in the Staff's recommendation; (9) Email from Jean Lee, dated October 22, 2012, providing a "Stanford Social Innovation Review...Merging Wisely". (10) Letter from Devora Davis, Chair, Early Care and Education Commission, dated October 22, 2012, offering comments on the Staff's recommendations. (11) Memorandum from Karl Vidt, Chair, Disability Advisory Commission, dated October 21, 2012, offering additional policy alternatives; (12) Memoranda and email correspondence from Joshua Barousse, Chair, City of San José's Human Rights Commission; David Parker, Appeals Hearing Board Commissioner; Jamil Shaikh, Human Rights Commission, and Kasey Ong, former District 4 Youth Commissioner, each offering comments and criticism of the Staff's recommendations.

City Clerk Dennis Hawkins and Senior Deputy City Attorney Lisa Herrick provided a presentation, outlining recommendations for structural improvements to the City's Boards and Commissions program and proposing elimination or consolidation of Commissions.

3.3 (Cont'd.)

Public Comments: Martha O'Connell, Mobile Home Advisory Commission, expressed support to the consolidation efforts; Kymberli Brady recommended performance reviews for the various Commissions to stay on track; Suzanne Roth Malone, former Arts Commissioner, offered support to recommendations presented by Council Member Pyle. Expressing criticism of the Staff's recommendations, offering additional comments and suggestions, were: Suzanne Doty; Joshua Barousse and Abraham Thompson, Human Rights Commission; Karl Vidt Disability Advisory Commission; Jacquie Heffner and Monna Long, Mobile Home Advisory Commission; Gail Anne Osmer; Mark Ramoser, Silicon Valley Independent Living Center; Wendy Ho, Robin Martinez, Larry Ames, Helen Chapman, Janet Thorsrud and Dev Davis, Early Care & Education Commission; Clarence Madrilejos; Roma Dawson; Gloria Chun Hoo, League of Women Voters; Pete Kolstad; Jean Lee; Chris Esparza; Michael Martin, Art's Commission; Clarence Tam and Sachin Peddada, Youth Advisory Commission.

Mayor Reed provided an overview of the project and thanked the City Clerk and Attorney's Office for tackling this difficult issue. City Clerk Dennis Hawkins responded to questions regarding various transitions, new appointments and recruitments.

Motion: Council Member Rocha moved approval of the Staff recommendations, with revisions as recommended in memoranda as indicated below in "Action". Council Member Liccardo seconded the motion.

Vice Mayor Nguyen requested to amend the motion to ask that the Elections Commission be changed to the "Ethics Commission". Council Members Rocha and Liccardo accepted the amendment.

Council Member Constant offered three amendments, regarding looking to the County for ideas and looking to the advisory boards and tying their mission into formal commissions' goals. Council Members Rocha and Liccardo declined to accept the amendments.

Council Member Chu requested to amend the motion to consider maintaining the Mobile Home Advisory Commission and Advisory Commission on Rent as stand-alone commissions. Council Member Kalra seconded the motion.

Action: On a call for the question, the amendment to the motion to maintain the Mobile Home Advisory Commission and Advisory Commission on Rent as stand-alone commissions, failed. (3-8. Noes: Campos, Constant, Herrera, Liccardo, Nguyen, Pyle, Rocha; Reed.)

Amendment to the Motion: Council Member Oliverio requested to amend the motion to fund the Commissions from the Council General Fund. Council Member Constant seconded the motion.

On a call for the question, the amendment to the motion failed. (2-9. Noes: Campos, Chu, Kalra, Herrera, Liccardo, Nguyen, Pyle, Rocha; Reed.)

3.3 (Cont'd.)

Action: On a call for the question, the original motion carried, and Staff recommendations were accepted, with inclusion of the memorandum co-signed by Council Members Rocha, Pyle, Liccardo and Kalra dated October 11, 2012; items (a) and (b) in the memorandum co-signed by Mayor Reed, Vice Mayor Nguyen and Council Member Herrera dated October 19, 2012, with direction to staff to do additional work on items (c) and (d); change the “Elections Commission” to the “Ethics Commission”; officially have discussions with the County in joining forces with their Family Domestic Advisory Board, and report back to Council with partnership ideas; consider a process for fundraising efforts, paralleling the model now used for City Council events (included as part of section ‘d’ in the memorandum co-signed by Mayor Reed, Vice Mayor Nguyen mentioned above); examine advisory boards where they may combine with formal commissions; allow Small Business Commission to change their charter or work plan to work with the small businesses. (9-2. Noes: Chu, Oliverio.)

3.4 **Accept the assessment of the Neighborhoods Commission Pilot presented in the memorandum, and provide direction to staff on a structure to encourage neighborhood participation in City decision making in the future. (City Manager’s Office)**

Documents Filed: (1) Joint memorandum from Mayor Reed, Vice Mayor Nguyen and Council Member Herrera, dated October 19, 2012, offering approval to the Staff recommendations with modifications. (2) Memorandum from Council Member Herrera, dated October 19, 2012, recommending formation of an advisory committee. (3) Deputy City Manager Norberto Duenas, dated September 14, 2012, outlining the Neighborhoods Commission Pilot Assessment.

Mayor Reed recommended that Council defer action on this item to June 2013.

Motion: Council Member Herrera moved approval to defer action on this item until the end of the fiscal year. Council Member Constant seconded the motion.

Council Member Liccardo offered the advantages to making a decision now, asking that the Commission be specific regarding the scope of their work. Deputy City Manager Norberto Duenas clarified the Commission’s activity, offering that the Commission may continue to meet as part of the pilot program.

Public Comments: Endorsing the Neighborhoods Commission’s effectiveness and belief that it should be reinstated as a permanent body, were: Larry Ames, Mauricio Astacio, Robert Sandoval and Marie Arnold.

Action: On a call for the question, the motion carried unanimously, with the assessment of the Neighborhoods Commission Pilot presented in the memorandum, providing direction to staff on a structure to encourage neighborhood participation in City decision-making in the future accepted, with formal action to be deferred to the end of the fiscal year. (11-0.)

3.5 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, to permit flexibility in scheduling public hearings before the Council. CEQA: Not a Project. (City Clerk/City Attorney's Office)

Documents Filed: (1) Joint memorandum from Council Member Pyle, Liccardo and Rocha, dated October 19, 2012, approving changes amending rules of conduct of meetings, with further modifications. (2) Memorandum from City Clerk Dennis Hawkins, dated September 13, 2012, transmitting the recommendations of the Rules and Open Government Committee. (3) Letter from Julie Hutcheson, Environmental Advocate, Committee for Green Foothills, supporting the Staff's recommendations.

Public Comments: Larry Ames asked that meetings not be limited to daytime to encourage more public participation. Helen Chapman, Committee for Green Foothills, offered support to the recommendations proposed by Council Members Pyle, Liccardo and Rocha.

Motion: Council Member Liccardo moved approval of the memorandum he cosigned with Council Members Pyle and Rocha, dated October 29, 2012. Council Member Rocha seconded the motion.

Discussion followed regarding flexibility of holding land use items during the day or evening sessions, at Staff's discretion.

Director of Planning, Building and Code Enforcement Joséph Horwedel, clarified his understanding that land use items are to be noticed for 7:00 p.m. when an evening session for Council has been scheduled. He added that if there are items that need to be moved ahead faster, they will be brought forward in the afternoon, specifying a time certain.

Action: Resolution No. 76475, approving proposed changes to the Rules of Conduct which rename "Public Hearings" to "Land Use", was adopted, and actions were approved as outlined in the memorandum co-signed by Council Members Pyle, Liccardo and Rocha, dated October 19, 2012, recommending: (1) Approve proposed changes to the Rules of Conduct renaming "Public Hearings" to "Land Use"; (2) Retain current practice of scheduling at least one City Council meeting per month at 7:00 p.m., and (3) Staff directed to return to their previous practice of indicating on public hearing notices for land use items that such items will be heard at 7:00 p.m. at the regularly scheduled evening Council meeting. (11-0.)

PUBLIC HEARINGS

- 11.2 Consideration of an ordinance rezoning the real property located at 6782 and 6790 San Felipe Road from the R-1-1 Single-Family Residence District to the A(PD) Planned Development Zoning District to allow for the development of up to 4 single-family detached residential units on a 2.14 gross acre site (DAL Properties LLC/Mark Lazzarini, Owner). CEQA: Mitigated Negative Declaration. PDC11-012 – District 8**

Action: Deferred to November 27, 2012 per Administration.

- 11.4 Conduct an ADMINISTRATIVE HEARING and consider a Conditional Use Permit and Determination of Public Convenience or Necessity to allow off-sale of alcohol for a full service grocery store in an existing commercial building (formerly SaveMart) on a 4.05 gross acre site in the CP Pedestrian Commercial Zoning District, located on the south side of Story Road, between McLaughlin Avenue and Clemence Avenue (1070 Story Road) (EOL Properties VII, LP, Owner). SNI: Tully-Senter. CEQA: Exempt. Planning Director and Planning Commission recommend approval (5-0-2; Commissioners Cahan and Kamkar absent) of CUP and granting of PCN,CP12-018/ABC12-006 – District 7**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. CP12-018 & ABC12-006, dated October 1, 2012 transmitted by Director of Planning, Building and Code Enforcement Joséph Horwedel. (2) Memorandum from Director of Planning, Building and Code Enforcement Joséph Horwedel, dated October 11, 2012, transmitting the Planning Commission recommendation. (3) Proof of Publication of Notice of Public Hearing, executed on September 21, 2012, submitted by the City Clerk.

Mayor Reed opened the public hearing.

Public Comment: Aurelia Sanchez urged certain restrictions on alcohol sold, and asked that the cosmetics of the establishment and panhandling be addressed.

Mayor Reed closed the public hearing.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera, and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, and Resolution No. 76462, entitled: “A Resolution of the Council of the City of San José Approving a Conditional Use Permit and Granting a Determination of Public Convenience or Necessity to Allow Off-Sale of Alcohol at a Full-Service Grocery Store in an Existing Commercial Building on an Approximately 4.05 Gross-Acre Site on the South Side of Story Road Between McLaughlin Avenue and Clemence Avenue (1070 Story Road)”, was adopted. (11-0.)

- 11.5 Conduct an ADMINISTRATIVE HEARING and consider an APPEAL of the Planning Commission's decision to deny a Conditional Use Permit to allow the addition of an automated carwash at an existing smog test facility on a 0.40 gross acre site in the CN Neighborhood Commercial Zoning District, located on the south side of Camden Avenue, 250 feet westerly of S. Bascom Avenue (2270 Camden Avenue) (Akbar and Mary E. Nazemian, et al., Owner). CEQA: Statutorily Exempt (CA Pub Res Code §21080(b)(5)), if denied. Planning Director and Planning Commission recommend denial (5-2-0; Commissioners Bit-Badal and Kamkar opposed).
CP10-010 – District 9**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. CP10-010, dated June 29, 2012, recommending denial of a permit. (2) Memorandum from Director of Planning, Building and Code Enforcement Joséph Horwedel, dated September 28, 2012, transmitting the Planning Commission recommendation to deny a Conditional Use Permit. (3) Proof of Publication of Notice of Public Hearing, executed on September 21, 2012 submitted by the City Clerk.

Mayor Reed opened the public hearing.

Public Comment: Encouraging approval of the project and asking that the City reverse the decision to appeal, were: the architect for the project, James Chao; Sattar Deldar, Ash Behbahani, Ali Abbasi, Edwin Amanesian, Bill Harris, Mr. Nazemian; acoustic consultant, Jeff Pack; Dr. Howard Eldin, Matt Kamkar and Bill Behbahani. Citing concerns regarding its negative impact on the neighborhood were John Stewart and Jim Cohen.

Leo Siegel, representing Habib Behbahani, spoke on behalf of this client, and said that the acoustical engineer's report had yet to be reviewed by Planning and asked that further consideration be given.

Mayor Reed closed the public hearing.

Director of Planning, Building and Code Enforcement Joséph Horwedel, explained the Planning Commission's decision and Staff's recommendation to deny the conditional use permit, citing noise pollution effecting the surrounding neighborhood.

The acoustic consultant for the property, Jeff Pack, and architect James Chao, responded to questions from Council, and asked that further consideration be given to this project.

Extensive discussion followed.

Motion: Council Member Rocha moved approval to delay a decision on this project until more discussion can be held between the applicant and Staff. The motion was seconded by Council Member Campos.

Action: On a call for the question, the motion carried unanimously, with the item referred back to staff for further review and discussion with applicant. (10-0-1. Absent: Constant.)

OPEN FORUM

Lashkar Singh, Amarjit Singh and Abdul Ericat, representing Silicon Valley Cab Company, complained they have been issued citations for drop-offs at the San José International Airport. Mayor Reed referred them to staff for further discussion.

ADJOURNMENT

The Council of the City of San José adjourned at 10:33 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Dennis Hawkins, CMC
City Clerk

rmk/10/23/12MIN