

## MINUTES OF THE CITY COUNCIL

**SAN JOSE, CALIFORNIA**

**TUESDAY, SEPTEMBER 25, 2012**

The Council of the City of San José convened in Regular Session at 9:29 a.m. in the Council Chambers at City Hall.

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

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

### STRATEGIC SUPPORT SERVICES

#### 3.2 Accept Labor Negotiations Update.

There was no Staff presentation.

### CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:34 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 Sacramento; 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. (2) Bradley v. City of San José, et al; Names of Parties Involved: Stephen Bradley, San José Police Officer K. Muto (Badge No. 3280), San José Police Officer Bielecki (Badge No. 3579), San José Police Officer B. Sanchez (Badge No. 3498), San José Police Officer Gonzales (Badge No. 3771), City of San José and San José Police Department and Does 1-200; Court: United States District Court, Northern District of California, San José Facility; Case No: CV10-01947 EJD; Amount of Money or Other Relief Sought: Damages according to

## CLOSED SESSION (Cont'd.)

proof. (B) to confer with Legal Counsel pursuant to Government Code Section 54956.9, Subsection (c) with respect to anticipated litigation in one (1) matter. (C) to confer to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) Association of Building, Mechanical and Electrical Inspectors (ABMEI); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and ABMEI. (2) Association of Engineers & Architects (AEA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AEA. (3) Association of Maintenance Supervisory Personnel (AMSP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AMSP. (4) City Association of Management Personnel Agreement (CAMP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CAMP. (5) Confidential Employees' Organization, AFSCME Local 101 (CEO); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CEO. (6) International Association of Firefighters, Local 230 (IAFF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Association of Firefighters. (7) International Brotherhood of Electrical Workers (IBEW); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and IBEW. (8) Municipal Employees' Federation, AFSCME Local 101, AFL-CIO (MEF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and MEF; (9) International Union of Operating Engineers, Local No. 3 (OE#3); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Union of Operating Engineers, Local No. 3. (10) San José Police Officers' Association (SJPOA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association. (11) Association of Legal Professionals of San José (ALP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc. Web: <http://www.sanjoseca.gov/employeerelations/moa.asp>; Telephone for Employee Relations: 408-535-8150.

(D) to confer with Legal Counsel pursuant to Government Code Section 54956.9, Subsection (a) with respect to existing litigation pertaining to the Successor Agency to the Redevelopment Agency of the City of San José: (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

## **CLOSED SESSION (Cont'd.)**

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.

By unanimous consent, Council recessed from the Closed Session at 11:21 a.m. and reconvened to Regular Session at 1:31 p.m. in the Council Chambers.

Present: Council Members - Campos, Chu, Constant, Herrera, Kalra, Liccardo (1:36 p.m.), Nguyen, Oliverio, Pyle, Rocha; Reed.

Absent: Council Members - All Present.

## **INVOCATION**

Pastor Tim Wood, Evergreen Valley Church presented the Invocation. (District 8)

## **PLEDGE OF ALLEGIANCE**

Mayor Reed, accompanied by third grade students from Franklin Elementary School, led the Pledge of Allegiance.

## **ORDERS OF THE DAY**

Upon motion by Council Member Herrera, seconded by Council Member Pyle and carried unanimously, the Orders of the Day and the Amended Agenda were approved, Ceremonial Item 1.2 was heard and Item 2.2(d) was deferred to October 2, 2012. (10-0-1. Absent: Liccardo.)

## **CEREMONIAL ITEMS**

### **1.1 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)**

Action: Deferred per Rules and Open Government Committee.

### **1.2 Presentation of a proclamation recognizing the Month of September 2012 as “Histiocytosis Awareness Month” in the City of San José. (Constant)**

Mayor Reed and Council Member Constant recognized the month of September 2012 as “Histiocytosis Awareness Month” in the City of San José.

**1.3 Presentation of a proclamation declaring September 28, 2012 as “Native American Day” in the City of San José. (Herrera)**

Mayor Reed and Council Member Herrera recognized September 28, 2012 as “Native American Day” in the City of San José.

**1.4 Presentation of a commendation honoring Santana Row as it celebrates its 10<sup>th</sup> anniversary in San José. (Constant/Oliverio)  
(Rules Committee referral 9/19/12)**

Mayor Reed and Council Members Constant and Oliverio recognized Santana Row upon its 10th anniversary in San José.

**1.5 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)  
(Rules Committee referral 9/19/12)**

Action: Deferred per Rules and Open Government Committee.

## **CONSENT CALENDAR**

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

**2.1 Approval of Minutes.**

There were none.

**2.2 Final adoption of ordinances.**

- (a) **ORD. NO. 29141 – Rezoning certain real property situated on the south side of Montecito Vista Drive, approximately 800 feet westerly of Monterey Road, on a 1.73 gross-acre site, to the A(PD) Planned Development Zoning District. PDC12-011**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29141 executed on September 14, 2012, submitted by the City Clerk.

Action: Ordinance No. 29141 was adopted. (11-0)

- (b) **ORD. NO. 29142 – Granting a Commercial Solid Waste and Recyclables Collection Franchise to Recycling & Waste Services, Inc.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29142 executed on September 14, 2012, submitted by the City Clerk.

Action: Ordinance No. 29142 was adopted. (11-0)

**2.2 (c) ORD. NO. 29143 – Granting a Commercial Solid Waste and Recyclables Collection Franchise to Pacific Coast Recycling, Inc.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29143 executed on September 14, 2012, submitted by the City Clerk.

Action: Ordinance No. 29143 was adopted. (11-0)

**(d) 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.**

[Deferred from 9/11/12 – Item 2.2(f) and 9/18/12 – Item 2.2(a)]

Action: Deferred to October 2, 2012 per Orders of the Day.

**2.3 Approval of Council Committee Reports.**

**(a) Rules and Open Government Committee Report of August 1, 2012. (Mayor)**

Documents Filed: The Rules and Open Government Committee Report dated August 1, 2012.

Council discussion ensued about adoption of a resolution in support of freeway directional signage on U.S. 101 and Interstate 280 directing commuters to Little Saigon Business District on Story Road.

Public Comments: David Wall provided comments about the Rules and Open Government Committee Reports.

The following speakers expressed support and opposition to the adoption to the resolution: Loc Vu (IRCC, Inc.), Teresa Thu Huong Hung (The Law Offices of Teresa Hung), Van Anh, Michael Herrera, Maria Noel Fernandez, Dat Nguyen, H.G. Nguyen (Vietnamese American Chamber of Commerce), Minh Steven Dovan, Minh Hoang, Barry Do (Little Saigon San José Foundation), David Nguyen, Tim Nguyen, Ton Ngo, Hung Nguyen, Van Le, Trang Kim Nguyen, Amy Duong, Lap Tang (Grand Century Mall), Robert Sandoval, Carlos DaSilva, Gloria Rivera, Christopher Dull, Hoang Minh Nguyen, The-Vu Nguyen, Dave Hoang, Ly Pham and Ly Charlie (Un-liberty Groups)

Action: Upon motion by Council Member Chu, seconded by Council Member Constant and carried unanimously, the Rules and Open Government Committee Report, dated August 1, 2012, was approved and Item(g)(5): Adopt a resolution in support of freeway directional signage on U.S. 101 and Interstate 280 directing commuters to Little Saigon Business District on Story Road, was agendized to November 6, 2012. (11-0)

- 2.3 (b) **Rules and Open Government Committee Report of August 8, 2012. (Mayor)**  
 (c) **Rules and Open Government Committee Report of August 15, 2012. (Mayor)**  
 (d) **Rules and Open Government Committee Report of August 22, 2012. (Mayor)**  
 (e) **Rules and Open Government Committee Report of August 29, 2012. (Mayor)**  
 (f) **Community and Economic Development Committee Report of August 27, 2012. (Herrera)**

Documents Filed: (1) The Rules and Open Government Committee Reports dated August 8, 2012, August 15, 2012, August 22, 2012 and August 29, 2012. (2) The Community and Economic Committee Report dated August 27, 2012.

Action: The Committee Reports were approved. (11-0)

- 2.4 (a) **Request for an excused absence for Mayor Reed from the Regular Meeting of the Rules and Open Government Committee on September 19, 2012 due to Authorized City Business: Public Policy Institute of California Speaker Series in San Francisco, CA. (Mayor)**  
**(Rules Committee referral 9/19/12)**

Documents Filed: Memorandum from Mayor Reed, dated September 19, 2012, requesting an excused absence.

Action: The absence for Mayor Reed was excused. (11-0)

**2.5 City Council Travel Reports.**

No Report.

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

No Report.

- 2.7 (a) **Adopt an ordinance ratifying the final 2011-2012 appropriation increases detailed in the staff memorandum.**  
 (b) **Adopt the following 2011-2012 Appropriation Ordinance and Funding Sources Resolution amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Central Fund:**  
 (1) **Increase the Earned Revenue estimate by \$2,803,231.**  
 (2) **Increase the Transfer to Council District 1 by \$162,736.**  
 (3) **Increase the Transfer to Council District 2 by \$135,416.**  
 (4) **Increase the Transfer to Council District 3 by \$135,457.**  
 (5) **Increase the Transfer to Council District 4 by \$126,867.**  
 (6) **Increase the Transfer to Council District 5 by \$214,886.**  
 (7) **Increase the Transfer to Council District 6 by \$247,082.**  
 (8) **Increase the Transfer to Council District 7 by \$217,600.**  
 (9) **Increase the Transfer to Council District 8 by \$132,518.**  
 (10) **Increase the Transfer to Council District 9 by \$122,378.**

- 2.7 (b) (11) Increase the Transfer to Council District 10 by \$94,405.  
 (12) Increase the Transfer to City-Wide by \$795,172.  
 (13) Increase the Transfer to the General Fund – Parks Eligible Maintenance Costs by \$418,714.
- (c) Adopt the following 2011-2012 Appropriation Ordinance and Funding Sources Resolution amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Maintenance Yards Purposes:  
 (1) Increase the Earned Revenue estimate by \$7,278.  
 (2) Increase the Transfer to the General Fund – Parks Eligible Maintenance Costs by \$7,278.
- (d) Adopt the following 2011-2012 Appropriation Ordinance amendments in the General Fund:  
 (1) Increase the Workers’ Compensation Claim – Fire appropriation by \$183,745.  
 (2) Decrease the Workers’ Compensation Claims – Transportation by \$85,000.  
 (3) Decrease the Workers’ Compensation Claims – Public Works by \$75,000.  
 (4) Decrease the Workers’ Compensation Claims – Other Departments by \$23,745.

**CEQA: Not a Project, File No. PP10-067(b), Appropriation Ordinance. (City Manager’s Office)**

Action: Deferred to October 16, 2012 per Administration.

- 2.8 Approve a Sixth Amendment to the Agreement with Roy Buis Consulting for construction management assistance on affordable housing projects, increasing the amount of the agreement by \$120,000 from \$341,000 to \$461,000 and extending the term of the agreement to June 30, 2013. **CEQA: Not a Project, File No. PP10-066(d), Consultant Services. (Housing)**

Action: Deferred to October 2, 2012 per Administration.

- 2.9 (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)**  
**(Deferred from 9/11/12 – Item 2.7 and 9/18/12 – Item 2.12)**

## 2.9 (Cont'd.)

Documents Filed: Memorandum from Director of Economic Development/Chief Strategist Kim Walesh, dated August 30, 2012, recommending approval of Team San José Performance Measures for 2012 – 2013 and adoption of a resolution.

Public Comments: David Wall spoke in support to the Staff recommendations.

Action: The Team San Jose performance measures for 2012 – 2013 were approved and Resolution No. 76440, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Execute the Third Amendment to the Agreement with Team San José for the Management of the Convention Center and Cultural Facilities and to Negotiate and Execute an Amendment to the Memorandum of Understanding Regarding Parking Operations at the Convention Center Garage”, was adopted. (11-0)

## 2.10 As recommended by the Rules and Open Government Committee on September 19, 2012:

- (a) **Approve the District 1 Shred-A-Thon and E-Waste Collection Day as a City Council sponsored Special Event.**
- (b) **Approve and accept donations from various individuals, businesses, or community groups to support the event.**

**CEQA: Exempt, File No. PP12-080 (State CEQA Guidelines Section 15304e). (City Clerk)**

**[Rules Committee referral 9/19/12 – Item G(3)]**

Documents Filed: Memorandum from City Clerk Dennis D. Hawkins, CMC, dated September 20, 2012, transmitting the recommendations of the Rules and Open Government Committee.

Action: The District 1 Shred-A-Thon and E-Waste Collection Day as a City Council sponsored Special Event was approved and donations from various individuals, businesses, or community groups to support the event were approved. (11-0)

## END OF CONSENT CALENDAR

## STRATEGIC SUPPORT SERVICES

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

City Manager Debra Figone provided highlights related to the second tier retirement plan for new employees.

- 3.3 (a) **Approve an ordinance amending Chapter 4.70 of Title 4 of the San José Municipal Code to extend the Cap Program for the Telecommunications Users Tax (TUT) through December 31, 2017.**
- (b) **Direct Staff to conduct an outreach program for other business to apply for participation in the program under the same criteria established in 2009 with the threshold for participation in the TUT Cap Program set at approximately \$54,000.**

**CEQA: Not a Project; File No. PP10-068, Municipal Code or Policy. (Finance)**

Documents Filed: (1) Memorandum from Council Member Pyle, dated September 21, 2012, recommending to defer extending both the Cap Program for the TUT and further direction to Staff as described in “Action”. (2) Memorandum from Acting Director of Finance Julia H. Cooper, dated September 4, 2012, recommending approval of an ordinance and direction to Staff as described above. (3) Statement and Declaration of Conflict of Interest Form from Council Member Herrera, dated September 26, 2012, noting a conflict of interest: investment of Cisco Stock. (4) Statement and Declaration of Conflict of Interest Form from Council Member Chu, dated September 26, 2012, noting a conflict of interest: investment of Cisco Stock. (5) Statement and Declaration of Conflict of Interest Form from Council Member Oliverio, dated September 26, 2012, noting a conflict of interest: investment of Cisco Stock. (6) Letter from Carl Guardino, President/CEO, Silicon Valley Leadership Group, dated September 24, 2012, regarding the Telecommunications Users Tax Extension.

Council Members Chu, Herrera, Liccardo and Oliverio abstained from voting due to conflict of interest, ownership of Cisco Stock.

Motion: Council Member Pyle moved approval of her memorandum dated September 21, 2012 and the Staff recommendations. Vice Mayor Nguyen seconded the motion.

Council Member Rocha requested to amend the motion to direct Staff to incorporate the analysis into a Special Study Session. Council Member Pyle and Vice Mayor Nguyen accepted the amendment.

Public Comments: David Wall spoke in opposition to the Staff recommendations.

Action: On a call for the question, the motion carried unanimously, Ordinance No. 29151, entitled: “An Ordinance of the City of San José Amending Sections 4.70.940 and 4.70.1050 of Chapter 4.70 of Title 4 of the San José Municipal Code to Extend the Expiration Date of the Cap on the Amount of Telecommunications Users Tax Paid Under This Chapter By Service Users Provided Certain Conditions Are Satisfied, Which Part Shall Expire on December 31, 2017 Unless Otherwise Extended, Shortened or Revised By the City Council”, was passed for publication. Staff was directed to conduct an outreach program for other business to apply for participation in the program under the same criteria established in 2009 with the threshold for participation in the TUT Cap Program set at approximately \$54,000. Staff was further directed to incorporate into the

### **3.3 (Action Cont'd.)**

analysis for a Special Study Session: (1) Exploration for extension or termination of the Cap Program relating to revenue generation. (2) Should cap increases be based upon 2% per year or should a TOT Cap look at company growth, i.e. the number of employees, in order to take into consideration both the increase in the cost of purchasing telecommunications services and the growth of the size of the companies participating in the program. (3) Include participation of members of the corporate community such as the San José/Silicon Valley Chamber of Commerce. (7-0-0-4. Abstained: Chu, Herrera, Liccardo, Oliverio.)

- 3.4 (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.**
- (d) 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)**

Action: Deferred to October 23, 2012 per Rules and Open Government Committee.

- 3.5 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)**

Action: Deferred to October 23, 2012 per Rules and Open Government Committee.

- 3.6 Adopt a resolution authorizing the City Manager to select and purchase certain City property and liability insurance policies for the period October 1, 2012 to October 1, 2013, at a total cost not to exceed \$1,600,000 for all policies, with the following insurance carriers:**

- (a) Lexington Insurance Company, (Boston, MA) - or other insurers that the City is currently in negotiations with - for Property Insurance, including Boiler and Machinery.**
- (b) National Union Fire Insurance Company (New York, NY) to provide the following coverage:**
- (1) Airport Owners and Operators Liability including War Risks & Extended Perils Coverage (Primary and Excess).**
- (2) Police Aircraft Hull & Liability including War Risks & Extended Perils.**
- (c) St Paul/Travelers Insurance Company, (Hartford, CT) - or other insurers that the City is currently in negotiations with - for Automobile Liability (Airport fleet vehicles including Shuttle Buses, WPCP fleet vehicles) and Airport Shuttle Bus physical damage.**

**3.6 (d) Indian Harbor Insurance Company, (Stamford, CT) for Secondary Employment Law Enforcement Professional Liability.**

**CEQA: Not a Project, File No.PP10-066(a), Agreements and Contracts for purchase of insurance. (Finance)**

Documents Filed: Memorandum from Acting Director of Finance Julia H. Cooper, dated September 5, 2012, recommending adoption of a resolution.

Motion: Council Member Constant moved approval of the Staff recommendations. Council Member Kalra seconded the motion.

Risk Manager John Dam and Acting Director of Finance Julia H. Cooper responded to Council questions.

Public Comments: David Wall commented on the theft of copper wire and shopping carts.

Action: On a call for the question, the motion carried unanimously, Resolution No.76441, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Select and Purchase Insurance Policies for the Period October 1, 2012 to October 1, 2013 At A Cost Not To Exceed \$1,600,000”, was adopted. (11-0)

**3.7 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 October 23, 2012 per Rules and Open Government Committee.

## **COMMUNITY & ECONOMIC DEVELOPMENT**

**4.1 Adopt the following 2012-2013 Appropriation Ordinance and Funding Sources Resolution amendments in the Workforce Investment Act (WIA) Fund:**

- (a) Increase the estimate for Earned Revenue by \$2,025,000; and**
- (b) Establish an appropriation to the Office of Economic Development for the Solyndra Project in the amount of \$2,025,000.**

**CEQA: Not a Project; File No. PP10-067(b), Appropriation Ordinance. (Economic Development/City Manager’s Office)**

Documents Filed: Memorandum from Director of Economic Development/Chief Strategist Kim Walesh and Budget Director Jennifer A. Maguire, dated September 4, 2012, recommending adoption of appropriation ordinance and resolution amendments.

Motion: Council Member Pyle moved approval of the Staff recommendations. Vice Mayor Nguyen seconded the motion.

#### 4.1 (Cont'd.)

Director of Strategic Partnerships Jeff Ruster responded to Council questions.

Public Comments: David Wall spoke in opposition to the Staff recommendations.

Action: On a call for the question, the motion carried unanimously, Ordinance No. 29152, entitled: "An Ordinance of the City of San José Amending Ordinance No. 29102 to Appropriate Monies in the Workforce Investment Act Fund for the Solyndra Project; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption" and Resolution No. 76442, 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 the Workforce Investment Act Fund", were adopted. (11-0)

#### 4.2 Approve an ordinance amending Title 23 (Sign Ordinance) of the San José Municipal Code to:

(a) Amend Chapter 23.02 to:

- (1) **Revise Section 23.02.290 lightbox, lightbox sign, revise Section 23.02.940 location of attached signs, and add a new Section 23.02.101 to define service station canopy; canopy sign, and revise Section 23.02.1110 signage at gasoline service stations.**

(b) Amend Chapter 23.04 to:

- (1) **Amend Section 23.04.020 to revise regulations for signage at gasoline service stations.**
- (2) **Amend Section 23.04.035 to increase the maximum allowable square footage of programmable electronic signs.**
- (3) **Amend Section 23.04.120 to revise regulations for signage at gasoline service stations.**

(c) **Make other nonsubstantive, ministerial, technical, or typographical changes to said Chapters 23.02 and 23.04 of Title 23 of the San José Municipal Code.**

**CEQA: Negative Declaration, File No. PP11-099, Addendum thereto, PP12-073. (Planning, Building and Code Enforcement)**

Documents Filed: (1) Memorandum from Mayor Reed, Vice Mayor Nguyen and Council Member Campos, dated September 21, 2012, recommending approval of the Staff recommendations. (2) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated September 5, 2012, recommending approval of an ordinance. (3) Proof of Publication of Notice of Public Hearing, executed on September 7, 2012, submitted by the City Clerk. (4) Letter from Dave Cortese, County Supervisor, dated September 24, 2012, regarding the sign ordinance.

Senior Planner of Planning, Building and Code Enforcement Andrew Crabtree presented the report.

Motion: Vice Mayor Nguyen moved approval of the memorandum she cosigned with Mayor Reed and Council Member Campos. Council Member Campos seconded the motion.

## 4.2 (Cont'd.)

Director of Planning, Building and Code Enforcement Joseph Horwedel responded to Council questions and concerns.

Mayor Reed and Council Member Campos provided meeting disclosures.

Public Comments: Art Calderon, Calderon Station, complained about the difficult time he encountered with the Planning Department. Aaron Resendez, Alofa Talivaa, David Wall and Dolores Marquez provided comments.

Director of Planning, Building and Code Enforcement Joseph Horwedel presented closing comments regarding the complaint.

Action: On a call for the question, the motion carried unanimously, the memorandum from Mayor Reed, Vice Mayor Nguyen and Council Member Campos was approved, approving the Staff recommendation and, additionally, allow the retention of previously approved signage on gas station canopies along with the new signage allowed under the proposed ordinance and Ordinance No. 29153, entitled: “An Ordinance of the City of San José Amending Title 23 of the San José Municipal Code by Amending Sections 23.02.290, 23.02.940 and 23.02.1110 and Adding A New Section 23.02.493, To Chapter 23.02, Amending Section 23.04.020 and 23.04.120 of Chapter 23.04, All to Amend Signage Regulations Pertaining to Service Station Canopy Signage, Amending Section 23.04.035 of Chapter 23.04 To Revise the Maximum Allowed Size of a Programmable Electronic Sign Component of a Freeway Sign and Making Other Nonsubstantive, Ministerial, Technical or Typographical Changes to Said Chapters 23.02 and 23.04 of Title 23 of the San José Municipal Code”, was passed for publication, as amended. (11-0)

## NEIGHBORHOOD SERVICES

### 5.1 **As recommended by the Neighborhood Services and Education Committee, accept the Anti-Graffiti and Litter Program Semi-Annual Report. (Parks, Recreation and Neighborhood Services)**

**[Neighborhood Services and Education Committee referral 9/13/12 – Item (d)(2)]**

Documents Filed: (1) Memorandum from Council Member Liccardo, dated September 25, 2012, recommending acceptance of the report with direction to the City Manager. (2) Memorandum from City Clerk Dennis D. Hawkins, CMC, dated September 20, 2012, transmitting the recommendations of Neighborhood Services and Education Committee.

Acting Director of Parks, Recreation and Neighborhood Services Julie Edmonds-Mares and Neighborhood Services Park Manager Parks Manager Mike Will presented the report.

## 5.1 (Cont'd.)

City Attorney Richard Doyle, Director of Planning, Building and Code Enforcement Joseph Horwedel, Acting Director of Parks, Recreation and Neighborhood Services Julie Edmonds-Mares and Acting Assistant Director of Parks, Recreation and Neighborhood Services responded to Council questions and concerns.

Council discussion ensued.

Motion: Council Member Liccardo moved approval of his memorandum dated September 25, 2012, including the suggestions from Council Member Herrera. Council Member Herrera seconded the motion.

Acting Director of Parks, Recreation and Neighborhood Services Julie Edmonds-Mares requested that Paragraph 2 be referred to the Mayor's Gang Prevention Task Force. Council Members Liccardo and Herrera accepted the amendment.

Vice Mayor Nguyen requested to amend the motion to include direction to the City Attorney to revisit the issue of imposing a fine for tagging/vandalism and holding parents accountable if a minor is involved. Council Members Liccardo and Herrera accepted the amendment.

Council Member Kalra requested to amend the motion to include the Office of the Public Defender. Council Members Liccardo and Herrera accepted the amendment.

Public Comments: Aurelia Sanchez and David Wall provided comments about the Anti-Graffiti and Litter Program.

Action: On a call for the question, the motion carried unanimously, the revised memorandum from Council Member Liccardo, dated September 25, 2012, was approved, the report was accepted, with the City Manager directed to: (1) Where large swaths of graffiti have lingered on freeway bridges have remained unabated for a period of two months or longer – such as the Union Pacific Bridge over 101 near Oakland Road – report to the Transportation and Environment Committee or other relevant committee: (a) What Code Enforcement citations, fines or other remedies have been sought against CalTrans, Union Pacific or other relevant parties (and if none, why no citations have been issued). (b) Whether the City can install signage on City Property at the closest off-ramp listing a CalTrans phone number for residents to call about graffiti abatement. Referral to the Mayor's Gang Prevention Task Force: (2) Convene a meeting with relevant officials of the County Office of Probation, the District Attorney's Office, and Honorable Patrick Trondreau, the Presiding Judge of the Juvenile Court and the Office of the Public Defender, to explore whether and how the juvenile probation system can employ more adjudicated juvenile taggers in cleaning graffiti throughout the City of San José. Report results of that meeting to the Mayor's Gang Prevention Task Force. Specific emphasis should be placed on: (a) Ensuring that every juvenile offender has a clear, implementable condition of probation to participate in a graffiti-cleaning program. (b) Where the County

## 5.1 (Cont'd.)

Probation office appears overstretched, explore with County Probation whether community partners could potentially assist in the supervision and employment of juvenile offenders in eradicating graffiti. Examples of such community partners might include the San José State University (SJSU) Criminal Justice Program (i.e. working through CommUniverCity), the Downtown Property-Based Improvement District (PBID) or youth-focused non-profits such as Catholic Charities. The following were also accepted: (1) Consolidate other services for reporting with other public agencies through the contractor or phone number/app and continue City efforts to find ways to feasibly build fences or barriers to help prevent future tagging. (2) The City Attorney was directed to revisit the issue of imposing a fine for tagging/vandalism and holding parents accountable if a minor is involved. (11-0)

## 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, 9/11/12 – Item 9.1, and 9/18/12 – Item 9.1)**

Action: Deferred to October 2, 2012 per Administration.

## COMMUNITY & ECONOMIC DEVELOPMENT

### 4.3 As referred by the Rules and Open Government Committee on September 19, 2012, review key concepts and issues associated with the Draft Santa Clara Valley Habitat Plan (Habitat Plan) and related documents to provide the Council an opportunity to evaluate and comment on the Plan's content in advance of final action:

- (a) **Summary Overview of the Habitat Plan.**
- (b) **Key Issues for San José:**
  - (1) **Avoidance of Deferred Liability**
  - (2) **Regulatory Streamlining**
  - (3) **Nitrogen Deposition Fee**
  - (4) **Western Burrowing Owl**
  - (5) **Riparian Setbacks**
  - (6) **Case Studies**
- (c) **Habitat Plan Implementation**
  - (1) **Implementing Entity**
  - (2) **Legislative Priorities**
  - (3) **Fine-tuning the Structure Fee**

**4.3 (d) Alternative to Habitat Plan Adoption**  
**CEQA: EIR Resolution to be adopted when action on Habitat Plan is taken.**  
**(Planning, Building and Code Enforcement)**  
**[Rules Committee referral 9/19/12 – Item D(1)]**

Director of Planning, Building and Code Enforcement Joseph Horwedel presented the report.

Scott Wilson, California Department of Fish and Game, and Cay C. Goude, Fish and Wildlife Service presented comments.

Public Comments: The following speakers expressed comments about Draft Santa Clara Valley Habitat Plan: Pat Sausedo (San José Silicon Valley Chamber of Commerce), Dennis Martin (NAIOP), Greg Kerekes, Joshua Wonland, Renee Hobbs, Brian Rosa, Aaron Rodriguez, Ada Marquez, Ricky Kazakoff, Calvia Kretz, Jay Aruta, Alexandria Perez, David Wall, Ivan Dang, Kelly Morris, Craig Bessette, Joshua McCluskey, Gerald Witters, Kevin Trieu and Amy Nilsun.

Council Member Pyle left the meeting at 5:54 p.m.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Oliverio and carried unanimously, Item 4.3 was continued to October 16, 2012. (7-0-4. Absent: Constant, Herrera, Pyle, Rocha.)

## **OPEN FORUM**

Documents Filed: (1) Rules and Laws Regarding Fireworks dated September 25, 2012, submitted by Gerald Witters. (2) District 7: Homeless Encampments, Environmental Contamination and Continued Community Disruption written by David Serrano, dated August 23, 2012.

- (1) David Wall provided information for an event to be held by the Committee for Safe San José Neighborhoods on September 27, 2012, 5:00 p.m., at the San José Police Officers Association Hall.
- (2) Gerald Witters expressed concern about rules and laws regarding fireworks.
- (3) David Serrano voiced concerns about the homeless encampments, environmental contamination and continued community disruption.

## ADJOURNMENT

The Council of City of San José was adjourned at 6:27 p.m. in memory of Norman Friborg, who passed away on July 22, 2012 after being inducted into the Piedmont Hills Athletics Hall of Fame having served as a high school basketball coach for 30 years.  
(Chu)

Minutes Recorded, Prepared and Respectfully Submitted by,

Dennis Hawkins, CMC  
City Clerk

smd/09-25-12 MIN

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

## GENERAL PLAN PUBLIC HEARINGS

No General Plan Public Hearing at this time.

## PUBLIC HEARINGS

### 11.1 Land Use Public Hearings on Consent Calendar.

No Land Use Public Hearings on Consent Calendar at this time.

### 11.2 **Consideration of a Planned Development Permit and Determination of Public Convenience or Necessity request to allow for the off-sale and on-sale of alcohol and late night use for a new full service restaurant in the A(PD) Planned Development Zoning District on a 38.52 gross acre site, located at the northeast corner of Zanker Road and Villagio Street (3350 Zanker Road) (Irvine Company, Owner/Patxi's Pizza, Applicant). CEQA: Use of a Final EIR and Addenda thereto (North San José Development Policies Update EIR). PD12-020/ABC12-004 – District 4**

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on August 3, 2012, submitted by the City Clerk.

Action: Item 11.2 was dropped.