



MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, OCTOBER 2, 2012

The Council of the City of San José convened in Regular Session at 9:34 a.m. in the Council Chambers at City Hall.

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

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

STRATEGIC SUPPORT SERVICES

3.2 Accept Labor Negotiations Update.

There was no Staff presentation.

CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:35 a.m. to a Closed Session in Room W133 (A) to confer with Legal Counsel pursuant to Government Code Section 54956.9, Subsection (c) with respect to anticipated litigation in two (2) matters. (B) to confer with Legal Counsel pursuant to Government Code Section 54956.9, Subsection (a) with respect to existing litigation: (1) San José Police Officers' Association v. City; Names of Parties Involved: San José Police Officers' Association, City of San José; Court: Superior Court of California, County of Santa Clara; Case No: Petition to compel arbitration; Amount of Money or Other Relief Sought: Petition to compel arbitration. (2) Renzo's Bar & Grill, et al. v. City of San José, et al; Names of Parties Involved: Renzo's Bar & Grill, Inc., Gholam R. Shafazand (CEO, Renzo's Bar & Grill, Inc.), and in his individual capacity, City of San José, San José Police Department, San José Police Sergeant John Vanek, San José Police Lieutenant David Hober, Frank Cucuzza, Jr., Cucuzza Family Partnership and Does 1-200; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV-114221; Amount of Money or Other Relief Sought: Injunctive relief and damages according to proof. (3) Guerrero et al. v. City of San José, et al; Names of Parties Involved: Mayra Guererro, Yesenia Guererro, Gesel Guerrero, Juan Quezada, City of San José; Court: United States District Court, Northern

CLOSED SESSION (Cont'd.)

District of California, San José Division; Case No: C11-02017 HRL; Amount of Money or Other Relief Sought: Damages according to proof. (4) City of Milpitas v. City of San José, et al; Names of Parties Involved: City of Milpitas, City of San José and Does 1-10; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV233069; Amount of Money or Other Relief Sought: Petition for writ of mandate and complaint for declaratory and injunctive relief. (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 with respect to Public Employment/Public Employee Evaluation pursuant to Government Code Section 54957: Independent Police Auditor.

CLOSED SESSION (Cont'd.)

By unanimous consent, Council recessed from the Closed Session at 11:15 a.m. and reconvened to Regular Session at 1:32 p.m. in the Council Chambers.

Present: Council Members - Campos, Chu, Constant, Herrera, Kalra, Liccardo, Nguyen, Oliverio (1:40 p.m.), Pyle, Rocha; Reed.

Absent: Council Members - All Present.

INVOCATION

Judy Rickard, author of *Torn Apart: United by Love, Divided by Law*, presented the Invocation. (District 9)

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Vice Mayor Nguyen, seconded by Council Member Herrera and carried unanimously, the Orders of the Day and the Amended Agenda were approved, and Item 2.2(h) and Item 2.3(a) were deferred to October 16, 2012. (10-0-1. Absent: Oliverio.)

CLOSED SESSION REPORT

Mayor Reed disclosed the following Closed Session actions of October 2, 2012:

- A. Public Employment/Public Employee Appointment Pursuant to Government Code Section 54957: To negotiate a new term of office for the Independent Police Auditor Judge LaDoris H. Cordell (Retired).

CEREMONIAL ITEMS

1.1 Presentation of a proclamation declaring the week of October 20 – 27, 2012 as “National Protect Your Identity Week” in the City of San José. (Constant)

Mayor Reed and Council Member Constant recognized the week of October 20, 2012 through October 27, 2012 as “National Protect Your Indentify Week” in San José.

1.2 Presentation of a proclamation declaring the October 12, 2012 as “National Disability Awareness Day” in the City of San José. (Constant)

Mayor Reed and Council Member Constant recognized October 12, 2012 as “National Disability Awareness Day” in San José.

1.3 Presentation of a proclamation declaring October 3, 2012 as “International Walk to School Day” in the City of San José. (Herrera/Constant)

Mayor Reed and Council Members Herrera and Constant recognized October 3, 2012 as “International Walk to School Day” in San José.

1.4 Presentation of a commendation to the Applied Materials “Silicon Valley Turkey Trot” for their dedication to raising money for local charities. (Liccardo) (Rules Committee Referral 09/26/12)

Mayor Reed and Council Member Liccardo recognized and commended Applied Materials “Silicon Valley Turkey Trot” for their dedication in raising money for local charities.

CONSENT CALENDAR

Upon motion by Council Member Herrera, seconded by Council Member Oliverio 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. 29144 – 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.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29144 executed on September 21, 2012, submitted by the City Clerk.

Action: Ordinance No. 29144 was adopted. (11-0.)

- 2.2 (b) **ORD. NO. 29145** – 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 Finance’s 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.

Documents Filed: Proof of Publication of the Title of Ordinance No. 29145 executed on September 21, 2012, submitted by the City Clerk.

Action: Ordinance No. 29145 was adopted. (11-0.)

- (c) **ORD. NO. 29146** – 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. PDC08-067

Documents Filed: Proof of Publication of the Title of Ordinance No. 29146 executed on September 21, 2012, submitted by the City Clerk.

Action: Ordinance No. 29146 was adopted. (11-0.)

- (d) **ORD. NO. 29147** – 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.

Documents Filed: Proof of Publication of the Title of Ordinance No. 29147 executed on September 21, 2012, submitted by the City Clerk.

Action: Ordinance No. 29147 was adopted. (11-0.). (First Reading: 10-1. Noes Kalra.)

- (e) **ORD. NO. 29148** – 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 José 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.

2.2 (e) (Cont'd.)

Documents Filed: Proof of Publication of the Title of Ordinance No. 29148 executed on September 21, 2012, submitted by the City Clerk.

Action: Ordinance No. 29148 was adopted. (11-0.)

- (f) **ORD. NO. 29149 – 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.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29149 executed on September 21, 2012, submitted by the City Clerk.

Action: Ordinance No. 29149 was adopted. (11-0.)

- (g) **ORD. NO. 29150 – 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, 25.08.754, 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.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29150 executed on September 21, 2012, submitted by the City Clerk.

Action: Ordinance No. 29150 was adopted. (11-0.). (First Reading: 7-4. Noes: Campos, Chu, Herrera, Kalra.)

- (h) **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 09/11/12 – Item 2.2(f) et. al. and 09/25/12 – Item 2.2(d)]

Action: Deferred to October 16, 2012 per Orders of the Day.

2.3 **Approval of Council Committee Reports.**

- (a) **Transportation and Environment Report of September 10, 2012. (Liccardo)**

Public Comments: David Wall presented comments about the Transportation and Environment Committee Report.

Action: Deferred to October 16, 2012 per Orders of the Day.

2.3 (b) Neighborhood Services and Education Committee Report of September 13, 2012. (Pyle)

Documents Filed: The Neighborhood Services and Education Committee Report dated September 13, 2012.

Action: The Neighborhood Services and Education Committee Report was approved. (11-0.)

2.4 Mayor and Council Excused Absence Requests.

There were none.

2.5 City Council Travel Reports.

Council Member Constant presented highlights of his attendance at the League of California Cities Crime Prevention and Public Safety Committee meeting in Sacramento.

2.6 Report from the Council Liaison to the Retirement Boards.

There was none.

2.7 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) (Deferred from 9/25/12 – Item 2.8)

Documents Filed: Replacement City Council Action Request from Director of Housing Leslye Corsiglia, dated September 27, 2012, recommending approval of a sixth amendment to the agreement.

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

Action: The 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, was approved. (11-0.)

2.8 As recommended by the Rules and Open Government Committee on September 19, 2012, approve an ordinance modifying Section 6.52.050 of Chapter 6.52 of the San Jose Municipal Code to enable one person to hold more than one pawnbrokers' permit, and/or to operate at multiple locations. CEQA: Not a Project; File No. PP10-068c, Municipal Code amendment involving no changes in the physical environment. (Liccardo/City Attorney's Office)

2.8 (Cont'd.)

Documents Filed: (1) Memorandum from Council Member Liccardo, dated October 1, 2012, recommending pulling the item to discuss comment and approving Staff recommendations on October 2, 2012. (2) Memorandum from Council Member Kalra, dated September 28, 2012, recommending deferring this matter for further Council discussion and stakeholder input. (3) Memorandum from City Attorney Richard Doyle, dated September 20, 2012, recommending approval of an ordinance. (4) Letter from Matthew Mahood, President/CEO, San José Silicon Valley Chamber of Commerce, dated October 2, 2012, expressing support to the Staff recommendations.

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

Public Comments: Speaking in support to the Pawnshop ordinance modification were Pat Sausedo, San José Silicon Valley Chamber of Commerce and Janis Schneider, R&J Jewelry and Loan. David Wall spoke in opposition to the Staff recommendations.

Substitute Motion: Council Member Kalra moved approval to defer this item and reagendaize it at a later date for a full Council discussion and stakeholder input. Council Member Chu seconded the motion.

City Attorney Richard Doyle, Assistant City Manager Edward K. Shikada and Lieutenant Thomas Sims, Commander of Permits Unit, responded to Council questions and concerns.

Council Members Rocha, Herrera and Constant expressed opposition to the substitute motion on the floor.

On a call for the question, the substitute motion failed. (3-8. Noes: Constant, Herrera, Liccardo, Nguyen, Oliverio, Pyle, Rocha; Reed.)

Discussion returned to the original motion.

Action: On a call for the question, the original motion carried, Ordinance No. 29154, entitled: "An Ordinance of the City of San José Amending Section 6.52.050 of Chapter 6.52 of Title 6 of the San José Municipal Code to Enable One Person to Hold Two Pawnbroker Permits at One Time", was passed for publication. (9-2. Noes: Campos, Kalra.)

2.9 **Adopt a resolution authorizing the Director of Public Works to utilize up to \$250,000 in existing project construction contingency funding for the San José Environmental Innovation Center Project Rebid (Project) to execute a work order with Asbestos Management Group of California, Inc. to perform needed hazardous material abatement work for the Project. CEQA: Negative Declaration for the renovation of the SJEIC was adopted on December 1, 2009; File No. PP09-138. (Public Works)**

2.9 (Cont'd.)

Documents Filed: Memorandum from Director of Public Works David Sykes, dated September 27, 2012, recommending adoption of a resolution and noting that the City's contractor for the San José Environmental Innovation Center Construction, Applegate Johnston, Inc., was on hold pending hazardous material abatement cleanup.

Director of Public Works David Sykes responded to Council questions and comments.

Motion: David Wall expressed opposition to the Staff recommendations.

Action: Upon motion by Council Member Campos, seconded by Vice Mayor Nguyen and carried, Resolution No. 76443, entitled: "A Resolution of the Council of the City of San José Authorizing the Use of Up to \$250,000 of the Construction Contract Contingency on the San José Environmental Innovation Center Project Rebid to Fund a Separate Contract for Hazardous Material Cleanup", was adopted. (10-1. Noes: Oliverio.)

2.10 As recommended by Rules and Open Government Committee on September 26, 2012, accept the recommended City positions on the November 6, 2012 California General Election ballot – Propositions 30, 31, and 35. (City Manager)

Documents Filed: (1) Memorandum from Council Member Rocha, dated September 8, 2012, recommending pulling Items 2.10, 2.11 and 2.12 and requesting that staff further explain their criteria for deciding which measures directly affect San José. (2) Memorandum from Director of Intergovernmental Relations Betsy Shotwell, dated October 1, 2012, responding to Council Member Rocha's memorandum of September 28, 2012. (3) Memorandum from City Clerk Dennis D. Hawkins, CMC, dated September 28, 2012, transmitting the recommendations of the Rules and Open Government Committee.

Mayor Reed provided opening remarks and opening the floor for public testimony.

Public Comments: The following speakers expressed support and opposition comments to the ballot measures: Perla Flores, Community Solutions; David Wall, Ruth Silver Taube, Attorney; Ross Signorino, John Vanek, Rachel Gibson, Santa Clara Valley Water District and Rick Callender.

Mayor Reed suggested taking each item separately. City Attorney Richard Doyle advised that Council may take a support position, oppose position or abstain from voting.

City Manager Debra Figone and Director of Intergovernmental Relations Betsy Shotwell responded to Council questions.

2.10 (Cont'd.)

Action: Upon motion by Council Member Rocha, seconded by Vice Mayor Nguyen and carried, a support position for Proposition 30 was approved. (9-2. Noes: Constant, Oliverio.)

Upon motion by Council Member Liccardo, seconded by Vice Mayor Nguyen and carried, no position was taken for Proposition 31. (4-4-0-3. Noes: Campos, Chu, Pyle, Rocha. Abstain: Herrera, Kalra, Oliverio.)

Upon motion by Council Member Kalra, seconded by Council Member Campos and carried, discussion and action for Proposition 35 continued to October 16, 2012 with Staff directed to return to Council with supporting and opposing arguments. (6-4-0-1. Noes: Constant, Liccardo, Nguyen; Reed. Abstain: Oliverio.)

2.11 **As recommended by Rules and Open Government Committee on September 26, 2012, approve support for the Santa Clara Valley Water District's Measure B on the November 6, 2012 General Election. (City Manager)**

Documents Filed: Memorandum from City Clerk Dennis D. Hawkins, CMC, dated September 28, 2012, transmitting the recommendations of the Rules and Open Government Committee.

Action: Upon motion by Council Member Campos, seconded by Council Member Pyle and carried, a support position for Measure B was approved. (9-1-0-1. Noes: Oliverio. Abstain: Constant.)

2.12 **As recommended by Rules and Open Government Committee on September 26, 2012, approve Staff's recommendation on Measure A – County of Santa Clara Sales Tax – on the November 6, 2012 General Election. (City Manager)**

Documents Filed: Memorandum from City Clerk Dennis D. Hawkins, CMC, dated September 28, 2012, transmitting the recommendations of the Rules and Open Government Committee.

Extensive Council discussion ensued.

Action: Upon motion by Council Member Pyle, seconded by Council Member Constant and carried, a support position for Measure A was approved. (6-5. Noes: Constant, Herrera, Liccardo, Oliverio; Reed.)

Upon motion by Council Member Constant, seconded by Council Member Herrera and carried, Staff was directed to return to the October 16, 2012 Meeting with the following for Council discussion: (1) Proposition 39. (10-1. Noes: Reed.) (2) Proposition 36. (8-2-1-0. Noes: Constant; Reed. Absent: Oliverio.) (3) Measures D and E. (7-3-1-0. Noes: Campos, Chu, Kalra. Absent: Oliverio.) (4) Proposition 34. (8-3. Noes: Constant, Oliverio; Reed.) (5) Proposition 32. (8-3. Noes: Constant, Oliverio; Reed.)

- 2.13 As recommended by the Rules and Open Government Committee on September 26, 2012 and outlined in the memorandum submitted to the Rules and Open Government Committee:**
- (a) Approve the District 1 Disability Awareness Day as a City Council sponsored Special Event.**
 - (b) Approve expending funds and accept donations from various individuals, businesses and community groups to support this event.**
- (City Clerk)**

Documents Filed: Memorandum from City Clerk Dennis D. Hawkins, CMC, dated September 28, 2012, transmitting the recommendations of the Rules and Open Government Committee.

Action: The District 1 Disability Awareness Day as a City Council sponsored Special Event was approved, expending funds and donations from various individuals, businesses and community groups to support this event were accepted. (11-0.)

- 2.14 As recommended by the Rules and Open Government Committee on September 26, 2012 and outlined in the memorandum submitted to the Rules and Open Government Committee:**
- (a) Approve the District 4 Community Health Resource Fair as a City Council sponsored Special Event.**
 - (b) Approve and accept donations from various individuals, businesses and community groups to support this event.**
- (City Clerk)**

Documents Filed: Memorandum from City Clerk Dennis D. Hawkins, CMC, dated September 28, 2012, transmitting the recommendations of the Rules and Open Government Committee.

Action: The District 4 Community Health Resource Fair as a City Council sponsored Special Event was approved and donations from various individuals, businesses and community groups to support this event were accepted. (11-0.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

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

City Manager Debra Figone pointed out that there are two upcoming Council meetings: Friday, October 05, 2012, the Annual Joint City/County Meeting and Tuesday, October 09, 2012, the Council Priority Setting Study Session.

3.3 Adopt a Statement of Policy and City Council Questions related to the selection of the Director of Parks, Recreation and Neighborhood Services as described in the staff memorandum, in compliance with City Charter Section 411.1. CEQA: Not a Project, File No. PP10-069(b), Personnel Related Decisions. (City Manager's Office)

Items 3.3 and 3.5 were heard together.

Documents Filed: Memorandum from City Manager Debra Figone, dated September 19, 2012, recommending adoption of a Statement of Policy and City Council questions.

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

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

Council Member Constant requested to amend the motion to include Item 3.5 in the same action. The amendment was accepted by Vice Mayor Nguyen and Council Member Herrera.

Action: On a call for the question, the motion carried unanimously, a Statement of Policy and City Council Questions related to the selection of the Director of Parks, Recreation and Neighborhood Services as described in the staff memorandum, in compliance with City Charter Section 411.1, was adopted. (11-0.)

**3.5 Adopt a statement of Policy and City Council Questions related to the selection of a prospective Director of Retirement Services as described in the staff memorandum, in compliance with City Charter Section 411.1. CEQA: Not a Project, File No. PP10-069(b), Personnel Related Decisions. (City Manager's Office)
(Rules Committee Referral 09/26/12)**

Documents Filed: Memorandum from City Manager Debra Figone, dated September 24, 2012, recommending adoption of the Policy and City Council Questions related to the selection of a prospective Director of Retirement Services.

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

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Herrera and carried unanimously, a statement of Policy and City Council Questions related to the selection of a prospective Director of Retirement Services as described in the staff memorandum, in compliance with City Charter Section 411.1, was adopted. (11-0.)

3.4 Adopt a resolution approving the terms of an agreement on Sick Leave Payout between the City and the Association of Building, Mechanical and Electrical Inspectors (ABMEI), 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 18, 2012, recommending adoption of a resolution.

Public Comments: David Wall commented on the Agreement with the Association of Building, Mechanical and Electrical Inspectors regarding sick leave payments.

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Herrera and carried, Resolution No. 76444, entitled: "A Resolution of the Council of the City of San José Approving an Agreement with the Association of Building, Mechanical and Electrical Inspectors (ABMEI) Regarding Sick Leave Payment, Effective September 30, 2012", was adopted. (10-1. Noes: Constant.)

COMMUNITY & ECONOMIC DEVELOPMENT

4.1 Hold a public hearing, conduct a special election, and take the following actions related to the formation of Community Facilities District No. 13 (Guadalupe Mines):

- (a) **Adopt a resolution for each of the following items to:**
- (1) **Establish Community Facilities District No. 13 (Guadalupe Mines) and authorize the levy of a special tax.**
 - (2) **Declare the results of the special election.**

If approved by voters:

- (b) **Direct the recording of the notice of the special tax lien for Community Facilities District No. 13 (Guadalupe Mines).**
- (c) **Approve an ordinance imposing the levy of special taxes for Community Facilities District No. 13 (Guadalupe Mines).**
- (d) **Establish a new fund for Community Facilities District No. 13 (Guadalupe Mines).**
- (e) **Adopt the following 2012-2013 Appropriation Ordinance and Funding Source Resolution amendments in the Community Facilities District No. 13 (Guadalupe Mines) Fund:**
 - (1) **Establish an estimate for Earned Revenue in the amount of \$95,084;**
 - (2) **Establish an estimate for Transfers from Other Funds in the amount of \$10,121;**
 - (3) **Establish a Personal Services appropriation for the Department of Transportation in the amount of \$6,000;**
 - (4) **Establish a Non-Personal/Equipment appropriation for the Department of Transportation in the amount of \$52,000;**
 - (5) **Establish an overhead expense appropriation in the amount of \$2,700;**
 - (6) **Establish an appropriation for the Community Facilities District No. 13 Feasibility project in the amount of \$30,000; and**
 - (7) **Establish an Ending Fund Balance in the amount of \$14,505.**

4.1 (f) Adopt the following 2012-2013 Appropriation Ordinance amendments in the Storm Sewer Operating Fund:

(1) Establish a Transfer to the Community Facilities District No. 13 (Guadalupe Mines) Fund in the amount of \$10,121; and

(2) Decrease the Ending Fund Balance by \$10,121.

CEQA: Mitigated Negative Declaration, File No. PDC10-005. (Public Works/City Manager's Office)

Documents Filed: Memorandum from Director of Public Works David Sykes and Budget Director Jennifer A. Maguire, dated September 10, 2012, recommending holding a public hearing, conduct a special election, and adopt resolutions and appropriation ordinance and resolution amendments.

Mayor Reed opened the public hearing for the formation of the District in order to hear and consider all testimony by interested persons relating to the formation of the District. He stated that the City Clerk will begin to collect ballots at this time and that all ballots must be submitted by the close of the public hearing.

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

Mayor Reed closed the public hearing.

Mayor Reed directed the City Clerk to tabulate the ballots received for the special election.

City Clerk Dennis D. Hawkins, CMC read the results of the tabulation of the property owner ballots for Community Facilities District No. 13, and stated a total of 18 votes from property owners have returned ballots in support of the levy of Special Taxes and that there were no ballots returned in opposition.

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Chu and carried unanimously, Resolution No. 76445, entitled: "A Resolution of the Council of the City of San José of Formation of Community Facilities District No. 13 (Guadalupe Mines), Authorizing the Levy of a Special Tax Therein, Preliminarily Establishing an Appropriations Limit Therefore and Submitting Levy of the Special Tax and the Establishment of the Appropriations Limit to the Qualified Electors Thereof"; Resolution No. 76446, entitled: "A Resolution of the Council of the City of San José Declaring Results of Special Election and Directing Recording of Notice of Special Tax Lien for Community Facilities No. 13 (Guadalupe Mines); Ordinance No. 29155, entitled: "An Ordinance of the City of San José Levying Special Taxes Within Community Facilities District No. 13 (Guadalupe Mines); Ordinance No. 29156, entitled: "An Ordinance of the City of San José Amending Ordinance No. 29102 to Appropriate Monies in the Community Facilities No. 13 (Guadalupe Mines) Fund for the Personal Services, For the Non-Personal/Equipment, For the Overhead Expenses, and For the Community Facilities District No. 13 Feasibility Project; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption"; Resolution No. 76447, 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

4.1 (Action Cont'd.)

Community Facilities District #13 (Guadalupe Mines) Fund” and Ordinance No. 29157, entitled: “An Ordinance of the City of San José Amending Ordinance No. 29102 to Appropriate Monies in the Storm Sewer Operating Fund for the Transfer to the Community Facilities District No. 13 (Guadalupe Mines) Fund; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption”, were adopted. (10-0-1. Absent: Liccardo.)

REDEVELOPMENT – SUCCESSOR AGENCY

9.1 Adopt resolutions by the City Council acting in its capacity as the Successor Agency to the Redevelopment Agency Board authorizing expenditure of items on:

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

Action: Deferred to October 16, 2012 per Administration.

OPEN FORUM

- (1) Art Napoleon expressed support to Black Independence Day and complained about customer service at the Martin Luther King Library.
- (2) David Wall thanked Fire Engine Company 1C for responding to calls in his neighborhood but voiced concern about the Fire Company’s continued trips to Valley Medical Center for one resident.
- (3) Ross Signorino expressed his concerns about Proposition 35.

ADJOURNMENT

The Council of the City of San José was adjourned at 4:29 p.m. in memory of Leigh Weimers, a Mercury News columnist who worked for the newspaper for 47 years. (Mayor)

Minutes Recorded, Prepared and Respectfully Submitted by,

Dennis Hawkins, CMC
City Clerk
smd/10-02-12 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/civiccenter>. For information on any ordinance that is not hyperlinked to this document, please contact the Office of the City Clerk at (408) 535-1266.