



## MINUTES OF THE CITY COUNCIL

SAN JOSÉ , CALIFORNIA

TUESDAY, DECEMBER 4, 2012

The Council of the City of San José convened in Regular Session at 9:31 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.

Documents Filed: Memorandum from Vera Todorov, President, Association of Legal Professionals (ALP), dated December 3, 2012, regarding ALP's Proposed Tentative MOA.

Marco Mercado, Office of Employee Relations, provided an update on the Association of Legal Professionals of San José (ALP) negotiations.

Action: No action required.

### CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:33 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: One (1); (B) to confer with Legal Counsel pursuant to Government Code Section 54956.9, Subsection (a) with respect to existing litigation: (1) Deisenroth v. City; Names of Parties Involved: Lorie Deisenroth, City of San José; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-224197; Amount of Money or Other Relief Sought: Damages According to Proof; (2) San José Police Officers' Association v. City of San José; Names of Parties Involved: San José Police Officers'

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

Association; City of San José; Court: Superior Court of California, County of Santa (ABMEI); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Clara; Case No: 1-12-CV-231271; Amount of Money or Other Relief Sought: Petition to Compel Arbitration; (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 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.

(A) 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 one (1) matter.



## 2.1 Approval of minutes.

- (a) **Regular Minutes of February 14, 2012**
- (b) **Regular Minutes of February 28, 2012**
- (c) **Regular Minutes of March 06, 2012**
- (d) **Regular Minutes of March 13, 2012**
- (e) **Regular Minutes of March 20, 2012**
- (f) **San José Housing Authority Minutes of March 20, 2012**
- (g) **Regular Minutes of March 27, 2012**
- (h) **Study Session Minutes on Future Retirement Costs of March 29, 2012**
- (i) **Regular Minutes of April 03, 2012**
- (j) **Regular Minutes of April 10, 2012**
- (k) **Regular Minutes of April 17, 2012**
- (l) **Regular Minutes of April 24, 2012**
- (m) **Regular Minutes of May 1, 2012**
- (n) **Joint San José / Diridon Development Authority Minutes of May 1, 2012**
- (o) **Regular Minutes of May 8, 2012**
- (p) **2012-2013 Budget Session Minutes of May 9, 2012 through May 11, 2012**

Documents Filed: (1) Regular Minutes of February 14 and 28, 2012, March 6, 13, 20 and 27, 2012, April 3, 10, 17 and 24, 2012; and May 1, and 8, 2012; (2) Special Meeting Minutes of March 20 and March 29, 2012; (3) Joint Diridon Development Authority Minutes of May 1, 2012; and (4) 2012-2013 Budget Session Minutes of May 9 through May 11, 2012.

Action: The Council, Special Meeting and Special Study Session Minutes were approved. (11-0.)

## 2.2 Final adoption of ordinances.

- (a) **ORD. NO. 29174 – Amending various Sections of Chapter 3.28 of Title 3 of the San José Municipal Code to clarify the City Charter supersedes the Federated City Employees Retirement Plan in event of conflict, clarify the definition of Tier 2 Member, discontinue the Supplemental Retiree Benefit Reserve, clarify actuarial soundness is determined consistent with the California constitution, and make additional requirements for mandatory Medicare enrollment, to be effective January 1, 2013.**

Documents Filed: (1) Supplemental memorandum from City Attorney Richard Doyle, dated November 29, 2012, providing additional clarifying language for the proposed ordinance. (2) Proof of Publication of the Title of Ordinance No. 29174 executed on November 9, 2012, submitted by the City Clerk.

Council Member Chu pulled Item 2.2 to register his opposition. Council Member Kalra expressed opposition to the ordinance given its effect on retirees, and the likelihood it will not provide significant benefit to the organization.

**2.2 (a) (Cont'd.)**

Public Comments: (1) Bob Leininger, San José Retired Employees Association, argued that the Board has not received responses to its questions and asked that this item be deferred. (2) Susan Devencenzi offered criticism of the proposed ordinance and asked that it at least be deferred for additional review.

Action: Upon motion by Council Member Constant, seconded by Vice Mayor Nguyen and carried, Ordinance No. 29174 was passed for publication. (7-4. Noes: Campos, Chu, Kalra, Pyle.)

**2.3 Approval of Council Committee Reports.**

None provided.

**2.4 (a) Request for an excused absence for Council Member Chu from the Regular Meeting of the City Council on November 27, 2012 due to Authorized City Business: National League of Cities – 2012 Congress of Cities & Exposition in Boston, MA. (Chu)**

Documents Filed: Memorandum from Council Member Chu, dated November 19, 2012, requested an excused absence due to Authorized City Business.

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

**2.5 City Council Travel Reports.**

Council Member Constant provided an overview of his trip with the National Congress League of Cities, and Mayor Reed reported on his trips to Los Angeles and Des Moines, Iowa to promote pension reform.

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

None provided.

**2.7 Appointments to the Boards of Administration of the Police and Fire Department Retirement Plan and the Federated City Employees' Retirement System.**

- (a) Accept the City Clerk's Certification of results of elections conducted among the Retired members of the Police and Fire Department Retirement Plan for the Police Retiree representative to the Police and Fire Retirement Board and among the Retired members of the Federated Retirement System for the Federated Retiree representative to the Federated Retirement Board.**
- (b) Appoint one Retired member to the Board of Administration of the Federated City Employees Retirement System (FCERS) to a term expiring November 30, 2016;**

**2.7 (Cont'd.)**

- (c) Appoint one Police Department Retired member to the Board of Administration of the Police and Fire Department Retirement Plan to a term expiring November 30, 2016;**
- (d) Appoint one Public member to the Board of Administration of the Federated City Employees' Retirement System (FCERS) to a term expiring November 30, 2016;**
- (e) Appoint one Public member to the Board of Administration of the Police and Fire Department Retirement Plan to a term expiring November 30, 2016.**

Documents Filed: (1) Memorandum from City Clerk Dennis Hawkins, dated November 21, 2012, recommending appointments. (2) Supplemental memorandum from City Clerk Dennis Hawkins, dated November 30, 2012, providing information concerning the election and interview results, applications and candidate statements. (3) Memorandum from City Attorney Richard Doyle, dated December 3, 2012, regarding review of applicants. (4) Memorandum from Acting Deputy Director, Planning, Building and Code Enforcement, Diane Buchanan, dated December 3, 2012, regarding review of the applicants.

Action: Appointments to the Boards of Administration of the Police and Fire Department Retirement Plan and the Federated City Employees' Retirement System were approved. (11-0.)

- 2.8 Adopt a resolution approving the provisions in Council Policy 0-33, "Public Records Policy and Protocol," related to the treatment of certain communications of the Mayor, Council Members and their staff made through non-City devices as public records, previously approved as a one-year pilot program retroactive to the expiration of the pilot program. CEQA: Not a Project, File No. PP10-068(b), Municipal Code or Policy. (City Manager's Office)**

Documents Filed: Replacement memorandum from Director of Communications, David Vossbrink, dated November 26, 2012, recommending adoption of a resolution, including clarification to the portion of the Council Policy being addressed.

Action: Resolution No. 76496, entitled: "A Resolution of the Council of the City of San José Approving City Council Policy 0-33, "Public Records Policy and Protocol," Previously Approved as a Pilot Program", was adopted. (11-0.)

- 2.9 Approve a Joint Use Agreement with the Santa Clara Valley Water District for continued operation and maintenance of recreational facilities along Los Alamitos Creek Trail, Calero Creek Trail and Pfeiffer Park on Santa Clara Valley Water District property for a term of 25 years, with City option to renew for another 25 years. CEQA: Not a Project, File No. PP10-066(g), Memorandum of Understanding. (Parks, Recreation and Neighborhood Services)**

## 2.9 (Cont'd.)

Documents Filed: Memorandum from Acting Director of Parks, Recreation and Neighborhood Services Julie Edmonds-Mares, dated November 13, 2012, recommending approval of an agreement.

Action: A Joint Use Agreement with the Santa Clara Valley Water District for continued operation and maintenance of recreational facilities along Los Alamitos Creek Trail, Calero Creek Trail and Pfeiffer Park on Santa Clara Valley Water District property with a 25-year term and option for renewal was approved. (11-0.)

## 2.10 **As recommended by the Public Safety, Finance and Strategic Support Committee on November 15, 2012, accept the First Quarter Financial Reports for Fiscal Year 2012-2013. CEQA: Exempt. (Finance)** **[Public Safety, Finance and Strategic Support Committee referral 11/15/12 – Item D(5)]**

Documents Filed: Memorandum from City Clerk Dennis Hawkins, dated November 19, 2012, transmitting the recommendations of the Public Safety, Finance and Strategic Support Committee.

Action: The First Quarter Financial Report for Fiscal Year 2012-2013, was accepted. (11-0.)

## 2.11 **Approve an ordinance amending Section 10.32.010 of Chapter 10.32 of Title 10 of the San José Municipal Code to exclude properly trained Airport employees and contract biologists discharging firearms within the perimeter of the airport as part of the Airport's Wildlife Hazard Management Program from the prohibition on discharging firearms within the limits of the City. CEQA: Resolution Nos. 67380 and 71451, File No. PP12-057. (Airport/Police)** **(Deferred from 11/27/12 – Item 2.7)**

Documents Filed: (1) Joint memorandum from Director of Aviation William F. Sherry and Chief of Police Chris Moore, dated November 5, 2012, recommending approval of an ordinance. (2) Letter from Eileen McLaughlin, dated December 2, 2012, suggesting revisions to the proposed ordinance. (3) Correspondence from Shani Kleinhaus, Santa Clara Valley Audubon Society, expressing concerns regarding the Airport's Wildlife Hazard Management Program.

Council Member Kalra pulled Item 2.11 with questions to Staff. Director of Aviation William F. Sherry offered that documentation will be extensive and all records will be shared with the Federal Government.

Public Comments: David Wall expressed concerns for wildlife, and Chris Sarbaugh expressed concerns regarding airport staff using live ammunition.

**2.11 (Cont'd.)**

Action: Upon motion by Council Member Constant, seconded by Vice Mayor Nguyen and carried unanimously, Ordinance No. 29183, entitled: “An Ordinance of the City of San José Amending Section 10.32.010 of Chapter 10.32 of Title 10 of the San José Municipal Code to Exclude Properly Trained Airport Employees and Contract Biologists Discharging Firearms within the Perimeter of the Airport as Part of the Airport’s Federal Aviation Administration-Required Wildlife Hazard Management Program from the Prohibition on Discharging Firearms Within the Limits of the City”, was passed for publication. (11-0.)

**2.12 Approve travel by Council Member Herrera to Sacramento, CA on November 15 – 16, 2012 to attend the CA League of Cities to attend the Transportation, Communication & Public Works Committee Meeting/Women’s Caucus. Source of Funds: League of California Cities. (Herrera)**

Documents Filed: Memorandum from Council Member Herrera, dated November 27, 2012, requesting to Travel for City Business.

Action: The request for travel was approved. (11-0.)

**2.13 (a) Approve Council Member Nancy Pyle’s Farewell Community Appreciation Reception as a City Council sponsored Special Event; and  
(b) Approve and accept donations from various individuals, businesses, or community groups to support the event.**

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

Action: Council Member Nancy Pyle’s Farewell Community Appreciation Reception as a City Council Sponsored Special Event was approved and authorization to accept donations from various individuals, businesses or community groups to support the event, was approved. (11-0.)

**2.14 (a) Appoint Matthew Domenici to the Airport Commission for the balance of an unexpired term ending June 30, 2014;  
(b) Appoint Linda Sending and Mita Mistry to the Early Care and Education Commission for the balance of two vacant seats with unexpired terms ending June 30, 2013;  
(c) Appoint Marilyn Messina to the Historic Landmarks Commission for an unexpired term ending June 30, 2014;  
(d) Reappoint Tim Tom and appoint Samuel Duval, Ralph McLaughlin, and Patrick Ngo to the Housing and Community Development Commission to terms expiring December 31, 2013;**

**2.14 (Cont'd.)**

- (e) Appoint Chris Roth to the Library Commission for a term expiring June 30, 2013; and**
- (f) Reappoint Monna Lang, neutral representation, to the Mobilehome Advisory Commission for a short-term expiring December 31, 2013.**

Documents Filed: (1) Memorandum from Council Member Campos, dated December 4, 2012, providing recommendations to the Human Rights Commission. (2) Memorandum from City Clerk Dennis Hawkins, dated November 28, 2012, transmitting the recommendations of the Rules and Open Government Committee.

Motion: Council Member Campos moved approval of his memorandum dated December 4, 2012, with a goal of finding representatives from each Council District as outlined below in "Action". The motion was seconded by Council Member Kalra.

City Clerk Dennis Hawkins responded to questions from Council, and Council discussion followed.

Action: On a call for the question, the motion carried unanimously, the appointments were approved. Staff was directed to return to Council with an implementation Work Plan to adjust Commission membership with attention to district representation during the recommended consolidations. (11-0.)

**2.15 As recommended by the Rules and Open Government Committee on November 28, 2012, approve an exemption to Item 4 (standard text for recognition plaque language) of the Parks, Recreation and Neighborhood Services Donated Bench Recognition Program Administrative Policy for the proposed donated park bench at Pfeiffer Park in recognition of Bev Head due to the tragic matter of her death on the Los Alamitos Creek Trail in 2009. (Pyle)**

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

Action: An exemption to Item 4 (standard text for recognition plaque language) of the Parks, Recreation and Neighborhood Services Donated Bench Recognition Program Administrative Policy for the proposed donated park bench at Pfeiffer Park in recognition of Bev Head due to the tragic matter of her death on the Los Alamitos Creek Trail in 2009, was approved, with the exemption hereby encompassed in the official policy. (11-0.)

- 2.16 As recommended by the Rules and Open Government Committee on November 28, 2012, approve travel by Council Member Rocha to Washington, D.C. on November 27 – 29, 2012 to participate in the Silicon Valley Leadership Group Washington, D.C. Advocacy Trip as one of the City’s designated representative. Source of Funds: Mayor/Council Travel Fund. (Rocha)**

Documents Filed: Memorandum from Council Member Rocha, dated November 20, 2012, requesting authorization to travel for authorized City business.

Council Member Rocha pulled Item 2.16 to modify the source of the funds.

Action: Upon motion by Council Member Rocha, seconded by Council Member Herrera and carried unanimously, travel by Council Member Rocha to Washington, D.C. on November 27 – 29, 2012 to participate in the Silicon Valley Leadership Group Washington D.C. Advocacy Trip as one of the City’s designated representative, was approved, with the source of funds modified per Council Member Rocha. (11-0.)

- 2.17 (a) Approve the District 2 Holiday Appreciation Event as a City Council sponsored Special Event; and**  
**(b) Approve expending funds and accept donations from various individuals, businesses, or community groups to support the event.**  
**CEQA: Not a Project. (City Clerk)**

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

Action: The District 2 Holiday Appreciation Event as a City Council Sponsored Special Event was approved and authorization to accept donations from various individuals, businesses or community groups to support the event, was approved. (11-0.)

- 2.18 (a) Approve the Vietnamese New Year Flag Raising Ceremony as a City Council sponsored Special Event; and**  
**(b) Approve expending funds and accept donations from various individuals, businesses, or community groups to support the event.**  
**CEQA: Not a Project. (City Clerk)**

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

Action: The Vietnamese New Year Flag Raising as a City Council Sponsored Special Event was approved and authorization to accept donations from various individuals, businesses or community groups to support the event, was approved. (11-0.)

- 2.19 (a) Approve the BART to Berryessa Extension Project Community Meeting and District 4 Community Recognition Event as a City Council sponsored Special Event; and**
- (b) Approve expending funds and accept donations from various individuals, businesses, or community groups to support the event.**
- CEQA: Not a Project. (City Clerk)**

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

Action: The BART to Berryessa Extension Project Community Meeting and District 4 Community Recognition Event as a City Council Sponsored Special Event was approved and authorization to accept donations from various individuals, businesses or community groups to support the event, was approved. (11-0.)

### **END OF CONSENT CALENDAR**

### **STRATEGIC SUPPORT SERVICES**

- 3.3 (a) Approve an ordinance amending Title 3 of the San José Municipal Code to add new Chapter 3.49 and amending various sections of Chapter 3.28 for the purposes of establishing an option between the Tier 2 Defined Benefit plan and a Defined Contribution 401(a) Plan that excludes participation in retiree healthcare, for Executive Management and Professional Employees (Unit 99), and who are hired on or after January 20, 2013.**
- (b) Adopt a resolution appointing the City Manager as administrator of the Defined Contribution 401(a) plan and authorizing the City Manager to negotiate and execute the Adoption Agreement and the Basic Plan Agreement and other documents to administer the Plan.**
- CEQA: Not a Project, File No. PP10-069(b), Personnel Related Decisions. (City Manager's Office)**

Documents Filed: Memorandum from City Manager Debra Figone, dated November 20, 2012, recommending approval of an ordinance and adoption of a resolution.

City Manager Debra Figone provided comments regarding Tier 3 options.

Public Comments: David Wall advised some structured bonus for improvement.

Jennifer Schembri, Office of Employee Relations, and Economic Development Policy Advisor, Ruani Weerakoon, responded to questions from Council. Extensive discussion followed.

### 3.3 (Cont'd.)

Action: Upon motion by Council Member Constant, seconded by Vice Mayor Nguyen and carried unanimously, Ordinance No. 29184, entitled: “An Ordinance of the City of San José Amending Title 3 of the San José Municipal Code to Amend Various Sections of Chapter 3.28 and to Add a New Chapter 3.49 for the Purpose of Establishing an Option Between the Tier 2 Defined Benefit Plan and a Defined Contribution 401(A) Plan that Excludes Participation in Retiree Healthcare, for Unclassified Executive Management and Professional Employees (Unit 99) who are Hired on or After January 20, 2013”, was passed for publication; and Resolution No. 76497, entitled: “A Resolution of the Council of the City of San José Appointing the City Manager as Administrator of the Defined Contribution 401(A) Plan for New Employees in Unit 99 who are Hired on or After January 20, 2013 and Authorizing the City Manager to Negotiate and Execute Various Documents Necessary to Administer the Plan”, was adopted. (11-0.)

- 3.4 (a) **Adopt a resolution authorizing the City Manager to execute the first amendment to the Agreement with Renne Sloan Holtzman & Sakai, LLP for labor consulting services in connection with labor matters, increasing the contract amount by \$400,000, not to exceed \$650,000, and extending the contract term to December 31, 2014.**
- (b) **Adopt the following Appropriation Ordinance amendments in the General Fund:**
- (1) **Increase the city-wide appropriation for Labor/Employee Relations Consulting Funding in the amount of \$350,000; and,**
  - (2) **Decrease the Fiscal Reform Plan Implementation Earmarked Reserve in the amount of \$350,000.**

Documents Filed: (1) Joint memorandum from Deputy City Manager Alex Gurza and Budget Director Jennifer Maguire, dated November 16, 2012, recommending adoption of a resolution and appropriation ordinance amendments. (2) Supplemental memorandum from City Attorney Richard Doyle, dated November 29, 2012, clarifying pending matters being handled by each law firm.

Public Comments: David Wall recommended having outside contributors fund these types of expenditures.

Extensive Council discussion ensued, and City Attorney Richard Doyle, Deputy City Manager Alex Gurza and City Manager Debra Figone responded to questions.

### 3.4 (Cont'd.)

Action: Upon motion by Council Member Liccardo, seconded by Council Member Rocha, the motion carried, Resolution No. 76498, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Execute a First Amendment to the Agreement with Renne Sloan Hotzman & Sakai, LLP for Labor Consulting Services”, and Ordinance No. 29185, entitled: “An Ordinance of the City of San José Amending Ordinance No. 29102 to Appropriate Monies in the General Fund; Citywide – Strategic Support for the Labor/Employee Relations Consultant Funding; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”; were adopted. (10-1. Noes: Kalra.)

- 3.5 (a) **Adopt a resolution authorizing the City Attorney to negotiate and execute a second amendment to the agreement with Meyers, Nave, Riback, Silver & Wilson for legal services in connection with employment, labor, and pension reform, increasing the contract amount by \$950,000 for a total amount not to exceed \$1,200,000, subject to appropriation of funds as recommended below. Resolution No. 76499 adopted, with the contracted legal service to provide a status update on litigation proceedings at a council meeting in the near future.**
- (b) **Adopt the following Appropriation Ordinance amendments in the General Fund:**
- (1) **Increase the city-wide appropriation to the City Attorney’s Office for Fiscal Reform Plan Outside Legal Counsel by the amount of \$1,000,000; and**
  - (2) **Decrease the Fiscal Reform Plan Implementation Earmarked Reserve by the amount of \$1,000,000.**

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

Documents Filed: Joint memorandum from Deputy City Manager Alex Gurza and Budget Director Jennifer Maguire, dated November 15, 2012, recommending adoption of a resolution and appropriation ordinance amendments.

Action: Upon motion by Council Member Constant, seconded by Vice Mayor Nguyen, the motion carried, Resolution No. 76499, entitled: “A Resolution of the Council of the City of San José Authorizing the City Attorney to Negotiate and Execute a Second Amendment to the Agreement with Meyers, Nave, Riback, Silver & Wilson to Provide Legal Services Relating to Employment, Labor and Pension Reform”, and Ordinance No. 29186, entitled: “An Ordinance of the City of San José Amending Ordinance No. 29102 to Appropriate Monies in the General Fund; Citywide – Strategic Support for the Fiscal Reform Plan Outside Legal Counsel; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”; were adopted. (8-3. Noes: Campos, Chu, Kalra.)

**3.7 As recommended by the Public Safety, Finance and Strategic Support Committee on November 15, 2012:**

- (a) Accept the report on the Comprehensive Annual Debt Report;**
- (b) Adopt a resolution amending City Council Policy 1-15, “Debt Management Policy,” to include additional guidance on the use of variable rate debt and short-term borrowing.**

**CEQA: Not a Project, File No. PP10-068(b), General Procedure & Policy Making. [Public Safety, Finance and Strategic Support Committee referral 11/15/12 – Item D(7)]**

Documents Filed: (1) Memorandum from Acting Director of Finance Julia H. Cooper, dated November 19, 2012, providing the Comprehensive Annual Debt Report (CADR). (2) Memorandum from City Clerk Dennis Hawkins, dated November 19, 2012, transmitting the recommendations of the Public Safety, Finance and Strategic Support Committee.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, the Comprehensive Annual Debt Report was accepted, and Resolution No. 76500, entitled: “A Resolution of the Council of the City of San José Approving Revisions to Council Policy 1-15 Relating to Debt Management Policy”, was adopted. (11-0.)

## **COMMUNITY & ECONOMIC DEVELOPMENT**

**4.1 Adopt a resolution:**

- (a) Declaring the property located at 500 South First Street, comprised of a 33,284 square foot building on an approximately 19,023 square foot parcel, surplus to the needs of the City;**
- (b) Approving an agreement between the City and Movimiento de Arte y Cultura Latino Americana de San Jose, Incorporated for the sale of the property in the amount of \$1,400,000, \$650,000 to be paid in cash over a three-year period and \$750,000 to be paid in in-kind services over 20-year period; 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: Exempt, File No. PP12-099. (Economic Development)**

Documents Filed: (1) Memorandum from Council Member Liccardo, dated November 30, 2012, recommending approval of the Staff Report. (2) Memorandum from Director of Economic Development/Chief Strategist Kim Welsh, dated November 13, 2012, recommending adoption of a resolution.

Director of Economic Development/Chief Strategist Kim Welsh gave a presentation on Movimiento de Arte y Cultura Latino (MACLA), and discussion followed.

#### 4.1 (Cont'd.)

Public Comments: Offering support to the Staff's recommendations were Anjee Helstrup, John McGuirk (Hewlett Foundation), Eva Terrazas, Cesar Gonzalez, David Wall, Ross Signorino, Tamara Alvarado, and Connie Martinez (1stAct Silicon Valley).

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, Resolution No. 76501, entitled: "A Resolution of the Council of the City of San José Declaring Certain City-Owned Property Located at 500 South First Street as Surplus to the Needs of the City, Approving an Agreement with Movimiento de Arte y Cultura Latino Americana de San José, Incorporated, for Sale of the Property in the Amount of \$1.4 Million, and Authorizing the City Manager or Her Designee to Execute Certain Documents Necessary to Complete the Transaction", was adopted. (11-0.)

#### 4.2 Adopt a resolution:

- (a) **Declaring 28,990 square feet of vacated street on Emory Street, surplus to the needs of the City;**
- (b) **Approving an agreement between the City of San José and Bellarmine College Preparatory (Bellarmine) for sale of the property in the amount of \$325,000; and**
- (c) **Authorizing the City Manager or her designee to execute the sale agreement, the deed and all other documents necessary to complete the transaction.**

**CEQA: Mitigated Negative Declaration, File No. PDC07-072. (Economic Development)**

Action: Deferred to December 11, 2012 per Administration.

#### 4.3 Conduct an ADMINISTRATIVE HEARING and consider an appeal of the Planning Commission's certification of the Environmental Impact Report (EIR) for the proposed project, the Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan. In addition, consider adoption of a resolution to uphold the Planning Commission's certification of the EIR and certify that:

- (a) **The City Council has read and considered the EIR;**
- (b) **The EIR has been completed in compliance with the California Environmental Quality Act (CEQA);**
- (c) **On the basis of the whole of the administrative record that there is no substantial evidence that the project will have a significant effect on the environment;**
- (d) **The EIR reflects the independent judgment and analysis of the City of San Jose;**
- (e) **The Director of Planning, Building and Code Enforcement shall transmit copies of the EIR to any other decision-making body of the City of San Jose for the project.**

**(Planning, Building and Code Enforcement)**

### 4.3 (Cont'd.)

Documents Filed: (1) Joint memorandum from Council Member Chu and Council Member Kalra, dated November 27, 2012, supporting the Staff and Planning Commission's recommendations. (2) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated November 13, 2012, recommending upholding the Planning Commission's certification of the Environmental Impact Report (EIR). (3) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated December 4, 2012, addressing increase in development costs. (4) Letter from David P. Lanferman, representing Sheppard, Mullin, Richter & Hampton LLP, dated December 3, 2012, supporting the appeal to the City Council. (5) Correspondence from Christina Peterson, urging approval of the Santa Clara Valley Habitat Plan.

Director of Planning, Building and Code Enforcement Joseph Horwedel addressed the supplemental memorandum he issued on December 4, 2012, and Division Manager, Andrew Crabtree continued the presentation.

Mayor Reed opened the Administrative Hearing.

Ella Foley Gannon, speaking on behalf of YCS Investments, claimed deficiencies in the EIR as outlined in the December 3, 2012 letter from Sheppard, Mullin, Richter & Hampton LLP, recommending that the EIR not be certified.

Public Comments: Melissa Hippard (Greenbelt Alliance) and Joshua McCluskey (Santa Clara Valley Audubon Society) offered support to the staff's recommendations. David Wall argued that the EIR is incomplete, as it inadequately addresses nitrogen deposition.

Mayor Reed closed the Administrative Hearing.

For the record Mayor Reed referenced key points outlined in correspondence both to and from the Department of Fish and Game, the U.S. Fish and Wildlife Service, Sierra Club and the Santa Clara Valley Audubon Society regarding efforts being made to ensure mitigation measures that would be considered and required under the HCP.

Action: Upon motion by Council Member Kalra, seconded by Council Member Chu, the motion carried, and Resolution No. 76502, entitled: "A Resolution of the Council of the City of San José Finding a Final Environmental Impact Report Prepared for the Santa Clara Valley Habitat Conservation Plan/Natural Communities Conservation Plan (File No. PP12-075) has been Completed in Compliance with the California Environmental Quality Act and Making Certain Other Related Findings Pursuant to Section 15090 of the State CEQA Guidelines", was adopted, upholding the appeal. (10-1. Noes: Constant.)

## **TRANSPORTATION & AVIATION SERVICES**

- 6.1 As recommended by the Transportation and Environment Committee on November 5, 2012, accept the staff report and presentation on the Automated Transit Network (ATN) Feasibility Study. (Transportation)  
[Transportation and Environment Committee referral 11/5/12 – Item D(5)]**

Documents Filed: Memorandum from City Clerk Dennis Hawkins, dated November 10, 2012, transmitting the recommendations of the Transportation and Environment Committee.

Director of Transportation Hans Larsen provided opening comments and responded to questions from Council.

Public Comments: Ed Porter offered support to the project and asked that private development begin. David Wall responded that the City should focus on road repairs, and Ross Signorino offered additional criticism of the plan and suggested alternatives.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, the Automated Transit Network (ATN) Feasibility Study was accepted. (9-0-2. Absent: Constant, Oliverio.)

## **STRATEGIC SUPPORT SERVICES**

- 3.6 As recommended by the Public Safety, Finance and Strategic Support Committee on November 15, 2012, accept the report on the Comprehensive Annual Financial Report. (Finance)  
[Public Safety, Finance and Strategic Support Committee referral 11/15/12 – Item D(6)]**

Documents Filed: Memorandum from Acting Director of Finance Julia H. Cooper, dated November 19, 2012, providing the Comprehensive Annual Financial Report (CAFR).

City Auditor Sharon Erickson provided an overview of the report, and Assistant Director of Finance Julia H. Cooper and staff responded to questions.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, the Comprehensive Annual Financial Report was accepted. (11-0.)

## **REDEVELOPMENT – SUCCESSOR AGENCY**

- 9.1 Accept the Basic Financial Statements for both the Redevelopment Agency of the City of San José for the period July 1, 2011 to January 31, 2012 and the Successor Agency to the Redevelopment Agency of the City of San José for the period February 1, 2012 to June 30, 2012. (Finance)  
(Rules Committee referral 11/28/12)**

Documents Filed: Joint memorandum from Assistant Director of Finance Julia H. Cooper and Successor Agency Managing Director Richard A. Keit, dated November 29, 2012, regarding Annual Audited Financial Statements.

Item heard concurrently with Item 3.6.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, the Comprehensive Annual Financial Report was accepted. (11-0.)

## **OPEN FORUM**

- (1) David Wall directed attention to the CIP update provided on the Water Pollution Control Plant and the need for fiscal responsibility.
- (2) Ross Signorino expressed support of the Steinbeck Middle School soccer field project.

The Council of the City of San José adjourned the afternoon session at 5:35 p.m.

## RECESS/RECONVENE

The City Council recessed from Closed Session at 5:35 p.m. and reconvened at 7:02 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.

City Clerk Dennis Hawkins read the requests for continuance of the applications. Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, the below noted continuances and actions were taken as indicated. (11-0.)

## CEREMONIAL ITEMS

### 1.1 **Presentation of a commendation to the Santa Clara Valley Science and Engineering Fair Association and the 2012 Winners from San José. (Kalra)**

Mayor Reed and Council Member Kalra presented a commendation to the Santa Clara Valley Science and Engineering Fair Association and the 2012 Winners from San José.

## PUBLIC HEARINGS

### 11.1 **Consideration of an ordinance rezoning the real property located at/on the east side of Monterey Road, approximately 300 feet southerly of East Alma Avenue on Monterey Road, to allow a third drive through use for a previously approved shopping center (carwash for gas station). CEQA: FEIR for Sun Garden Project, Resolution No. 75929. PDC12-023 – District 7**

Documents Filed: Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC12-023, dated November 6, 2012, recommending approval.

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

## 11.1 (Cont'd.)

Action: Upon motion by Herrera, seconded by Council Member Pyle, and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, and Ordinance No. 29187, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the East Side of Monterey Road, Approximately 300 Feet Southerly of Alma Avenue, to a Conforming Planned Development Rezoning from the CG(PD) Planned Development Zoning District to the CG(PD) Planned Development Zoning District to Allow a Third Drive-Through Use (Carwash at a Gas Station) to a Previously-Approved 257,296 Square Foot Shopping Center (Sun Gardens)”, was passed for publication. (11-0.)

## 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, Resolution to be adopted. Planning Commission recommend approval (7-0-0). PDC11-012 – District 8

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC11-012, dated September 18, 2012, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated November 8, 2012, transmitting the Planning Commission recommendation.

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

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

Action: Upon motion by Herrera, seconded by Council Member Pyle, and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, and Ordinance No. 29188, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the North Side of the Future Turturici Way, Approximately 400 Feet Easterly of San Felipe Road (6782 & 6790 San Felipe Road), from the R-1-1 Single-Family Residence District to the A(PD) Planned Development Zoning District”, was passed for publication; and Resolution No. 76503, entitled: “A Resolution of the Council of the City of San José Adopting the 6782 and 6790 San Felipe Road Mitigated Negative Declaration, for which an Initial Study was Prepared, all in Accordance with the California Environmental Quality Act, as Amended, and Adopting a Related Mitigation Monitoring and Reporting Program”, was adopted. (11-0.)

- 11.3 (a) **Conduct an ADMINISTRATIVE HEARING and consider an Appeal of the Planning Director’s adoption of the Mitigated Negative Declaration (MND) for the proposed project, The Harker School, File No. PD12-027, a Planned Development Permit to allow redevelopment of the existing 7.7 acre former Santa Clara County Children’s Shelter campus including demolition of two existing 4,800 square foot buildings, construction of a new 17,500 square foot multi-purpose building, a 2,500 square foot accessory structure, and other site improvements for a private elementary school for up to 600 pre-Kindergarten through fifth grade students. In addition, consider adoption of a resolution to uphold the Planning Director’s adoption of the Mitigated Negative Declaration and certify that:**
- (1) **The City Council has read and considered the Mitigated Negative Declaration;**
  - (2) **The Mitigated Negative Declaration has been completed in compliance with the California Environmental Quality Act (CEQA);**
  - (3) **On the basis of the whole of the administrative record that there is no substantial evidence that the project will have a significant effect on the environment;**
  - (4) **The Mitigated Negative Declaration reflects the independent judgment and analysis of the City of San José;**
  - (5) **The Director of Planning, Building and Code Enforcement shall transmit copies of the Mitigated Negative Declaration to any other decision-making body of the City of San José for the project.**
- (b) **Conduct an ADMINISTRATIVE HEARING and consider an Appeal of the Planning Director’s decision to approve a Planned Development Permit for The Harker School project, File No. PD12-027, and consider adoption of a resolution approving this Planned Development Permit.**
- CEQA: Mitigated Negative Declaration, Resolution to be adopted.  
PD12-027 – District 9**

Documents Filed: (1) Memorandum from Council Member Rocha, dated November 30, 2012, supporting Staff’s recommendations with amendments as noted. (2) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated November 5, 2012, recommending consideration of an appeal. (3) Letter from Head of Harker School, Christopher Nikoloff, received November 29, 2012, urging the City to deny appeals. (4) Letter from Linda Callon, Berliner Cohen Attorneys at Law, dated November 29, 2012, on behalf of Harker School. (5) Letter from Head of Harker School, Christopher Nikoloff, dated December 3, 2012, to Council Member Rocha agreeing to conditions suggested in the Council Member’s November 30, 2012 memorandum. (6) Letter from Donna Stewart, Executive Director, Community United San José, dated December 2, 2012, in support of the expansion. (7) Letter from Craig Pasqua, President, IHC Board of Directors, dated December 4, 2012 and Email from Tiffany Ho, received December 3, 2012, urging support of the permit.

Director of Planning, Building and Code Enforcement Joseph Horwedel, provided an overview of the project.

### 11.3 (Cont'd.)

Mayor Reed opened the Administrative Hearing.

Appellants, Brian Burke, Jeff Bellini, Anya O'Donovan and Jeffrey Pickard spoke to impact of traffic on the neighborhood and modification of the plan. Applicant Chris Nikoloff countered that traffic mitigation will be a top priority and can be resolved to everyone's satisfaction.

Public Comment: Carol Gutstein, Mark Warlick (Blackford Neighborhood Action Coalition), Elise Cutini (Silicon Valley Children's Fund), Laura Champion, Susan Dworak, Robin Marino, David Lopez (National Hispanic University), Justin Glass, Tina Najibi, Rekha Nandakumar and Andrew Faber offered support to the project and expressed confidence that Harker will manage the traffic situation effectively. Expressing concerns regarding traffic calming were Allison Hatzenbuhler, Marina Murray, Patric Malda and James Bohan.

Mayor Reed closed the Administrative Hearing.

Motion: Council Member Rocha moved his memorandum of November 30, 2012 including the motion to deny the appeal. The motion was seconded by Council Member Liccardo.

Mayor Reed provided meeting disclosures.

Action: On a call for the question, the motion was carried unanimously, Resolution No. 76504, entitled: "A Resolution of the Council of the City of San José Denying an Appeal of the Director of Planning, Building and Code Enforcement's Decision on and Approving a Request for a Planned Development Permit to Allow Redevelopment of the Existing 7.7 Acre Former Santa Clara County Children's Shelter Campus Located on the West Side of Union Avenue, Approximately 100 Feet Southerly of Barrett Avenue (4525 Union Avenue), Including Demolition of Two Existing 4,800 Square Foot Buildings, Construction of a New 17,500 Square Foot Accessory Structure, and Other Site Improvements for a Private Elementary School for up to 600 Pre-Kindergarten through 5<sup>th</sup> Grade Students", was adopted, with recommendations as outlined in Council Member Rocha's memorandum of November 30, 2012. (11-0.)

## ADJOURNMENT

The Council of the City of San José adjourned at 8:44 p.m. in memory of Gunnery Sergeant Harold "Skip" Adams (United States Marine Corps, retired) who passed away on November 12, 2012 at 86 years of age. Skip served his country during World War II at the Battle of Iwo Jima, and later became an enthusiastic promoter of the Spirit of '45 Campaign to preserve the memories of those who witnessed the end of that war and worked to create the era of peace that followed. (Herrera)

Minutes Recorded, Prepared and Respectfully Submitted by,

Dennis Hawkins, CMC  
City Clerk

rmk/12-04-12MIN