

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, FEBRUARY 12, 2013

The Council of the City of San José convened in Regular Session at 9:06 a.m. in the Council Chambers at City Hall.

Present: Council Members - Campos, Constant, Khamis, Nguyen, Oliverio; Reed.

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

STRATEGIC SUPPORT SERVICES

3.2 Accept Labor Negotiations Update.

Documents Filed: The City of San José and Association of Legal Professionals City Proposed Tentative Agreement 1, dated January 14, 2013.

Senior Executive Analyst Jennifer Schembri informed the Council that Employee Relations received a proposal from Association of Legal Professionals of San José (ALP).

CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:07 a.m. to a Closed Session in Room W133 (A) to confer with Legal Counsel with respect to Public Employment/Public Employee Evaluation pursuant to Government Code Section 54957: (1) City Auditor; Title: Sharon Erickson. (B) to confer with Legal Counsel pursuant to Government Code Section 54956.9, Subsection (c) with respect to anticipated litigation in two (2) matters. (C) 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) George Nathan Jaeger v. City of San José, et al; Names of Parties Involved: George Nathan Jaeger, City of San José, Board of

CLOSED SESSION (Cont'd.)

Administration Police and Fire Retirement Plan of the City of San José, Does 1-100; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-234048; Amount of Money or Other Relief Sought: Damages according to proof. (3) San José Retired Employees Association, et al. v. City, et al; Names of Parties Involved: San José Retired Employees Association, Howard E. Fleming, Donald S. Macrae, Frances J. Olson, Gary J. Richert and Rosalinda Navarro, City of San José, Does 1 through 50, Board of Administration for the Federated City Employees Retirement System; Court: Superior Court of California, County of Santa Clara; Case No: 112CV233660; Amount of Money or Other Relief Sought: Declaratory Relief and Verified Petition for Writ of Mandate. (4) San José Police Officers' Association v. City, et al; Names of Parties Involved: San José Police Officers' Association, City of San José, Board of Administration for Police and Fire Department Retirement Plan of City of San José and Does 1-10; Court: Superior Court of California, County of Santa Clara; Case No: 112CV225926; Amount of Money or Other Relief Sought: Declaratory and Injunctive Relief. (5) Sapien, et al. v. City of San José, et al; Names of Parties Involved: Robert Sapien, Mary Kathleen McCarthy, Thanh Ho, Randy Sekany, Ken Heredia, City of San José, Debra Figone in her official capacity as City Manager of the City of San José, Does 1-15, The Board of Administration for the 1961 San José Police and Retirement Plan; Court: Superior Court of California, County of Santa Clara; Case No: 112CV225928; Amount of Money or Other Relief Sought: Challenge to Measure B. (6) Harris, et al. v. City of San José, et al; Names of Parties Involved: Teresa Harris, Jon Reger, Moses Serrano, Suzann Stauffer, City of San José, Debra Figone in her official capacity as City Manager of the City of San José, The Board of Administration for the 1975 Federated City Employees' Retirement Plan, Does 1-15; Court: Superior Court of California, County of Santa Clara; Case No: 112CV226570; Amount of Money or Other Relief Sought: Challenge to Measure B. (7) Mukhar, et al. v. City of San José, et al; Names of Parties Involved: John Mukhar, Dale Dapp, James Atkins, William Buffington, Kirk Pennington, City of San José, Debra Figone in her official capacity as City Manager of the City of San José, The Board of Administration for the 1975 Federated City Employees' Retirement Plan, Does 1-15; Court: Superior Court of California, County of Santa Clara; Case No: 112CV226574; Amount of Money or Other Relief Sought: Challenge to Measure B. (8) AFSCME, et al. v. City of San José, et al; Names of Parties Involved: American Federation of State, County and Municipal Employees, Local 101 on behalf of its members, City of San José, Debra Figone in her official capacity as City Manager of the City of San José, The Board of Administration for the 1975 Federated City Employees' Retirement Plan, Does 1-15; Court: Superior Court of California, County of Santa Clara; Case No: 112CV225928; Amount of Money or Other Relief Sought: Challenge to Measure B. (D) 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

CLOSED SESSION (Cont'd.)

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. Telephone for Employee Relations: 408-535-8150. (E) to confer with Legal Counsel pertaining to the Successor Agency to the Redevelopment Agency of the City of San José with respect to initiation of litigation pursuant to subsection (c) of Section 54956.9 of the Government Code in two (2) matters to be discussed.

By unanimous consent, Council recessed from the Closed Session at 11:50 a.m. and reconvened to Regular Session at 1:33 p.m. in the Council Chambers.

Present: Council Members - Campos, Chu, Constant, Herrera, Kalra, Khamis, Liccardo (1:47 p.m.), Nguyen, Oliverio (1:47 p.m.), Rocha; Reed.

Absent: Council Members - All Present.

INVOCATION (DISTRICT 1)

Father Mike Carson, Queen of Apostles Catholic Church, presented the Invocation.

PLEDGE OF ALLEGIANCE

Mayor Reed, accompanied by students from Success Academy, led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Herrera, seconded by Vice Mayor Nguyen and carried unanimously, the Orders of the Day and the Amended Agenda were approved, with Item 3.6 heard before Item 3.3. (9-0-2. Absent: Liccardo, Oliverio.)

CEREMONIAL ITEMS

- 1.1 Presentation to the Chinese Historical Cultural Project in recognition of their 25th anniversary and recognition of their efforts to preserve Chinese American and Chinese history and culture through community outreach activities in San José. (Chu)**

Mayor Reed, Vice Mayor Nguyen and Council Member Chu recognized and commended the Chinese Historical Cultural Project for their preservation efforts and outreach.

- 1.2 Presentation of a proclamation declaring the month of February 2013 as “American Heart Month” in the City of San José. (Kalra)**

Mayor Reed and Council Member Kalra recognized the month of February 2013 as “American Heart Month” in the City of San José.

- 1.3 Presentation of a commendation to Mr. Cung Le, in honor of his outstanding martial arts performance and his international representation of the United States and the City of San José as a UFC Champion in China. (Nguyen)**

Mayor Reed and Vice Mayor Nguyen recognized and commended Mr. Cung Le for his exceptional achievements.

CONSENT CALENDAR

Upon motion by Council Member Herrera, 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. 29202** – Rezoning certain real property situated on the southwest corner of West San Carlos Street and Royal Avenue on a 5.66 gross-acre site (720 West San Carlos Street and 655 Auzerais Avenue) to the CIC Combined Industrial/Commercial Zoning District. C12-027

Documents Filed: Proof of Publication of the Title of Ordinance No. 29202 executed on February 1, 2013, submitted by the City Clerk.

Action: Ordinance No. 29202 was adopted. (11-0.)

- (b) **ORD. NO. 29203** – Amending Title 18 of the San José Municipal Code to add a new Chapter 18.40 to adopt by reference and implement the Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP) including authority to collect the local development mitigation fees adopted by the Santa Clara Valley Habitat Agency from project applicants and remit the fees to the Agency for funding the preservation of natural ecosystems in accordance with the Plan, and amending Sections 17.04.310 and 17.04.340 of Chapter 17.04 of Title 17 of the San José Municipal Code to incorporate HCP/NCCP compliance requirements for grading permit issuance.

Documents Filed: Proof of Publication of the Title of Ordinance No. 29203 executed on February 1, 2013, submitted by the City Clerk.

Action: Ordinance No. 29203 was adopted. (11-0.) (First Reading: 10-1. Noes Constant.)

2.3 Approval of Council Committee Reports.

- (a) **Rules and Open Government Committee Report of May 2, 2012. (Mayor)**
(b) **Rules and Open Government Committee Report of May 9, 2012. (Mayor)**
(c) **Rules and Open Government Committee Report of May 16, 2012. (Mayor)**
(d) **Rules and Open Government Committee Report of May 23, 2012. (Mayor)**
(e) **Rules and Open Government Committee Report of May 30, 2012. (Mayor)**
(f) **Ad Hoc Committee on Economic Competitiveness Committee Report of January 7, 2013. (Mayor)**
(g) **Public Safety, Finance and Strategic Support Committee Report of January 24, 2013. (Constant)**

Documents Filed: (1) The Rules and Open Government Committee Reports dated May 2, 2012, May 9, 2012, May 16, 2012, May 23, 2012 and May 30, 2012. (2) The Ad Hoc Committee on Economic Competitiveness Committee Report dated January 7, 2013. (3) The Public Safety, Finance and Strategic Support Committee dated January 24, 2013.

Public Comments: David Wall expressed opposition to the report on Consortium for Police Leadership in Equity Report [Item (d)(2) from the Public Safety, Finance and Strategic Support Committee Report dated January 24, 2013.].

2.3 (Cont'd.)

Action: Upon motion by Council Member Herrera, seconded by Vice Mayor Nguyen and carried unanimously, the Council Committee reports were approved, including the minor corrections related to attendance on Items 2.3(b) and (c) of the Rules and Open Government Committee Reports. (11-0.)

- 2.4 (a) **Request for an excused absence for Council Member Constant from the Regular Meeting of the Rules and Open Government Committee on January 30, 2013, due to Authorized City Business: Police and Fire Retirement Board Strategic Planning Meeting. (Constant)**
- (b) **Request for an excused absence for Council Member Herrera from the Regular Meeting of the City Council on February 5, 2013, due to illness. (Herrera)**

Documents Filed: (1) Memorandum from Council Member Constant, dated January 24, 2013, requesting an excused absence on January 30, 2013, due to authorized City business. (2) Memorandum from Council Member Herrera, dated February 5, 2013, requesting an excused absence on February 5, 2013, due to illness.

Action: The absences for Council Members Constant and Herrera were excused. (11-0.)

2.5 City Council Travel Reports.

There were none.

2.6 Report from the Council Liaison to the Retirement Boards.

Council Member Constant presented an update from the Police / Fire Retirement Board Meetings on February 7, 2013.

Public Comments: David Wall offered comments and suggestions related to the Police / Fire Retirement Board Meetings.

Brief Council discussion ensued.

2.7 Authorize the City Manager to:

- (a) **Amend Open Purchase Order 47381 with Wattis Construction Co. (San José, CA) to increase the compensation by an additional \$260,000, for a revised total amount not-to-exceed \$500,000 for the period ending on June 30, 2013, to repair and maintain asphalt walkways and parking lots at various City park locations as required.**
- (b) **Exercise the remaining two one-year options to extend the term through June 30, 2015, subject to the appropriation of funds.**

CEQA: Not a Project, File No. PP10-066(a), Agreements and Contracts. (Finance)

2.7 (Cont'd.)

Documents Filed: City Council Action Request from Director of Finance Julia H. Cooper, dated January 25, 2013, recommending authorization for the City Manager to amend the purchase order with options.

Action: The City Manager was authorized to amend the Open Purchase Order 47381 with Wattis Construction Co. (San José, CA) to increase the compensation by an additional \$260,000, for a revised total amount not-to-exceed \$500,000 for the period ending on June 30, 2013, to repair and maintain asphalt walkways and parking lots at various City park locations as required and to exercise the remaining two one-year options to extend the term through June 30, 2015, subject to the appropriation of funds. (11-0.)

**2.8 Approve travel by Council Member Herrera to Pasadena, CA and Sacramento, CA on April 4 – 5, 2013, June 14, 2013, and September 18 – 20, 2013, to attend the California League of Cities Meeting and Conferences as Vice Chair of Transportation, Communication & Public Works. Source of Funds: Mayor & Council Travel Fund. (Herrera)
(Rules Committee referral 01/30/13)**

Documents Filed: Memorandum from Council Member Herrera, dated January 28, 2013, requesting approval to travel.

Action: The travel requests for Council Member Herrera to Pasadena, CA and Sacramento, CA on April 4 – 5, 2013, June 14, 2013, and September 18 – 20, 2013, to attend the California League of Cities Meeting and Conferences as Vice Chair of Transportation, Communication & Public Works, were approved. (11-0.)

2.9 As recommended by the Rules and Open Government Committee on January 9, 2013:

- (a) Approve Council Member Ash Kalra's African American History Month Flag Raising as a City Council sponsored Special Event.**
- (b) Approve and accept donations from various individuals, businesses, or Community groups to support the event.**

CEQA: Not a Project. (City Clerk)

[Rules Committee referral 01/09/13 – Item G(3)]

Documents Filed: Memorandum from Acting City Clerk Toni Taber, CMC, dated January 30, 2013, transmitting the recommendations of the Rules and Open Government Committee.

Action: The African American History Month Flag Raising as a City Council sponsored Special Event was approved and donations from various individuals, businesses, or Community groups to support the event were authorized. (11-0.)

2.10 As recommended by the Rules and Open Government Committee on January 30, 2013:

- (a) Approve the District 2 and District 5 Arthritis Awareness Events as a City Council Sponsored Event.**
- (b) Approve expending funds and accepting donations from various individuals, businesses and community groups to support this event.**

CEQA: Not a Project. (City Clerk)

[Rules Committee referral 01/30/13 – Item G(6)]

Documents Filed: Memorandum from Acting City Clerk Toni Taber, CMC, dated January 30, 2013, transmitting the recommendations of the Rules and Open Government Committee.

Action: The District 2 and District 5 Arthritis Awareness Events as a City Council sponsored Special Event were approved and donations from various individuals, businesses, or Community groups to support the event were authorized. (11-0.)

2.11 As recommended by the Rules and Open Government Committee on January 30, 2013, approve the following appointments and reappointments to the Project Diversity Screening Committee:

- (a) Appoint Elisa Orona, Delores Springs, Mansimrat Singh, Denise McCallaCreary, Karl Hennig, and Nga Huynh to two-year terms expiring December 31, 2014.**
- (b) Appoint Johnny Lee to the balance of an unexpired term ending December 31, 2013.**
- (c) Reappoint Nathaniel Montgomery to a two-year term expiring December 31, 2014.**
- (d) Direct the City Clerk to continue recruitment efforts and bring additional applicants forward for the Mayor’s consideration within forty-five (45) days.**

CEQA: Not a Project. (City Clerk)

[Rules Committee referral 01/30/13 – Item F(1)(a)]

Documents Filed: Memorandum from Acting City Clerk Toni Taber, CMC, dated February 7, 2013, transmitting the recommendations of the Rules and Open Government Committee.

Action: The appointments and reappointments to the Project Diversity Screening Committee were approved. (11-0.)

- 2.12 (a) Approve travel by Council Member Liccardo to Washington, D.C. on March 19 - 21, 2013, to participate in the Silicon Valley Leadership Group’s Washington, D.C. Advocacy Trip as a Metropolitan Transportation Commission designated representative. Source of Funds: Metropolitan Transportation Commission. (Liccardo)**

- 2.12 (b) Request for an excused absence for Council Member Liccardo from the Closed Session, Regular Session, and Evening Session of the City Council Meeting on March 19, 2013, due to Authorized City Business: Silicon Valley Leadership Group Washington, D.C. Advocacy Trip as a Metropolitan Transportation Commission designated representative. (Liccardo)
(Rules Committee referral 02/06/13)**

Documents Filed: Replacement memorandum from Council Member Liccardo, dated March 19, 2013, requesting an excused absence and approval of travel.

Action: The travel for Council Member Liccardo was approved and the absence due to authorized City business was excused. (11-0.)

- 2.13 As recommended by the Rules and Open Government Committee on February 6, 2013:**

- (a) Approve the District 5 Neighborhood Association Appreciation Dinner as a City Council sponsored Special Event.**
(b) Approve and accept donations from various individuals, businesses, or Community groups to support the event.

CEQA: Not a Project. (City Clerk)

[Rules Committee referral 02/06/13 – Item G(2)]

Documents Filed: Memorandum from Acting City Clerk Toni Taber, CMC, dated February 7, 2013, transmitting the recommendations of the Rules and Open Government Committee.

Action: The District 5 Neighborhood Association Appreciation Dinner as a City Council sponsored Special Event was approved and donations from various individuals, businesses, or Community groups to support the event were authorized. (11-0.)

- 2.14 As recommended by the Rules and Open Government Committee on February 6, 2013:**

- (a) Approve the District 1 Annual Greek Flag Raising Event as a City Council sponsored Special Event.**
(b) Approve expending funds and accepting donations from various individuals, businesses and community groups to support this event.

CEQA: Not a Project. (City Clerk)

[Rules Committee referral 02/06/13 – Item G(3)]

Documents Filed: Memorandum from Acting City Clerk Toni Taber, CMC, dated February 7, 2013, transmitting the recommendations of the Rules and Open Government Committee.

Action: The District 1 Annual Greek Flag Raising Event as a City Council sponsored Special Event was approved and donations from various individuals, businesses, or Community groups to support the event were authorized. (11-0.)

2.15 As recommended by the Rules and Open Government Committee on February 6, 2013, adopt a resolution appointing representatives to the Santa Clara Valley Habitat Agency Governing Board and Implementation Board as follows:

- (a) Appoint Council Member Herrera and Council Member Khamis to serve of the Governing Board and Council Member Chu and Council Member Oliverio to serve as their alternates.**
- (b) Appoint Council Member Khamis to serve on the Implementation Board and Council Member Herrera to serve as his alternate.**
- (c) Appoint Joseph Horwedel, Director of Planning, Building and Code Enforcement, to serve on the Implementation Board, and Andrew Crabtree, Division Manager, to serve as his alternate.**

(Mayor)

[Rules Committee referral 02/06/13 – Item G(4)]

Documents Filed: (1) Memorandum from Mayor Reed, dated February 8, 2013, recommending adoption of a resolution. (2) Memorandum from Acting City Clerk Toni Taber, CMC, dated February 7, 2013, transmitting the recommendations of the Rules and Open Government Committee.

Action: Resolution No. 76548, entitled: “A Resolution of the Council of the City of San José Appointing Representatives to the Santa Clara Valley Habitat Agency Governing Board and Implementation Board”, was adopted. (11-0.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

3.6 As recommended by the Public Safety, Finance and Strategic Support Committee on January 24, 2013, accept the 2011-12 Annual Performance Audit of Team San José’s Management of the City’s Convention and Cultural Facilities. (City Auditor) [Public Safety, Finance and Strategic Support Committee referral 1/24/13 – Item D(5)]

Documents Filed: (1) Memorandum from Council Members Constant and Liccardo, dated February 8, 2013, recommending approval of the audit, with direction to the City Manager. (2) Memorandum from Acting City Clerk Toni Taber, CMC, dated January 29, 2013, transmitting the recommendations of the Public Safety, Finance and Strategic Support Committee.

City Auditor Sharon W. Erickson presented the Report on the 2011 – 2012 Annual Performance Audit of Team San José’s Management of the City’s Convention and Cultural Facilities. Mayor Reed and City Manager Debra Figone presented introductory remarks.

3.6 (Cont'd.)

Motion: Council Member Constant moved approval of the memorandum he cosigned with Council Member Liccardo, dated February 8, 2013, recommending approval of the audit, with direction to the City Manager as described below in "Action". Council Member Liccardo seconded the motion.

Mayor Reed requested to amend the motion to direct Staff to take a broader look at the financial performance measures (Fund 536) and appropriate incentives and to explore and analyze the survey work that is currently being done by Team San José. The amendments to the motion were accepted by Council Members Constant and Liccardo.

Vice Mayor Nguyen expressed support to the motion on the floor.

City Attorney Richard Doyle, City Auditor Sharon W. Erickson, City Manager Debra Figone, William Sherry, Chief Executive Officer, Team San José and Assistant to the City Manager/Downtown Manager Lee C. Wilcox responded to Council questions and concerns.

Public Comments: Michael Mulcahy, Chair, Board of Directors, Team San José, spoke in support to the Staff recommendations. David Wall expressed opposition to the Staff recommendations.

Action: On a call for the question, the motion carried, the memorandum from Council Members Constant and Liccardo, dated February 8, 2013, was approved, accepting the Team San José Performance Audit, with the City Manager directed to: (1) Negotiate and execute an amendment to the Management Agreement to eliminate the individual 90% requirement as part of the Performance/Incentive Measures, relying on a total weighted performance score. (2) Continue discussions with Team San José and Convention, Sports and Leisure, LLC (CSL) to develop new theater performance measures, for the new Management Agreement currently being negotiated, which more accurately reflects the desired benefits to Downtown San José. The City Manager was further directed to: (a) Take a broader look at the financial performance measures (Fund 536) and appropriate incentives. (b) Explore and analyze the survey work that is currently being done by Team San José. (10-1. Noes: Oliverio.)

- 3.8**
- (a) Interview applicants for appointment to the Elections Commission.**
 - (b) Appoint two members to the Elections Commission.**
 - (c) If no appointment is made, direct the City Clerk to continue recruitment efforts and bring additional applicants forward for consideration within 90-days.**
- (City Clerk)**
(Rules Committee referral 02/06/13)

3.8 (Cont'd.)

Documents Filed: Memorandum from Acting City Clerk Toni J. Taber, CMC, dated February 8, 2013, recommending interviewing applicants for appointments and appoint two members to the Elections Commission.

Action: Four applicants were interviewed. Michael Smith, Incumbent, was reappointed and Chris Peacock was appointed, each to fill four year terms expiring March 1, 2017 to the Elections Commission.

- 3.3 (a) **Approve the 2012-2013 Mid-Year Budget Review Report.**
(b) **Adopt related Appropriation Ordinance and Funding Sources Resolution amendments in various funds as detailed in Section III (Recommended Budget Adjustments and Clean-Up Actions) of the 2012-2013 Mid-Year Budget Review Report.**

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

Documents Filed: (1) Memorandum from Council Members Constant and Liccardo, dated February 8, 2013, recommending authorization for the City Manager to reimburse Team San José for expenses and adoption of appropriation ordinance amendments. (2) The 2012 – 2013 Mid-Year Budget Review from the Office of the City Manager, dated January 2013.

Budget Director Jennifer Maguire provided the 2012 – 2013 Mid-Year Budget Review Report and responded to Council questions and concerns.

Motion: Council Member Constant moved approval of the Staff recommendations and the memorandum he cosigned with Council Member Liccardo, dated February 8, 2013, with direction as described below in “Action”. Council Member Liccardo seconded the motion.

Extensive Council discussed ensued.

Council Member Liccardo requested to amend the motion to direct the City to circulate an information memorandum to the Council detailing the Team San José final reimbursement items. The amendment was accepted by Council Member Constant.

Public Comments: Claudia Shope expressed concern about how the City of San José employees are being treated. Ross Signorino expressed concern about the street lights that have been turned off. David Wall asked why the Water Pollution Control Plant was not mentioned.

3.3 (Cont'd.)

Action: On a call for the question, the motion carried, the 2012 – 2013 Mid-Year Budget Review Report was approved, Ordinance No. 29208, entitled: “An Ordinance of the City of San José Amending Ordinance No. 29102 to Appropriate Monies in the General Fund and Various Special and Capital Funds; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption” and Resolution No. 76550, entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 76302 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2012-2013 To Adjust Revenues in the General Fund and Various Special and Capital Funds”, were adopted, and the memorandum from Council Members Constant and Liccardo, dated February 8, 2013, was approved: (1) Authorizing the City Manager to reimburse Team San José for expenses that have been identified that relate to the Convention Center Expansion and/or other applicable City-related expenses in an amount not to exceed the appropriation below. (2) Adoption of the following appropriation ordinance amendments in the Convention and Cultural Facilities Fund: (a) Increase the Convention Facilities Operations appropriation in the amount of \$350,000. (b) Decrease the Unrestricted Ending Fund Balance in the amount of \$350,000. (3) The City Manager was directed to circulate an information memorandum to the Council detailing the Team San José final reimbursement items. (9-2. Noes: Campos, Kalra.)

3.4 Accept the report on the results of the 2013 Community Budget Survey. (Mayor)

Documents Filed: The City of San José 2013 Budget Priorities Survey Report of Findings dated February 2013 from Fairbank, Maslin, Maullin, Metz and Associates.

David Metz, Fairbank, Maslin, Maullin, Metz and Associates presented the report on the results of the 2013 Community Budget Survey and responded to Council questions.

Public Comments: Providing comments to the survey were Ross Signorino, David Wall, Shaunn Cartwright, Joseph Rosas and James Lee.

Action: Upon motion by Council Member Herrera, seconded by Council Member Oliverio and carried unanimously, the report on the results of the 2013 Community Budget Survey was accepted. (10-0-1. Absent: Khamis.)

- 3.5 (a) **Approve a Program Development Agreement with Chevron Energy Solutions for the purpose of conducting preliminary and investment grade audits on City facilities in the maximum amount of \$150,000.**
- (b) **Accept the report and approve the program direction for project financing and implementation of projects identified through the implementation of the Program Development Agreement.**

CEQA: Not a Project, File No. PP10-066(a), Purchase of Supplies, Equipment & Professional Services with no changes in the physical environment. (Public Works)

3.5 (Cont'd.)

Documents Filed: (1) Memorandum from Mayor Reed, Vice Mayor Nguyen, Council Members Liccardo and Rocha, dated February 8, 2013, recommending approval of the Staff recommendations. (2) Memorandum from Director of Public Works David Sykes, dated January 22, 2013, recommending approval of the agreement and acceptance of the report. (3) Letter from Neil Struthers, Chief Executive Officer, dated February 4, 2013, stating concurrence with the Staff recommendations.

Director of Public Works David Sykes and Deputy Director of Public Works Matthew Morley presented the report and responded to Council questions.

Motion: Council Member Rocha moved approval of the memorandum he cosigned with Mayor Reed, Vice Mayor Nguyen and Council Member Liccardo, dated February 8, 2013, recommending approval of the Staff recommendations. Council Member Liccardo seconded the motion.

Mayor Reed, Vice Mayor Nguyen, Council Members Constant, Rocha, Liccardo, Chu and Campos provided meeting disclosures.

Public Comments: Speaking in support to the Staff recommendations were Sal Ventura, Building Trades; Anne Smart, Silicon Valley Leadership Group; Lindsey Corbin, Chevron Energy Solution and David Wall.

Action: On a call for the question, the motion carried unanimously, the memorandum from Mayor Reed, Vice Mayor Nguyen and Council Members Liccardo and Rocha, dated February 8, 2013, was approved, the Staff recommendations were accepted as described in Item 3.5(a)(b) above. (10-0-1. Absent: Khamis.)

COMMUNITY & ECONOMIC DEVELOPMENT

4.1 Consideration of an ordinance rezoning the real property located on the southeast corner of West San Carlos Street and South Bascom Avenue (1990 West San Carlos Street) from the CP Commercial Pedestrian Zoning District to the CG Commercial General Zoning District on a 0.65 gross acre site (Hobbs Soon What Trustee & Et Al, Owner). CEQA: Envision San José 2040 General Plan Final Program EIR. (Planning, Building and Code Enforcement) C13-001 – District 6

Documents Filed:(1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C13-001, dated January 18, 2013, recommending approval of the subject rezoning. (2) Proof of Publication of Notice of Public Hearing, executed on January 25, 2013, submitted by the City Clerk.

4.1 (Cont'd.)

Motion: Council Member Oliverio moved approval of the Staff recommendations. Council Member Liccardo seconded the motion.

Mayor Reed opened the public hearing.

Public Comments: Anthony Sacco, Burbank Community Association, expressed opposition to the project because of the increased noise, air pollution, chemicals and that it would not enhance the neighborhood character.

Jeffrey Niederauer, Western Appliance spoke in support of the Staff recommendations and stated that a new business at the corner of Bascom and West San Carlos will spur the revitalization of the area.

David Wall stated that this business will be keeping with the City of San José's Green Vision Policy and added that he looks forward to buying his next Vespa from San José BMW.

Joe Coscarelli, San José Motosport spoke to the merits of the project and addressed the neighborhood concerns.

Will Hodgson, San José Motosport presented closing remarks and added that he anticipated increasing revenues and bringing in more sales tax for the City of San José.

Mayor Reed closed the public hearing.

Action: On a call for the question, the motion carried unanimously, Ordinance No. 29209, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the Southeast Corner of West San Carlos Street and South Bascom Avenue on a 0.65 Gross Acre Site (1990 West San Carlos Street) To the CG Commercial General Zoning District", was passed for publication. (10-0-1. Absent: Khamis.)

4.2 **As recommended by the Rules and Open Government Committee on February 6, 2013:**

- (a) **Adopt a resolution approving an amendment to the North San José Area Development Policy to amend the North San José Traffic Impact Fee Incentive Program to expand the square footage allocation by an additional 250,000 sf.**
- (b) **Direct the City Manager to analyze the potential impact on transportation improvements and bring recommendations to the City Council in the budget process for modifications to the Transportation Improvement Program or funding to offset the potential impacts.**

CEQA: Resolution No. 72768, Addendum to the North San José Policy Update EIR. (Mayor)

[Rules Committee referral 02/06/13 – Item G(5)]

4.2 (Cont'd.)

Documents Filed: (1) Memorandum from Mayor Reed, dated February 8, 2013, recommending an amendment to the North San José Traffic Impact Fee Incentive Program to expand by 250,000 square feet and to direct the City Manager to analyze the potential impact on transportation improvements and bring recommendations to the City Council in the budget process for modifications to the Transportation Improvement Program or funding to offset the potential impacts. (2) Memorandum from Acting City Clerk Toni Taber, CMC, dated February 7, 2013, transmitting the recommendations of the Rules and Open Government Committee. (3) Supplemental memorandum from Director of Economic Development/Chief Strategist Kim Walesh and Director of Planning, Building and Code Enforcement Joseph Horwedel, dated February 8, 2013, providing context and analysis to the recommendation included in the memorandum from Mayor Reed, dated January 31, 2013, forwarded to the Rules and Open Government Committee on February 6, 2013. (4) Letter from Matthew Mahood, President/CEO, San José Silicon Valley Chamber of Commerce, dated February 11, 2013, expressing support to the Staff recommendations. (5) Letter from Doug Lowell, Director, Cisco, dated February 11, 2013, expressing support to the Staff recommendations. (6) Letter from Charlie Bae, President, Samsung, dated February 8, 2013, expressing support to the Staff recommendations. (7) Letter from Dean Rubinson, Senior Vice President, Ellis Partners, dated February 8, 2013, expressing support to the Staff recommendations.

Mayor Reed presented opening comments.

Motion: Vice Mayor Nguyen moved approval of the memorandum from Mayor Reed, dated February 8, 2013, as described in “Action” on Page 17. Council Member Herrera seconded the motion.

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

Council Member Chu expressed opposition to the motion on the floor and voiced concerns about the lack of traffic impact fees to mitigate the impacts.

Mayor Reed, Council Members Campos and Rocha provided meeting disclosures.

Council Member Liccardo requested to amend the motion to direct the Director of Transportation to meet with Council Member Chu to prioritize North San José projects in an attempt to secure OneBayArea Grant Program funding (OBAG) and funding through NTC to ensure the concerns related to the areas, i.e. Montague Expressway, Highway 101, Mabury and other projects are receiving strong priorities in our region. The amendment was accepted by Vice Mayor Nguyen and Council Member Herrera.

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

4.2 (Cont'd.)

Action: On a call for the question, the motion carried, Resolution No. 76551, entitled: “A Resolution of the Council of the City of San José Amending the North San José Area Development Policy to Amend the Temporary Traffic Impact Fee Incentive Program to Increase the Maximum Amount of Square Footage of New Industrial Development That Can Be Eligible for the Program from One Million Square Feet to One Million Two Hundred Fifty Thousand Square Feet”, was adopted, the memorandum from Mayor Reed, dated February 8, 2013, was approved: including: the North San José Traffic Impact Fee Incentive Program was expanded by 250,000 square feet and the City Manager was directed to analyze the potential impact on transportation improvements and bring recommendations to the City Council in the budget process for modifications to the Transportation Improvement Program or funding to offset the potential impacts, and the Director of Transportation was directed to meet with Council Member Chu to prioritize North San José projects in an attempt to secure OneBayArea Grant Program funding (OBAG) and funding through NTC to ensure the concerns related to the areas, i.e. Montague Expressway, Highway 101, Mabury and other projects are receiving strong priorities in our region. (9-1-1. Noes: Chu. Absent: Khamis.)

REDEVELOPMENT – SUCCESSOR AGENCY

9.1 Adopt resolutions of the City Council and Successor Agency Board:

- (a) **Approving the Recognized Obligation Payment Schedule for July to December, 2013 (ROPS 13-14A).**
- (b) **Approving the Administrative Budget for July-December, 2013 and directing staff to present the approved Administrative Budget for July-December, 2013 to the Oversight Board for approval.**

CEQA: Not a Project, File No. PP10-066, Agreements and Contracts. (Successor Agency)

Action: Deferred to February 26, 2013 per Administration.

9.2 **Approve a Termination Agreement with the Gillick Family Partnership to terminate that certain Parking Lease Agreement dated March 27, 2009, of the surface parking lot located at the corner of Race Street and The Alameda for a final payment by the Successor Agency of \$6,486. CEQA: Not Project, File No. PP10-066, Agreements and Contracts. (Successor Agency)**

Documents Filed: Memorandum from City Manager Debra Figone, dated January 30, 2013, recommending approval of a Termination Agreement.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Herrera and carried unanimously, a Termination Agreement with the Gillick Family Partnership to terminate that certain Parking Lease Agreement dated March 27, 2009, of the surface parking lot located at the corner of Race Street and The Alameda for a final payment by the Successor Agency of \$6,486, was approved. (6-0-5. Absent: Campos, Chu, Constant, Kalra, Khamis.)

STRATEGIC SUPPORT SERVICES

3.7 Adopt a resolution authorizing the City Attorney to join efforts as amicus curiae to support the City of San Francisco in their upcoming submission to the United States Supreme Court challenging the constitutionality of Proposition 8 (California Marriage Protection Act). (Kalra/Campos/Chu/Rocha) (Referred from 2/5/13 – Orders of the Day)

Documents Filed: Memorandum from Council Members Kalra, Campos, Chu and Rocha, dated February 5, 2013, recommending joining the City of San Francisco in their upcoming submission to the United States Supreme Court challenging the constitutionality of Proposition 8.

Mayor Reed presented introductory remarks.

Motion: Council Member Kalra moved approval of the memorandum he cosigned with Council Members Campos, Chu and Rocha, dated February 5, 2013, to join the City of San Francisco in their upcoming submission to the United States Supreme Court challenging the constitutionality of Proposition 8. Council Member Herrera seconded the motion.

City Attorney Richard Doyle responded to Council questions and concerns.

Public Comments: Speaking in support to the motion on the floor were: Reverend Darlene Bogle, First Congregational UCC; Fred Hirsch, Judy Rickard, Lisa and Bren, Jordon Eldridge, James Gonzales, Peter Van Der Pas, South Bay Pride at Work; Rhonda Harper, Franklin Ramos, The National Association for the Advancement of Colored People (NAACP); Omar Torres, Jo Kenny, Shaunn Cartwright and James Lee, Peninsula Direct Action; Joseph Rosas, Ross Signorino, Martha O'Connell, Jeremy Barousse, Dameyon Ford, Joshua Barousse, Silicon Valley Young Democrats; Jamie McLeod, Dennis Chiu, Bay Area Municipal Elections Committee (BAYMEC); Ben Field, South Bay Labor Council; David Wall, Anthony Sacco, Tom Linebarger and Sarah Julian.

The following speakers submitted a card in support to the motion on the floor: Steve Preminger, Rich Constantine, Larry Yamasaki, Judy Chirco, Anu Mandavilli, Friends of South Asia; Nick, Ruth Krantz, Ashley Roybal-Reid, Office of Congressman Mike Honda; Claudia Shope and J. Manual Herrera.

Vice Mayor Nguyen and Council Members Kalra, Liccardo, Constant, Herrera, Campos and Rocha spoke in support to the motion on the floor.

Mayor Reed provided closing comments. Mayor Reed pointed out that the residents of California have made their decision on this law and he voiced his support for California law.

3.7 (Cont'd.)

Action: On a call for the question, the motion carried, Resolution No. 76552, entitled: “A Resolution of the Council of the City of San José Authorizing the City Attorney to Join Efforts as Amicus Curiae to Support the City of San Francisco in Their Upcoming Submission to the United States Supreme Court Challenging the Constitutionality of Proposition 8 (California Marriage Protection Act)”, was adopted. (9-1-1. Noes: Reed. Absent: Khamis.)

NOTICE OF CITY ENGINEER’S PENDING DECISION ON FINAL MAPS

In accordance with Sec. 19.16.140d of the San José Municipal Code, this is notice of the City Engineer's pending decision on the following Final Maps:

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/ Units</u>	<u>Type</u>	<u>Proposed Decision</u>
10126	S/S of William Street, approx 350’ w/o S. 24 th Street	3	Taylor Morrison of CA, LLC	10 Lots/ 62 Units	MFA	Approval

OPEN FORUM

David Wall commented about various issues, including the vagrant encampment behind Columbus Park.

ADJOURNMENT

The Council of the City of San José was adjourned at 7:43 p.m. in memory of brothers Danny Santiago and Michael Wagner, who passed away in May and December of 2012, after years of dedicated service to the Alviso community through the Santa Visits Alviso Foundation. (Chu)

Minutes Recorded, Prepared and Respectfully Submitted by,

Toni J. Taber, CMC
Acting City Clerk

smd/02-12-13 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.tv>. For information on any ordinance that is not hyperlinked to this document, please contact the Office of the City Clerk at (408) 535-1266.