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## MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, APRIL 16, 2013

The Council of the City of San José convened in Regular Session at 9:07 a.m. in the Council Chambers at City Hall.

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

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

### STRATEGIC SUPPORT SERVICES

#### 3.2 Accept Labor Negotiations Update.

There was no Staff presentation.

### CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:08 a.m. to a Closed Session in Room W133 (A) to confer with Legal Counsel pursuant to Government Code Section 54956.9, Subsection (b) with respect to anticipated litigation: Claimants: In re Claim of Ghemis; City Department: Parks, Recreation and Neighborhood Services. (B) to confer with Legal Counsel pursuant to Government Code Section 54956.9, Subsection (b) with respect to anticipated litigation in one (1) matter. (C) to confer with Legal Counsel pursuant to Government Code Section 54956.9, Subsection (a) with respect to existing litigation: (1) In re: Claim of Busalacchi; Amount of Money or Other Relief Sought: Administrative Appeal. (2) In re: Claim of Toscano; Amount of Money or Other Relief Sought: Administrative Appeal. (3) Northern California River Watch v. City of San José; Names of Parties Involved: Northern California River Watch, City of San José; Court: U.S. District Court; Case No: 3:12-CV-01624 MEJ; Amount of Money or Other Relief Sought: Damages according to proof. (4) 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. (5) San José Police Officers' Association v. City, et al. Names of Parties Involved: San José Police Officers' Association, City of San José, Board of

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

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. (6) 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 1-50, 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. (7) 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 a City Manager of the City of San José, Does 1 – 15, The Board of Administration for the 1961 San José Police and Fire Department 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. (8) 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 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. (9) 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 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. (10) 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 capacity as City Manager of the City of San José, The Board of Administration for the Federated City Employees' 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. (11) Citizens Against Airport Pollution v. City, et al; Names of Parties Involved: Citizens Against Airport Pollution, an unincorporated association, Does 1-5, City of San José, City Council of the City of San José and Does 6-10, Does 10-30, Real Parties in Interest; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV-177290; Amount of Money or Other Relief Sought: City to set aside and void approvals relating to 8<sup>th</sup> addendum to Airport Master Plan. (12) Carrillo, Alexandra v. City; Names of Parties Involved: Alexandra Carrillo, City of San José and Does 1-10; Court: Superior Court of California, County of Santa Clara; Case No: 1-13-CV-242864; Amount of Money or Other Relief Sought: Damages according to proof. (13) City v. International Association of Firefighters, et al; Names of Parties Involved: International Association of Firefighters, Local 230; Court: Superior Court of California, County of Santa Clara; Case No: 1-06-CV-075858; Amount of Money or Other Relief Sought: Motion to compel arbitration. (14) City v. International Association of Firefighters, et al;

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

Names of Parties Involved: International Association of Firefighters, Local 230; Court: Superior Court of California, County of Santa Clara; Case No: 1-09-CV-1337865; Amount of Money or Other Relief Sought: Arbitration of Firefighters Bill of Rights Issue. (15) Parker, et al. v. City of San José, et al; Names of Parties Involved: David Parker, James Williams, Jason Bivens, Debra Ward and Shannon Blean, City of San José and Does 1-20; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV-176055; Amount of Money or Other Relief Sought: Damages according to proof. (16) American Federation of State, County and Municipal Employees, City of San José; Court: State of CA Public Employment Relations Board; Case No: SF-CE-837-M; Amount of Money or Other Relief Sought: Damages according to proof. (17) IAFF Local 230 v. City; Names of Parties Involved: International Association of Firefighters Local 230, City of San José; Court: State California Public Employees Relations Board; Case No: SF-CE-941-M; Amount of Money or Other Relief Sought: Damages according to proof. (18) American Federation of State, County and Municipal Employees, et al. v. City; Names of Parties Involved: American Federation of State, County and Municipal Employees, City of San José; Court: State California Public Employees Relations Board; Case No: SF-CE-924-M; Amount of Money or Other Relief Sought: Damages according to proof. (19) IAFF Local 230 v. City; Names of Parties Involved: International Association of Firefighters Local 230, City of San José; Court: State California Public Employees Relations Board; Case No: SF-CE-969-M; Amount of Money or Other Relief Sought: Damages according to proof. (20) OE#3 v. City of San José; Names of Parties Involved: Operating Engineers Local Union No. 3, City of San José; Case No: SF-CE-900-M. Amount of Money or Other Relief Sought: Damages according to proof. (21) IFPTE Local 21, AFL-CIO v. City of San José; Names of Parties Involved: International Federation of Professional and Technical Engineers, City of San José; Court: State California Public Employees Relations Board; Case No: SF-CE-966-M. Amount of Money or Other Relief Sought: Damages according to proof. (24) American Federation of State, County and Municipal Employees, et al. v. City; Names of Parties Involved: American Federation of State, County and Municipal Employees, City of San José, Court: State California Public Employees Relations Board; Case No: SF-CE-972-M; Amount of Money or Other Relief Sought: Damages according to proof. (25) City of San José (11-0.). SJPOA; Names of Parties Involved: City of San José, San José Police Officers' Association; Case No: SCMCS ARB 11-0477. (26) City of San José v. SJPOA; Names of Parties Involved: City of San José, San José Police Officers' Association; Case No: CSMCS ARB 12-0171. (27) City of San José v. SJPOA; Names of Parties Involved: City of San José, San José Police Officers' Association; Case No: CSMCS ARB 11-0136. (28) City of San José v. SJPOA; Names of Parties Involved: City of San José, San José Police Officers' Association; Case No: CSMCS ARB 11-0412. (29) Great Oaks Water, Inc. v. City, et al. Names of Parties Involved: Great Oaks Water, Inc., John W.S. Roeder, Betty B. Roeder, Betty B. Roeder Trust A and William C. Miller, Jr. and Betty B. Roeder, Trustees of the Walter S. Roeder Trust B, The City of San José, The San José Redevelopment Agency, Southbay Water Recycling, Does 1 – 100; Court: Superior Court of California, County of Santa Clara; Case No: 1-04-CV012008; Amount of Money or Other Relief Sought: Damages according to proof. (30) County of Alameda,

## CLOSED SESSION (Cont'd.)

et al. v. AMBAC Financial, et al; Names of Parties Involved: County of Alameda, City and County of San Francisco, City of Los Angeles, Los Angeles Department of Water and Power, Los Angeles World Airports, City of Oakland, City of Richmond, Redwood City, East Bay Municipal Utility District, City of Sacramento, Sacramento Suburban Water District, Sacramento Suburban Water District, Sacramento Municipal Utility District, City of San José, City of Stockton, The Redevelopment Agency of the City of Stockton, County of Tulare, The Regents of the University of California, The Redevelopment Agency of the City of San José, AMBAC Financial Group, Inc., AMBAC Assurance Corporation, MBIA, Inc., MBIA Insurance Corporation, MBIA Insurance Corp. of Illinois, aka National Public Finance Guarantee Corporation, Syncora Guarantee, Inc., fka XL Capital Assurance Inc., Financial Guaranty Insurance Company, Financial Security Assurance, Inc., CIFG Assurance North America, Inc., Assured Guaranty Corp., Jason Kissane, Does 1-50; Court: Superior Court of California, In and for the City and County of San Francisco; Amount of Money or Other Relief Sought: Damages according to proof. (31) RDA/City vs. Bank of America, N.A., et al; Names of Parties Involved: City of San José, The San José Redevelopment Agency, Bank of America, N.A., Merrill Lynch and Co., Inc., UBS AG, UBS Financial Services, Inc., UBS Securities, LLC, MBIA, Inc., Citibank, N.A., Citigroup Financial Products Inc., Citigroup Global Markets Holdings Inc., Morgan Stanley, Rabobank Group, Bayerische, Landesbank Gironzentrale, Piper Jaffray & Co., Societe Generale SA, Financial Security Assurance, Inc., Assured Guaranty US Holdings Inc., Dexia S.A., National Westminster Bank, PLC, Natixis Funding Corp., Natixis S.A., The Goldman Sachs Group, Inc., Goldman Sachs Mitsui Marine Derivative Products, L.P., Goldman Sachs Bank USA, CDR Financial Products, Winters & Co., Advisors, LLC, George K. Baum & Co., Sound Capital Management, Inc., Investment Management Advisory Group, Inc., First Southwest Company, PFM Investment, LLC, PFM Asset Management LLC. Court: United States District Court, Northern District of California, San José Division; Case No: CV10 2199; Amount of Money or Other Relief Sought: Damages according to proof. (32) Sipple, et al. v. City of Alameda, et al; Names of Parties Involved: Donald Sipple, John Simon, Karl Simonsen, Christopher Jacobs, Settlement Class Representatives, New Cingular Wireless PCS LLC, City of Alameda, County of Alameda, City of Albany, City of Alhambra, City of Arcadia, City of Baldwin Park, City of Beaumont, City of Bell, City of Bellflower, City of Benecia, City of Berkeley, City of Burbank, City of Calabasas, City of Cathedral, City of Ceres, City of Chico, City of Chico, City of Chula Vista, City of Citrus Heights, City of Claremont, City of Colton, City of Compton, City of Covina, City of Cudahy, City of Culver City, City of Cupertino, City of Daly City, City of Desert Hot Springs, City of Dinuba, City of Downey, City of East Palo Alto, City of El Cerrito, City of El Monte, City of El Segundo, City of Emeryville, City of Eureka, City of Exeter, City of Fairfax, City of Fairfield, City of Gardena, City of Gilroy, City of Glendale, City of Gonzales, City of Greenfield, City of Grover Beach, City of Guadalupe, City of Gustine, City of Hawthorne, City of Hayward, City of Hercules, City of Hermosa Beach, City of Holtville, City of Huntington Beach, City of Huron, City of Indio, City of Inglewood, City of Irwindale, City of La Habra, City of Lakewood, City of La Palma, City of La Verne, City of Lawndale, City of Lindsey, City of Long Beach, City of Los

## CLOSED SESSION (Cont'd.)

Alamitos, City of Los Altos, City of Los Angeles, Los Angeles County, City of Lynwood, City of Malibu, City of Mammoth Lakes, City of Maywood, City of Menlo Park, City of Modesto, City of Montclair, City of Monterey, City of Monterey Park, City of Moreno Valley, City of Mountain View, City of Norwalk, City of Oakland, City of Orange Cove, City of Oroville, City of Pacific Grove, City of Palm Springs, City of Palo Alto, City of Paramount, City of Pasadena, City of Pico Rivera, City of Piedmont, City of Pinole, City of Placentia, City of Pleasant Hill, City of Pomona, City of Port Hueneme, City of Porterville, City of Rancho Palos Verde, City of Redondo Beach, City of Redwood City, City of Rialto, City of Richmond, City of Riverside, City of Sacramento, City of Salinas, City of San Bernardino, City of Buenaventura (Ventura), City of San Francisco, City of San Gabriel, City of San Jose, City of San Leandro, City of San Luis Obispo, City of San Marino, City of San Pablo, City of Sanger, City of Santa Ana, City of Santa Barbara, City of Santa Cruz, City of Santa Monica, City of Seal Beach, City of Seaside, City of Sierra Madre, City of Soledad, City of South Pasadena, City Stanton, City of Stockton, City of Sunnyvale, City of Torrance, City of Tulare, City of Waterford, City of Watsonville, City of Westminster, City of Whittier, City of Winters, City of Woodlake, Does 1-50; Court: Superior Court of California, County of Santa Clara; Case No: BC462270; Amount of Money or Other Relief Sought: Damages according to proof. (33) Konnick v. Kaiser, et al; Names of Parties Involved: Michi Konnick, by her Gaurdian Ad Litem, Mircea G. Dragomir, CLPF and George Konnick, Kaiser Foundation Healthplan, Inc., Kaiser Foundation Hospitals, The Permanente Medical Group, Inc., Chandu A. Karadi, Johnson D. Chan, American Medical Response, Inc., Bonnie McPherson, Carlos Garcia, Thomas Cooper, The City of San José dba San José Fire, Rocco Francisco and Does 1-200; Court: Superior Court of California, County of Santa Clara; Case No: 1-11-CV-200068; Amount of Money or Other Relief Sought: Damages according to proof. (34) Seibert v. City of San José; Names of Parties Involved: Grant Seibert, City of San José, San José Civil Service Commission, Debra Figone as San José City Manager, Alex Gurza as San José Director of Employee Relations, William McDonald as Fire Chief for San José Fire Department, Does 1-10; Court: Superior Court of California, County of Santa Clara; Case No: 1-11CV2040986; Amount of Money or Other Relief Sought: Damages according to proof. (35) California Building Industry Association v. City, et al; Names of Parties Involved: California Building Industry Association, A California Nonprofit Corporation, City of San José, A California Municipal Corporation, City Council and Mayor of the City of San José, Does 1-200; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV-167289; Amount of Money or Other Relief Sought: Declaratory and Injunctive Relief. (36) Bernal, et al. v. City, et al. Names of Parties Involved: Mike C. Bernal, Susan R. Bernal, Nanetta Bernal, Lilian Bernal Auvinen, Katherine Lira, Diana Bernal-Tuyor, Mike A. Bernal, Gary James Bernal, Domenico Loverde, Tomas J. Martinez, Authur Paul Lira, Jr., Jerimiah Lira, Sommer Kai Espinosa, Lucia A. Bernal, Guillermo Espinosa, City of San José and Does 1-25; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV-116141; Amount of Money or Other Relief Sought: Damages according to proof. (37) Andy's BP, Inc. et al, v. City of San José, et al. Names of Parties Involved: Andy's BP, Inc., a California Corporation, Sabek, Inc., a California Corporation and

## CLOSED SESSION (Cont'd.)

Andy Saberi, an Individual, the City of San José, Joseph Horwedel, individually and Amir Shirazi, individually and dba Moe's Stop and Amir Shirazi, as Trustee for the Mohammad M. Shirazi Living Trust and Does 1-25; Court: United States District Court, Northern District of California, San José Division; Case No: 12-CV-01631 LHK; Amount of Money or Other Relief Sought: Damages according to proof. (38) Berg & Berg Enterprises, LLC v. City, et al; Names of Parties Involved: Berg & Berg Enterprises, LLC, City of San José, San José City Council and Does 1-50; Court: Superior Court of California, County of Santa Clara; Case No: 1-07-CV-091955; Amount of Money or Other Relief Sought: Damages according to proof. (39) California Clean Energy Committee v. City, et al; Names of Parties Involved: California Clean Energy Committee, City of San José, Does 1-50, FWSH Partners II, LLC, Edward D. Storm and Does 51-100; Court: Superior Court of California, County of Santa Clara; Case No: 1-11-CV-212623; Amount of Money or Other Relief Sought: Injunctive Relief; (40) City of Milpitas v. City, et al; Names of Parties Involved: City of Milpitas, a public entity, City of San José, public entity and Does 1-10; Court: Superior Court of California, County of Santa Clara; case No: 1-12-CV-233069; Amount of Money or Other Relief Sought: Petition for writ of mandate. (41) People/City v. Bevan, Warren; Names of Parties Involved: People of the State of California, ex rel., City Attorney of the City of San José, Wanda M. Bevan, an individual, Warren Bevan, aka Warren A. Bevan, an individual, Warren A. Bevan and Lynn E. Winnett-Bevan, Trustees of the Bevan Trust, created on 8/16/06 and Does 1-10; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV118193; Amount of Money or Other Relief Sought: Injunctive relief. (42) City v. Marquez, Rita and Avalos, Luzmarie; Names of Parties Involved: City of San José, Rita Marquez, Luzmarie Avalos, Court: Superior Court of California, County of Santa Clara; Case No: C-1354130; Amount of Money or Other Relief Sought: Damages according to proof. (43) People/City v. Rosales; Collins & Constant, Robert Collins, John Seaman, et al; Names of Parties Involved: People of the State of California, ex rel, City Attorney of San José and City of San José, Julian Rosales, an individual, dba Beautiful Temple International, Collins & Constant Investments, LLC, A California limited liability company, Robert Collins, an individual, John Seaman, an individual; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV235487; Amount of Money or Other Relief Sought: Injunctive Relief. (44) Ahluwalia, et al. v. City of San José, et al; Names of Parties Involved: Harsh R. Ahluwalia, individually and as successor-in-interest to Decedent Varun Kumar, Ravinder K. Ahluwalia, individually and as co-successor-in-interest to Decedent Varun Kumar, the Estate of Varun Kumar, City of San José, Chris Moore, in his official capacity as Chief of Police for the San José Police Department, Sergio Carabarin, in his individual and official capacities as an officer of the San José Police Department, Ryan Kimber, in his individual and official capacities as an officer of the San José Police Department, Phil Juan, in his individual and official capacities as an officer of the San José Police Department, and Does 1-50; Court: United States District Court, Northern District of California, San José Division; Case No: C13-0114 PSFG; Amount of Money or Other Relief Sought: Injunctive Relief. (45) Carter v. City of San José, et al; Names of Parties Involved: Jamil Carter, The City of San José, The San José Police Department (SJPD), Michael Sullivan, individually and in his

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

official capacity as Lieutenant, SJPd and Keith Cottrell, individually and in his official capacity as Sergeant, SJPd; Court: United States District Court, Northern District of California; Case No: CV12-01968 HRL; Amount of Money or Other Relief Sought: Damages according to proof. (46) Cicala, et al. v. City, et al; Names of Parties Involved: Paul Cicala, Enrico Sagullo, Erick Sanchez, City of San José, Robert Davis, Officers Ordaz, Higgins, Marfia, Kyono, Siegel and Does; Court: United States District Court, Northern District of California; Case No: C08-04032 PVT; Amount of Money or Other Relief Sought: Damages according to proof. (47) Chahal v. City of San José, Bach Thai Tran; Names of Parties Involved: Lakhbir Singh Chahal, Baljit Chahal, City of San José, Bach Thai Tran, Does 1-20; Court: Superior Court of California, County of Santa Clara; Case No: 1-11-CV-199202; Amount of Money or Other Relief Sought: Damages according to proof. (48) Correa v. City of San José, et al; Names of Parties Involved: Thomas Correa, The City of San José; The San José Police Department (SJPd), Michael Sullivan, individually and in his official capacity as Lieutenant, SJPd, Kimberly Hudson, individually and in his official capacity as Sergeant, SJPd; Court: United States District Court, Northern District of California, San José Division; Case No: CV12-05436 HRL; Amount of Money or Other Relief Sought: Damages according to proof. (49) Fujikawa, Michael v. City, Chief Chris Moore, et al; Names of Parties Involved: Michael Fujikawa, The City of San José, Police Chief Chris Moore, Officers Payne (Badge No. 3971), Officer Pfeifer (Badge No. 3951), Officer Jeffrey (Badge No. 3926), Officer Akery (Badge No. 3495) and Does 1-50; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-219612; Amount of Money or Other Relief Sought: Damages according to proof. (50) Galindo, Celina et al. v. Tassio, Kilmer, et al; Names of Parties Involved: Celina Galindo, Sabrina Galinda, Valente Galindo, IV, a minor, by and through his Guardian ad Litem, Gina Padilla, Officer Lee Tassio, Officer Anthony Kilmer and City of San José; Court: Superior Court of California, County of Santa Clara; Case No: CV13-0105 HRL; Amount of Money or Other Relief Sought: Damages according to proof. (51) Garden City, Inc. dba Casino M8trix, et al. v. City of San José, et al. Names of Parties Involved: Garden City, Inc., dba Casino M8trix, a California Corporation, Airport Parkway Two, LLC, a California limited liability company and Airport Opportunity Fund, LLC, a Delaware limited liability company, City of San José, a California municipal corporation, San José Police Department, for the City of San José, Richard Teng, individually and as Administrator of the San José Police Department Division of Gaming Control; Court: Superior Court of California, County of Santa Clara; Case No: 1-13-CV-240941; Amount of Money or Other Relief Sought: Damages according to proof. (52) Garden City, Inc. dba Casino M8trix, et al. v. City of San José, et al; Names of Parties Involved: Garden City, Inc., dba Casino M8trix, a California Corporation, Airport Parkway Two, LLC, a California limited liability company and Airport Opportunity Fund, LLC, a Delaware limited liability company, City of San José, a California municipal corporation, San José Police Department, for the City of San José, Richard Teng, individually and as Administrator of the San José Police Department Division of Gaming Control; Court: United States District Court, Northern District of California, San José Division; Case No: CV-13-0577 PSG; Amount of Money or Other Relief Sought: Damages according to proof. (53) Swallow, et al. v. City of San José;

## CLOSED SESSION (Cont'd.)

Names of Parties Involved: Eric Swallow, Jeanine Lunardi, City of San José; Court: Superior Court of California, County of Santa Clara; case No: 1-13-CV-243151; Amount of Money or Other Relief Sought: Damages according to proof. (54) Gonzales, Mary Lou v. City, et al. Names of Parties Involved: Mary Lou Gonzales, City of San José, as a municipal corporation, San José Police Chief Moore, individually and in his official capacity, SJPD Detective Yvonne Delacruz, in her official and individual capacity, SJPD Sgt. Archer, in his official capacity and individual capacity, SJPD Homicide Detective Jamie (Last Name Unknown), in his official capacity and individual capacity, SJPD Officers Doe 1 to Doe 7 in their individual and official capacities, SJPD Officers and Detectives and employees Doe 8-50; Court: United States District Court, Northern District of California, San José Division; Case No: CV13-0695 PJH; Amount of Money or Other Relief Sought: Damages according to proof. (55) Gonzales-Guerrero, Javier v. City, Brian Johst, Mark Stephens, et al; Names of Parties Involved: Javier Gonzales-Guerrero, City of San José, Brian Johst, Mark Stephens, Gary Petrakovitz and Tim Stephens; Court: United States District Court, Northern District of California, San José Division; Case No: CV12-03541 PSG; Amount of Money or Other Relief Sought: Damages according to proof. (56) Hellams, John, Charles Bernard and Marline Anderson v. City, et al; Names of Parties Involved: John Hellams, Charles Bernard, Marelene Anderson, City of San José, Does 1-50; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-227586; Amount of Money or Other Relief Sought: Damages according to proof. (57) Hernandez, Luis and Cindy Calderon v. City of San José, et al; Names of Parties Involved: Luis Hernandez, Cindy Calderon, City of San José, Ernie Alcantar, individually and his official capacity as Captain, SJPD and James Werkema, individually and his official capacity as Lieutenant, SJPD; Court: United States District Court, Northern District of California, San José Division; Case No: CV12-02952 HRL; Amount of Money or Other Relief Sought: Damages according to proof. (58) Kerkeles v. City of San José, et al; Names of Parties Involved: Michael Kerkeles, aka Michael Kerk, City of San José, Matthew Christian and Does 1-15; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV103523; Amount of Money or Other Relief Sought: Damages according to proof. (59) Montiel v. City, et al; Names of Parties Involved: Jermaine Montiel, Officer M. Williams, Officer C. Sheppard, Officer Hernandez, Officer Rodriguez, John Doe and Richard Doe, Robert Davis, City of San José and Does; Court: United States District Court, Northern District of California, San José Division; Case No: C07 05490 PSG; Amount of Money or Other Relief Sought: Damages according to proof. (60) City of San José, et al. v. BKD Investments, LLC, et al. Names of Parties Involved: People of the State of California, ex rel, City Attorney of the City of San José and the City of San José, BKD Investments, LLC, a California Limited Liability Company dba Hotel Elan, Pankaj K. Patel, an individual, Sanjay K. Patel, an individual, April Guzman, an individual and Does 1-100; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-227614; Amount of Money or Other Relief Sought: Permanent Injunction and Final Judgment. (61) People/City v. Stanley A. Fimowicz, et al. Names of Parties Involved: People of the State of California, ex rel, City Attorney of the City of San José, the City of San José, Stanley A. Fimowica, an individual, Stella L. Fimowicz, an individual and Does 1-10; Court: Superior Court of

## CLOSED SESSION (Cont'd.)

California, County of Santa Clara; Case No: 1-13-CV-243896; Amount of Money or Other Relief Sought: Damages according to proof. (62) People/City v. Chinh Hoang Nguyen dba La Visage Salon, et al. Names of Parties Involved: People of the State of California, ex rel, City Attorney of the City of San José and the City of San José, Chinh Hoang Nguyen aka Nguyen Chinh Hoang, an individual, dba La Visage Salon, Tung Van Vo, aka Andy Hoang Buu Vo aka Vo Tung, an individual, dba La Visage Salon, Sang Van Pham aka Pham Sang Van, an individual; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-226470; Amount of Money or Other Relief Sought: Damages according to proof. (63) Naymark, et al. v. City, et al. Names of Parties Involved: Janice Naymark, Ronald Naymark, City of San José, San José Police Department, Robert Davis, City of Campbell, Campbell Police Department, David Gullo, Town of Los Gatos, City of Monte Sereno, Los Gatos, Monte Sereno Police Department, Scott Seaman, City of Palo Alto, Lynn Johnson, City of Santa Clara, Santa Clara Police Department, Stephen D. Lodge, State of California, California Highway Patrol, Michael L. Brown, County of Santa Clara, Office of the Santa Clara County Sheriff, Laurie Smith and Does 1-25; Court: Superior Court of California, County of Santa Clara; Case No: 1-07-CV080008; Amount of Money or Other Relief Sought: Injunctive relief. (64) Rice, JoAnn, America Savin, et al. v. City, et al. Names of Parties Involved: JoAnn Rice, America Savin, Perry Nelson and W.N., a minor, by and through his Guardian and Litem, America Savin, City of San José, San José Police Department, Does 1-10; Court: United States District Court, Northern District of California, San José Division; Case No: 2:13-CV-00334-KJM-CKD; Amount of Money or Other Relief Sought: Damages according to proof. (65) Valdez, et al. v. City, et al. Names of Parties Involved: Franciscan Valdez, Ricardo Vasquez, Daniel Martinez, Jamil Stubbs, City of San José, San José Police Chief Robert Davis, Officer R. Agaman (4041), Officer Martin (#3894), Officer Rickert (#3734), Officer Wallace (#3922), Officer Orlando, Does 1-2500; Court: United States District Court, Northern District of California, San José Division; Case No: C09 00176 RMW; Amount of Money or Other Relief Sought: Damages according to proof. (66) Pham/Do v. City, et al. Names of Parties Involved: Vinh Huu Pham and Lan Thi Do, City of San José, a municipality of the State of California, Officer Brian Jeffrey, #3926, individually and his official capacity as a police officer, Officer Matthew Blackerby, #3999, individually and in his official capacity as a police officer and Does 1-100; Court: United States District Court, Northern District of California, San José Division; Case No: CV11-01526 EJD; Amount of Money or Other Relief Sought: Damages according to proof. (67) Pugh v. City, et al. Names of Parties Involved: Dwayne Pugh, City of San José and Does 1-100; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV189429; Amount of Money or Other Relief Sought: Damages according to proof. (68) Salinas, Roberta, George and Frances Salinasa, et al. v. City et al. Names of Parties Involved: Roberta Salinas, George Salinas, Frances Salinas, Carlos Salinas, Olivia Salinas, Loretta Salinas, City of San José and Does 1-50; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV-116174; Amount of Money or Other Relief Sought: Damages according to proof. (69) Noreen Salinas v. City, et al. Names of Parties Involved: Noreen Salinas, City of San José, Chief Robert Davis, Taser International, Inc., Does 1-10; Court: United States District Court, Northern District of

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

California, San José Division; Case No: C08-02625 RS (consolidated with C09-04410RS); Amount of Money or Other Relief Sought: Damages according to proof. (70) Vasquez v. City, et al. Names of Parties Involved: Ramon Jose Vasquez, Brian Ferrante, individually and as an Officer of the San José Police Department and Tom Morales, individually and as an Officer of the San José Police Department, Does 1-50; Court: United States District Court, Northern District of California, San José Division; Case No: CV10-00948 LKH; Amount of Money or Other Relief Sought: Damages according to proof. (71) Watson-Stalker, et al. v. City et al. Names of Parties Involved: Tracy Watson, Renee Stalker, Olivia Stalker, Shafer Watson, Riley Watson, County of Santa Clara, County of Santa Clara Department of Family and Children Services, County of Santa Clara Department of County Counsel, County of Santa Clara District Attorney's Office, Santa Clara Medical Center, Evergreen School District, City of San José, San José Police Department, Norma Sparks, Yazima Letona, Sharon Burgan, Jewels Rameriz, Vu Tran, Ann Miller Ravel, Rima Singh, Aaron West, George Kennedy, Clifton Black, Rose Real, Robert Pruitt, Cheryl Harms, Claudia Blodgett, Gary Kishimoto, John Hamilton, Anita Noble, Janet Kahle, Mary Ritter, David Kearns, Rajul Kazi, Rob Davis, William Hoyt, Craig Blank; Court: United States District Court, Northern District of California, San José Division; Case No: C06-04029 RMW; Amount of Money or Other Relief Sought: Damages according to proof. (72) City v. Western Roofing. Names of Parties Involved: City of San José, Western Roofing; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV123029; Amount of Money or Other Relief Sought: Damages according to proof. (73) City v. Rosdruliscesenbery Architecture, Inc., et al. Names of Parties Involved: City of San José, Rosdruliscesenbery Architecture, Inc., aka Michael Ross Charles Drulis Architects and Planners, a purported California corporation, Does 1-100; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-237767; Amount of Money or Other Relief Sought: Damages according to proof. (74) Shahrivar, Farid v. City, et al. Names of Parties Involved: Farid Shahrivar, City of San José, a municipality, Rodney Rapson, an individual, David Sykes, an individual, Harry Freitas, an individual, Katherine Jensen, an individual, David Printy, an individual, Danny Tso, an individual, Katrina Allen, an individual, Dough Baker, an individual, Alex Gurza, an individual, Sarah Nunes, an individual, Les White, an individual, Allen Demers, an individual, Rajiv Das, an individual, Adam Stempel, an individual, Steve Pagan, an individual, Angela Chen, an individual, Mark Danaj, an individual, Robert Fabela, an individual, Susan Lacy and Does 1-45; Court: United States District Court, Northern District of California, San José Division; Case No: CV1-0-01029 PSG; Amount of Money or Other Relief Sought: Damages according to proof. (75) Vagts, Hale and Patty Vagts v. State of California, et al. Names of Parties Involved: Hale Vagts and patty Vagts, State of California, City of San José and Does 1-40; Court: Superior Court of California, County of Santa Clara; Case No: 1-13-CV-239693; Amount of Money or Other Relief Sought: Damages according to proof. (76) Flores, Valerie v. City of San José, et al. Names of Parties Involved: Valerie Flores, City of San José, Does 1-25; Court: Superior Court of California, County of Santa Clara; Case No: 1-11-CV-212090; Amount of Money or Other Relief Sought: Damages according to proof. (77) Leath, Vicky Kim v. City, County of Santa Clara, et al. Names of Parties Involved: Vicky Kim

## CLOSED SESSION (Cont'd.)

Leath, City of San José, County of Santa Clara, Huyen Nguyen; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-227600; Amount of Money or Other Relief Sought: Damages according to proof. (78) McLaughlin, Shirli v. City of San José; Names of Parties Involved: Shirli McLaughlin, City of San José; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-236396; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-236396; Amount of Money or Other Relief Sought: Damages according to proof. (79) Ortiz v. City, et al. Names of Parties Involved: Esmeralda Galan and Jose Ortiz, Husband and Wife, Individually and as Parents and Successors in Interest of their Deceased Minor Son Mateo Ortiz, City of San José, a Charter City, David Alvernaz, Alycia Saaveda-Alvernaz and Does 1-20; Court: Superior Court of California, County of Santa Clara; Case No: 1-11-CV199150; Amount of Money or Other Relief Sought: Damages according to proof. (80) Perez, Cynthia v. City of San José; Names of Parties Involved: Cynthia Perez, City of San José and Does 1-25; Court: Superior Court of California, County of Santa Clara; Case No: 1-11-CV-209825; Amount of Money or Other Relief Sought: Damages according to proof. (81) Stand for San José, et al. v. City, et al. Names of Parties Involved: Stand for San José and Eileen Hannan, City of San José, City Council of the City of San José, Redevelopment Agency of the City of San José, Diridon Development Authority; Court: Superior Court of California, County of Santa Clara; Case No: 1-11-CV-214196; Amount of Money or Other Relief Sought: Injunctive Relief. (82) City of San José v. County of Santa Clara; Names of Parties Involved: City of San José, a municipal corporation, as Successor Agency to the Redevelopment Agency of the City of San José, Vinod K. Sharma, individually and in official capacity as Santa Clara County Director of Finance, County of Santa Clara; Court: Superior Court of California, County of Sacramento; Case No: 34-2012-80001190; Amount of Money or Other Relief Sought: Damages according to proof. (83) Ted Smith v. City, et al. Names of Parties Involved: Ted Smith, City of San José, a municipal entity, San José Redevelopment Agency, , a municipal entity, Harry Mavrogenes, in his official capacity as Executive Director of the San José Redevelopment Agency, Mayor Chuck Reed, in his official capacity as Mayor of the City of San José, Pete Constant, in his official capacity as Council Member of the City of San José, Ash Kalra, in his official capacity as Council Member of the City of San José, Sam Liccardo, in his official capacity as Council Member of the City of San José, Pierluigi Oliverio, in his official capacity as Council Member of the City of San José, Madison Nguyen, in her official capacity as Council Member of the City of San José, Rose Herrera, in her official capacity as Council Member of the City of San José, Judy Chirco, in her official capacity as Council Member of the City of San José, Kansen Chu, in his official capacity as Council Member of the City of San José, Nora Campos, in her official capacity as Council Member of the City of San José, Nancy Pyle, in her official capacity as Council Member of the City of San José and Does 1-20; Court: Superior Court of California, County of Santa Clara; Case No: 1-09-CV-150427; Amount of Money or Other Relief Sought: Damages according to proof. (84) Vietnamese-American Community of Northern California v. City, et al. Names of Parties Involved: Vietnamese-American Community of Northern California, City of San José, City Council of San José; Court: Superior Court of California, County of Santa Clara; Case No:

## CLOSED SESSION (Cont'd.)

1-08-CV-107082; Amount of Money or Other Relief Sought: For declaratory and injunctive relief according to proof. (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 Existing Contract or MOA: Memorandum of Agreement between City of San José and AEA. (3) Association of Maintenance Supervisory Personnel (AMSP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AMSP. (4) City Association of Management Personnel Agreement (CAMP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CAMP. (5) Confidential Employees' Organization, AFSCME Local 101 (CEO); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CEO. (6) International Association of Firefighters, Local 230 (IAFF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Association of Firefighters. (7) International Brotherhood of Electrical Workers (IBEW); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and IBEW. (8) Municipal Employees' Federation, AFSCME Local 101, AFL-CIO (MEF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and MEF; (9) International Union of Operating Engineers, Local No. 3 (OE#3); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Union of Operating Engineers, Local No. 3. (10) San José Police Officers' Association (SJPOA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association. (11) Association of Legal Professionals of San José (ALP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc. Web: <http://www.sanjoseca.gov/employeerelations/moa.asp>; Telephone for Employee Relations: 408-535-8150.

By unanimous consent, Council recessed from the Closed Session at 11:07 a.m. and reconvened to Regular Session at 1:32 p.m. in the Council Chambers.

Present: Council Members - Campos, Chu, Constant, Herrera, Kalra, Khamis, Liccardo, Nguyen, Oliverio (1:41 p.m.), Rocha, Reed.

Absent: Council Members - All Present.

## INVOCATION

Tony Salazar, Hope Services, sang for the Invocation. (District 4)

## PLEDGE OF ALLEGIANCE

Mayor Reed, accompanied by Third Grade Students, Payne Elementary School, led the Pledge of Allegiance.

## ORDERS OF THE DAY

Upon motion by Council Member Herrera, seconded by Council Member Khamis and carried unanimously, the Orders of the Day and the Amended Agenda were approved, and Ceremonial Item 1.3 was dropped. (11-0.)

## CEREMONIAL ITEMS

### **1.1 Presentation of a proclamation recognizing the week of April 14-20 as “National Library Week” in the City of San José. (Chu)**

Mayor Reed and Council Member Chu recognized the week of April 14 through April 20, 2013 as “National Library Week” in the City of San José.

### **1.2 Presentation of a proclamation declaring April 22, 2013 as “Earth Day” in the City of San José. (Chu)**

Mayor Reed and Council Member Chu recognized April 22, 2013 as “Earth Day” in the City of San José.

### **1.3 Presentation of a commendation to the Association for Viet Arts (AVA), which, as the first nonprofit Vietnamese arts organization in the Bay Area, has fostered excellence in Vietnamese American performing, visual, and literary arts and enriched the cultural landscape of this region. (Nguyen)**

Action: Dropped per Orders of the Day.

### **1.5 Presentation of a commendation to Good Karma Bikes for their contribution to the Transportation for Transformation movement. (Liccardo) (Rules Committee referral 4/10/13)**

Mayor Reed and Council Members Liccardo and Oliverio recognized and commended Good Karma Bikes.

## CONSENT CALENDAR

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

### 2.1 Approval of Minutes.

There were none.

### 2.2 Final Adoption of Ordinances.

There were none.

### 2.3 Approval of Council Committee Reports.

- (a) Rules and Open Government Committee Report of November 7, 2012. (Mayor)
- (b) Rules and Open Government Committee Report of November 14, 2012. (Mayor)
- (c) Rules in Lieu Report of November 20, 2012. (City Clerk)
- (d) Rules and Open Government Committee Report of November 28, 2012. (Mayor)

Documents Filed: (1) The Rules and Open Government Committee Reports dated November 7, 2012, November 14, 2012 and November 28, 2012. (2) The Rules in Lieu Report dated November 20, 2012.

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

### 2.4 Mayor and Council Excused Absence Requests.

There were none.

### 2.5 City Council Travel Reports.

There were none.

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

There were none.

### 2.7 Approve the easement modification agreement with Los Esteros Critical Energy Facility, LLC, extending the length of the existing permanent easement for ingress and egress to connect existing Los Esteros Critical Energy Facility, LLC facilities to Pacific Gas and Electric Company's sub-station facility. CEQA: Los Esteros Critical Energy Facility EIR, File No. PDCSH01-088, (Resolution No. 70259). Council District 4. (Economic Development)

## 2.7 (Cont'd.)

Documents Filed: (1) Memorandum from Director of Economic Development/Chief Strategist Kim Walesh, dated March 25, 2013, recommending approval of the easement modification agreement. (2) Supplemental letter from Chuck Reed, Chair, the Treatment Plant Advisory Committee, dated April 11, 2013, stating concurrence with the Staff recommendations.

Action: The easement modification agreement with Los Esteros Critical Energy Facility, LLC, extending the length of the existing permanent easement for ingress and egress to connect existing Los Esteros Critical Energy Facility, LLC facilities to Pacific Gas and Electric Company's sub-station facility, was approved. (11-0.)

## 2.8 (a) Award the construction contract for the 115KV Circuit Breaker Replacement Project to the low bidder, Clyde G. Steagall, Inc., Lomas, CA in the amount of \$344,927.

(b) Approve a contingency in the amount of \$34,493.

**CEQA: Exempt, File No. PP12-089. (Environmental Services)**

Documents Filed: (1) City Council Action Request from Director of Environmental Services Kerrie Romanow, dated March 25, 2013, recommending approval of the fourth amendment to the agreement. (2) Supplemental letter from Chuck Reed, Chair, the Treatment Plant Advisory Committee, dated April 11, 2013, stating concurrence with the Staff recommendations.

Action: The construction contract for the 115KV Circuit Breaker Replacement Project to the low bidder, Clyde G. Steagall, Inc., Lomas, CA in the amount of \$344,927, with related contingency, was approved. (11-0.)

## 2.9 (a) Report on bids and award of contract for 7146-Repairs and Installation of Water Services and Mains: 2013, to the lowest responsive bidder, San José Water Company, for the initial term of May 2013 through May 2015, in an amount not to exceed \$2,087,117.

(b) Adopt a resolution authorizing the Director of Environmental Services to exercise two options: one option to extend the term for an additional one-year after the initial term for an amount not to exceed \$1,043,558, and a second option to extend the term for an additional year after the first option year for an amount not to exceed \$1,043,558.

**CEQA: Exempt, File No. PP12-108. (Environmental Services/Public Works)**

Documents Filed: (1) Memorandum from Director of Environmental Services Kerrie Romanow and Director of Public Works David Sykes, dated March 25, 2013, recommending award of the contract to the lowest responsive bidder and adoption of a resolution. (2) Supplemental letter from Chuck Reed, Chair, the Treatment Plant Advisory Committee, dated April 11, 2013, stating concurrence with the Staff recommendations.

## 2.9 (Cont'd.)

Action: The award of contract for 7146-Repairs and Installation of Water Services and Mains: 2013, to the lowest responsive bidder, San José Water Company, for the initial term of May 2013 through May 2015, in an amount not to exceed \$2,087,117, was approved and Resolution No. 76603, entitled: “A Resolution of the Council of the City of San José Authorizing the Director of Environmental Services to Exercise Two Options to the Contract for 7146 – Repairs and Installation of Water Services and Mains: 2013, To San José Water Company: One Option to Extend the Term for an Additional One-Year After the Initial Term for An Amount Not To Exceed \$1,043,558, and a Second Option to Extend the Term for an Additional Year After the First Option Year for an Amount Not To Exceed \$1,043,558”, was adopted. (11-0.)

## 2.10 **Accept the Park Trust Fund annual report for fiscal year 2011-2012. CEQA: Not a Project, File No. PP10-069(a), Annual reports and assessments. (Parks, Recreation and Neighborhood Services)**

Documents Filed: Memorandum from Acting Director of Parks, Recreation and Neighborhood Services Julie Edmonds-Mares, dated March 25, 2013, recommending acceptance of the report.

Action: The Park Trust Fund annual report for fiscal year 2011-2012, was accepted. (11-0.)

## 2.11 **As recommended by the Rules and Open Government Committee on April 3, 2013, adopt a resolution in support of AB 503, Agnews Developmental Center: Transfer of Title. (Chu)**

Documents Filed: (1) Memorandum from Mayor Reed and Council Member Chu, dated April 11, 2013, recommending adoption of a resolution. (2) Memorandum from Acting City Clerk Toni Taber, CMC, dated April 3, 2013, transmitting the recommendations of the Rules and Open Government Committee.

Council Member Chu provided background of Assembly Bill 503 in support of a transfer of title of the Agnews Property to the Santa Clara Unified School District at fair market value.

Motion: Council Member Chu moved approval of the memorandum he cosigned with Mayor Reed, dated April 11, 2013. Council Member Constant seconded the motion.

Mayor Reed requested to amend the motion to direct the City Attorney to amend the resolution by adding to the last section a reference to educational services and a joint use plan for parks. The amendment was accepted by Council Members Chu and Constant.

Public Comments: Speaking in support to the motion on the floor were Bobbie Plough, Santa Clara Unified School District, Vladimir Raykin and Rocky Fernandez, District Director, representing Assembly Member Bob Wieckowski.

## 2.11 (Cont'd.)

Assistant Director of Planning, Building and Code Enforcement Laurel Prevetti responded to Council questions and concerns.

Action: On a call for the question, the motion carried unanimously, the memorandum from Mayor Reed and Council Member Chu, dated April 11, 2013. The City Manager was directed to: (a) Pursue a zoning designation that allows the future development of a K-12 school campus by Santa Clara Unified School District on 54 acres of the 81 acre Agnews property on Zanker Road and River Oaks Parkway and a regional park and other public uses on the balance of the site. (b) Initiate conversations with the State Department of General Services regarding City interest in acquiring the remaining acreage for regional park purposes and return to Council with a status report on feasibility of funding such a use in partnership with other County and regional partners. The City Attorney was directed to amend the resolution by adding to the last section a reference to educational services and a joint use plan for parks. Resolution No. 76604, entitled: "A Resolution of the Council of the City of San José In Support of Assembly Bill 503, Agnews Developmental Center: Transfer of Title", was adopted, as amended. (11-0.)

## 2.12 **Approve travel by Council Member Campos to Long Beach, CA on April 18-21, 2013 to attend the League of California Cities' Latino Caucus board meeting. Source of Funds: Mayor & Council Travel Fund. (Campos) (Rules Committee referral 4/10/13)**

Documents Filed: Memorandum from Council Member Campos, dated April 4, 2013, requesting approval of travel.

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

## 2.13 **Approve travel by the City Auditor to Nashville, TN on May 5-7, 2013 to attend the Association of Local Government Auditors (AGLA) 25<sup>th</sup> Annual Conference. Source of Funds: City Auditor's Non Personal Appropriation and Professional Development Funds. (City Auditor) (Rules Committee referral 4/10/13)**

Documents Filed: Memorandum from City Auditor Sharon W. Erickson, dated April 3, 2013, requesting approval of travel.

Action: The travel request for City Auditor Sharon W. Erickson was approved. (11-0.)

## 2.14 **As recommended by the Rules and Open Government Committee on April 10, 2013, approve a support position for AB 639 (Perez) – Veterans Housing & Homeless Prevention Act of 2014. (Housing) [Rules Committee referral 4/10/13 – Item G(2)]**

Documents Filed: Memorandum from Acting City Clerk Toni Taber, CMC, dated April 10, 2013, transmitting the recommendations of the Rules and Open Government Committee.

**2.14 (Cont'd.)**

Council Member Herrera expressed her support to Assembly Bill 639 (Perez) Veterans Housing and Homeless Prevention Act of 2014.

Action: Upon motion by Council Member Herrera, seconded by Council Member Liccardo and carried unanimously, a support position for AB 639 (Perez) – Veterans Housing and Homeless Prevention Act of 2014 was approved. (10-0-1. Absent: Chu.)

**2.15 As recommended by the Rules and Open Government Committee on April 10, 2013, approve the following positions on amendments to be considered by the League of California Cities (LOCC) membership and responded to by a mail in ballot:**

- (a) **Approve an oppose position to Amendment #1, Resolutions submitted to the League for presentation to the General Assembly must be concurred in by at least five or more cities or by city official from at least five or more cities.**
- (b) **Approve a support position for Amendment #2, the League Board may take a position on a statewide ballot measure by a 2/3rd vote of the Directors present. Currently, the Board may take positions with a simple majority vote.**

**(City Manager's Office)**

**[Rules Committee referral 4/10/13 – Item G(3)]**

Documents Filed: Memorandum from Acting City Clerk Toni Taber, CMC, dated April 10, 2013, transmitting the recommendations of the Rules and Open Government Committee.

Council Member Rocha pulled Item 2.15 from the Consent Calendar for Council discussion.

Motion: Council Member Rocha moved approval for an oppose position to Amendment #1 and a support position for Amendment #2. Council Member Constant seconded the motion.

Brief Council discussion ensued.

Action: On a call for the question, the motion carried unanimously, an oppose position to Amendment #1, Resolutions submitted to the League for presentation to the General Assembly must be concurred in by at least five or more cities or by city official from at least five or more cities was approved, and a support position for Amendment #2, the League Board may take a position on a statewide ballot measure by a 2/3rd vote of the Directors present was approved. (11-0.)

**END OF CONSENT CALENDAR**

## COMMUNITY & ECONOMIC DEVELOPMENT

### 4.1 As recommended by the Community and Economic Development Committee on March 25, 2013, accept staff's report on:

- (a) The Accomplishments of Economic Strategy Work Plan to date.
- (b) The status and use of development incentives.
- (c) The status of campus development and leasing opportunities.
- (d) The proposed Economic Strategy Work Plan.

**CEQA: Not a Project, File No. PP10-066(a), Staff Report. (Economic Development)**

Documents Filed: (1) Memorandum from Mayor Reed, Vice Mayor Nguyen and Council Members Herrera and Liccardo, dated April 12, 2013, recommending acceptance of the Staff report with further direction as described in "Action". (2) Memorandum from Acting City Clerk Toni Taber, CMC, dated March 20, 2013, transmitting the recommendations of the Community and Economic Committee. (3) Presentation slides dated April 16, 2013 summarizing the Tech Companies Served by Expedited Permit Process in 2012. (4) Staff presentation dated April 16, 2013 summarizing the Economic Strategy Update and the Proposed 18 Month Work Plan.

Director of Economic Development/Chief Strategist Kim Walesh presented the Economic Strategy Update and the Proposed 18 Month Work Plan.

Mayor Reed shared a brief slide presentation depicting the Tech Companies Served by Expedited Permit Process in 2012 and feedback from Samsung Semiconductor and Synaptics.

Mayor Reed requested that Staff track trends on what companies are saying and share the information with Council.

Motion: Council Member Herrera moved approval of the memorandum she cosigned with Mayor Reed, Vice Mayor Nguyen and Council Member Liccardo, dated April 12, 2013, approving the Staff report with further direction as described below in "Action". Council Member Liccardo seconded the motion.

Director of Economic Development/Chief Strategist Kim Walesh, Assistant Director of Planning, Building and Code Enforcement Laurel Prevetti, Business Development Manager Chris Burton, Deputy Director of Economic Development Nanci J. Klein and Assistant City Manager Edward K. Shikada responded to Council questions and concerns.

Public Comments: Ross Signorino spoke in support to the Staff recommendations but urged the Council not to forget education and immigration.

Action: On a call for the question, the motion carried unanimously, the memorandum from Mayor Reed, Vice Mayor Nguyen and Council Members Herrera and Liccardo, dated April 12, 2013, was approved, the Staff report on the accomplishments of the

#### 4.1 (Action Cont'd.)

Economic Strategy Work Plan to date, the status and use of development incentives, the status of campus development and leasing opportunities and the proposed 18 month Work Plan (July 2013 through December 2014) was accepted, with further direction to: (1) Focus on implementing the following Highest Priority Strategic Goals and Actions listed in Exhibit B of the 18 month Work Plan as described below. (a) Goal #6: Improve the Speed, Consistency and Predictability of the Development Review Process and Reduce Costs of operating a business in San José. 6.a Working through the Mayor's Ad Hoc Committee on Economic Competitiveness, ensure the timely delivery of major development projects that can have a measureable impact on job creation or revenues within the next 18 months, including those that will generate tax increment, property tax revenues, or sales tax revenues. 6.c Retain and improve the Expedited Planning Permit, Special Tenant Improvement and Industrial Tools Installation programs and continue to reorganize and streamline the development review process. (1) (b) Goal #1: Encourage Companies and Sectors that Can Drive the San Jose/Silicon Valley Economy and Generate Revenue for City Services and Infrastructure. 1.a Through the City's ongoing Business Outreach Program, incorporate focused retention and expansion visits with driving industry companies. 1.c Promote the key attributes of San Jose to businesses looking to expand or move as well as to property owners and the brokerage and development community. (c) Goal #2: Develop Retail to Full Potential, Maximizing Revenue Impact and Neighborhood Vitality. 2.a Advance destination retail projects on existing sites through the planning stage, including Almaden Ranch, Evergreen Arcadia, and Hitachi Cottle Road. 2.b Support retail and small businesses in Downtown and Neighborhood Business Districts and advance goals to provide access to public transportation as needed. (d) Goal #3: Preserve and Strengthen Manufacturing-Related Activity and Jobs. 3.a Preserve industrial lands and facilities that support manufacturing and protect existing industrial land uses from incompatible uses. (e) Goal #9: Keep Developing a Competitive, World Class Airport, and Attract New Air Service. 9.a Maintain a cost-competitive, efficient and attractive airport that can successfully compete with airports in the Bay Area and across the nation in recruiting carriers and flights to serve Silicon Valley. 9.b Execute strategy to recruit new international and domestic air service in partnership with the Silicon Valley business community. 9.c Facilitate private sector development of a new general aviation facility on the Airport's west side property. (f) Goal #10: Continue to Position Downtown as Silicon Valley's City Center. 10.b Position Downtown San Jose as an easy-to-access, competitive work environment for start-ups, scaling businesses, and freelancers by highlighting our innovation and creativity. 10.c Maintain a dialogue with existing downtown businesses, property owners and brokers to retain and grow and attract new businesses. (1) (g) Goal #12: Develop a Distinctive Set of Sports, Arts, and Entertainment Offering Aligned with San Jose's Diverse, Growing Population. 12.a Enable construction of the San Jose Earthquakes Major League Soccer Stadium. 12.b Continue planning for a Major League Baseball facility in the Diridon Station Area. (2) Update the Community and Economic Development Committee and City Council with six month progress reports of the accomplishments associated with implementing the Highest Priority Strategic Goals and Actions. (11-0.)

## ENVIRONMENTAL & UTILITY SERVICES

- 7.1 Consideration of an ordinance of the City of San José amending Section 15.10.290 of Chapter 15.10 of Title 15 (Public Utilities), Chapter 15.11 of Title 15 in its entirety, and Section 20.100.440 of Chapter 20.100 of Title 20 (The Zoning Ordinance) of the San José Municipal Code, all to modify the Water Efficient Landscape Standards for New and Rehabilitated Landscaping and to establish Water Efficient Landscape Regulations pursuant to State Law and to make other technical, formatting, or other nonsubstantive changes with those Chapters of Title 15 and Title 20. CEQA: Final Program Environmental Impact Report (EIR) for the envision San José 2040 General Plan, EIR Resolution No. 76041 (File No. PP12-100). Planning Commission recommends approval (7-0-0). (Planning, Building and Code Enforcement) (Deferred from 3/26/13 – Item 7.1)**

Documents Filed: (1) Memorandum from Planning Commission Secretary Joseph Horwedel, dated April 3, 2013, transmitting the Planning Commission recommendation. (2) Supplemental memorandum from Director of Environmental Services Kerrie Romanow and Director of Planning, Building and Code Enforcement Joseph Horwedel, dated April 15, 2013, providing additional information related to the applicability of the proposed water efficient landscape ordinance and examples of how this ordinance would apply to landscape projects submitted for approval by homeowners and residential developers. (3) Proof of Publication of Notice of Public Hearing, executed on February 8, 2013, submitted by the City Clerk.

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

Assistant Director of Planning, Building and Code Enforcement Laurel Prevetti and City Attorney Richard Doyle responded to Council questions and concerns.

Action: On a call for the question, the motion carried, Ordinance No. 29243, entitled: “An Ordinance of the City of San José Amending the San José Municipal Code to Amend Section 15.10.290 of Chapter 15.10 of Title 15, Chapter 15.11 of Title 15 in Its Entirety and Section 20.100.440 of Chapter 20.100 of Title 10, All To Modify the Water Efficient Landscape Standards for New and Rehabilitated Landscaping and To Establish Water Efficient Landscape Regulations Pursuant to State Law”, was passed for publication. (9-2. Noes: Constant, Khamis.)

- 7.2 As recommended by the Transportation and Environment Committee on April 8, 2013, accept the progress report highlighting habitat improvement activities for the Western Burrowing Owl on San José/Santa Clara Water Pollution Control Plant (WPCP) bufferlands that began in 2012. CEQA: Not a Project, File No. PP10-069(a), Informational Memos that involve no approvals of any City actions. (Environmental Services) [Transportation and Environment Committee referral 4/8/13 – Item D(5)]**

## 7.2 (Cont'd.)

Documents Filed: (1) Memorandum from Acting City Clerk Toni Taber, CMC, dated April 10, 2013, transmitting the recommendations of the Transportation and Environment Committee. (2) Supplemental letter from Chuck Reed, Chair, the Treatment Plant Advisory Committee, dated April 11, 2013, stating concurrence with the Staff recommendations.

Assistant Director of Planning, Building and Code Enforcement Laurel Prevetti and Director of Environmental Services Kerrie Romanow responded to Council questions.

Action: Upon motion by Council Member Constant, seconded by Council Member Herrera and carried unanimously, the progress report highlighting habitat improvement activities for the Western Burrowing Owl on San José/Santa Clara Water Pollution Control Plant (WPCP) bufferlands that began in 2012, was accepted. (11-0.)

## REDEVELOPMENT – SUCCESSOR AGENCY

### 9.1 **Approve the designation of the City’s Director of Finance as the Chief Financial Officer of the Successor Agency to the Redevelopment Agency of the City of San José. CEQA: Not a Project, File No. PP10-069, City organizational and administrative activities. (Successor Agency)**

Documents Filed: Memorandum from City Manager Debra Figone, dated April 3, 2013, recommending the designation of the City’s Director of Finance as the Chief Financial Officer of the Successor Agency.

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Herrera and carried unanimously, the designation of the City’s Director of Finance as the Chief Financial Officer of the Successor Agency to the Redevelopment Agency of the City of San José, was approved. (11-0.)

## OPEN FORUM

- (1) Mark Trout voiced his own religious point of view.
- (2) Ross Signorino commented about the recent tragedy in Boston, Massachusetts.

## ADJOURNMENT

The Council of the City of San José adjourned the afternoon session at 4:03 p.m.

## RECESS/RECONVENE

The City Council recessed at 4:03 p.m. from the afternoon Council Session and reconvened at 7:00 p.m. in the Council Chambers, City Hall.

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

Absent: Council Members - All Present.

Acting City Clerk Toni J. Taber, CMC read the requests for continuance of the applications. Upon motion by Council Member Liccardo, seconded by Vice Mayor Nguyen and carried unanimously, the below noted continuances and actions were taken as indicated. (11-0.)

## CEREMONIAL ITEMS

### **1.4 Presentation of a proclamation declaring the month of April as “National Autism Awareness Month” in the City of San José. (Rocha)**

Mayor Reed and Council Member Rocha recognized the month of April as “National Autism Awareness Month” in the City of San José.

### **1.6 Presentation of a commendation to the nominees of the Outstanding Contributor to Childcare Awards for their exceptional contributions to the needs of young children and their families particularly within quality, licensed child care. (Oliverio)**

Mayor Reed and Council Member Oliverio recognized and commended the nominees of the Outstanding Contributor to Childcare Awards.

## TRANSPORTATION & AVIATION SERVICES

### **6.1 Accept report on curfew provisions for fixed base operator agreements at the Norman Y. Mineta San José International Airport, approve curfew provisions for proposed fixed base operator ground lease and operating agreement with Signature Flight Support, and adopt a resolution authorizing the City Manager to execute agreements and amendments as authorized by the City Council on April 9, 2013. CEQA: Airport Master Plan EIR, Resolution Nos. 67380 and 71451, with Addendum, File No. PP13-022. (Airport) (Referred from 4/9/13 – Item 6.1)**

## 6.1 (Cont'd.)

Documents Filed: (1) Memorandum from Mayor Reed and Council Members Herrera and Liccardo, dated April 12, 2013, recommending approval of the supplemental Staff report dated April 12, 2013. (2) Memorandum from Council Member Chu, dated April 12, 2013, recommending revising the additional airport curfew provisions to eliminate the eviction violation and to direct Airport staff to explore the feasibility of escalating fines for repeated airport curfew violations. (3) Supplemental memorandum from Director of Aviation Services William F. Sherry, A.A.E., dated April 12, 2013, providing detailed recommendations on the curfew. (4) Copy of the memorandum from Director of Aviation Services William F. Sherry, A.A.E., dated March 18, 2013, recommending considering the appeal by Atlantic Aviation and adoption a resolution on the RFP for General Aviation Aeronautical Services Facilities. (5) Staff presentation dated April 16, 2013 summarizing the West Side Development Recommendations and Curfew Discussion. (6) Letter from City Attorney Richard Doyle and Senior Deputy City Attorney Kevin Fisher to Ash Pirayou, Rutan & Rucker, LLP, dated April 15, 2013, responding to the April 8, 2013 letter regarding the award of lease and operating agreement to Signature Flight Support at Norman Y. Mineta San José International Airport. (7) Letter from Tim Murray, General Manager, Atlantic Aviation; ACM Aviation and San José Jet Center, dated April 12, 2013, expressing strong opposition to allowing Signature Flight Support to change the lease language as it relates to the Airport curfew. (8) Petition dated April 16, 2013 signed by 54 residents in the Vendome Neighborhood to “Keep the Airport Curfew”. (9) Letter from Tom Sawyer, dated April 16, 2013, expressing concerns regarding the award of the ground lease and operating agreement to Signature Flight Support. (10) Letter from Yolanda Reynolds, dated April 16, 2013, expressing concerns regarding the award of the ground lease and operating agreement to Signature Flight Support.

Director of Aviation William F. Sherry, A.A.E. presented the report on the curfew provisions for the fixed base operator agreements at the Norman Y. Mineta San José International Airport.

Public Comments: Presenting various comments in support or opposition on the curfew provisions at the Norman Y. Mineta San José International Airport and the west side expansion were: Christopher Escher, Ed Hodges, Matthew Mahood, San José Silicon Valley Chamber of Commerce; Patti Bossert, Tina Morrill, Bill Hough, Max Rosenberg, Santa Barbara Aviation; Rudy Ortega, Peter Norana, San José State University Aviation; Susan Price-Jang, Steve Frost, Corporate Air Technology; Phil Hood, Delmas Park Neighborhood Association; Cameron Singh, San José State University; Helen Chapman, Dianne Carter, Tim Murray, Atlantic; Jim Lynch, Lessie Miller, Bronwen Lacey, Sara Lott, Tessa Woodmansee, Brian Brennan, Silicon Valley Leadership Group; Frank Sweeney, David Truslow, Hyde Park Neighborhood Association; Yolanda Reynolds, Robert Harmsson, Mike Fox Jr., CEO, Goodwill Silicon Valley and Tom Sawyer.

## 6.1 (Cont'd.)

Motion: Council Member Liccardo moved approval of the memorandum he cosigned with Mayor Reed and Council Member Herrera, and the Staff recommendations, and the memorandum from Council Member Chu, dated April 12, 2013, was referred to the Rules and Open Government Committee. Council Member Herrera seconded the motion.

City Attorney Richard Doyle, Director of Aviation Services William F. Sherry, A.A.E., Deputy City Attorney Kevin Fisher and Deputy Director David Maas responded to Council questions and concerns.

Council Member Chu provided meeting disclosures.

Council Members Chu, Rocha, Kalra and Herrera expressed support to the motion on the floor. Council Member Oliverio expressed opposition.

Mayor Reed presented closing remarks.

Action: On a call for the question, the motion carried, the memorandum from Mayor Reed and Council Members Herrera and Liccardo, dated April 12, 2013, was approved, the Staff Report on curfew provisions were accepted, Staff was directed to ensure that the terms and conditions relating to the Airport Curfew Ordinance in the lease agreement with Signature Flight Support are consistent with conditions imposed on existing airline tenants that require compliance with applicable laws, including the Curfew Ordinance, the memorandum from Council Member Chu, dated April 12, 2013, recommending revising the additional airport curfew provisions to eliminate the eviction violation and direct Airport Staff to explore the feasibility of escalating fines for repeated airport curfew violations, was referred to the Rules and Open Government Committee and Resolution No. 76605, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute Agreements and Amendments with Signature Flight Support as Authorized by the City Council on April 9, 2013", was adopted. (10-1. Noes: Oliverio.)

## PUBLIC HEARINGS

- 11.2 Conduct an Administrative Hearing and consider an Appeal of the Planning Commission's decision to deny a Conditional Use Permit to allow the development of an approximately 3,911 square-foot public eating establishment with a drive-through use on an approximately 13.1 gross-acre parcel in the CN-Commercial Neighborhood Zoning District, located at/on the east side of Miller Avenue approximately 350 feet southerly of Bollinger Road within the Orchard Farm Center Shopping Center (6148 Bollinger Road) (Christopher Marchese Trustee & Et Al, Owner/ McDonald's, Developer). CEQA: Mitigated Negative Declaration, File No. CP11-026 and H12-001. Director of Planning, Building and Code Enforcement and Planning Commission recommend denial.**  
**CP11-026 – District 1**

## 11.2 (Cont'd.)

Documents Filed: (1) Memorandum from Council Members Constant and Campos, dated April 12, 2013, recommending approving the Applicant's appeal with several conditions of mitigation. (2) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated March 27, 2013, transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. CP11-026, dated January, 2013, on the subject rezoning and the Planning Commission recommendation of denial. (3) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated April 10, 2013, providing the Council with community input received at a recent meeting, correspondence and revised plans from McDonald's Restaurant. (4) Proof of Publication of Notice of Public Hearing, executed on March 22, 2013, submitted by the City Clerk. (5) Staff presentation dated April 16, 2013 summarizing the proposed McDonald's at Orchard Farms Shopping Center. (6) Submittal from Dr. Alvin A. Milgram dated April 16, 2013 outlining his objections to the proposed McDonald Restaurant Drive Through.

Assistant Director of Planning, Building and Code Enforcement Laurel Prevetti presented the report. Senior Planner Mike Enderby provided comments.

Mayor Reed opened the administrative hearing.

Margaret Trujillo, representing McDonald's and the Marchese Family, offered a presentation to the benefits of economic impact, design enhancements, project improvements, addressing noise and providing employment.

Public Comments: The following speakers expressed opposition to the proposed McDonald's citing safety and traffic concerns, Hyde Middle School is situated close by, loud noise levels, and is inconsistent with the San José Land Use Designation Envision 2040: Conrad Marshall, Ishan Sharma, Melissa Yant-Hunsinger, Marilyn Miller, Haribabu Jagarlamudi, Suzie Woolhouse, Xiaodong Zhang, Vasantha Tammana, Clave Tinungs, Cindy Stormo, Sue Reigelman-Doi, Doris Livezey, Susan Steckclair, Adrienne Renner, Lud Renner, Al Milgram, Bollinger Miller Group; Taeki Chun, Lynn Woolhouse, Udo Strasill, Geoff Hall, Pearl Hall, Eileen McLaughlin, Lisa Wuelser, Jean-Pierre Wuelser, Pamela Rabeck, Nyrie Courtis, Caffè Adria; Kavish Trivedi, Cynthia Schultz, Rob Carnahan, Calabazas Cyclery; Rebecca Fernandez, Elaine Reiling, Gin Chen, Debra Haley, Chun Liu, Ray Sasaki, Claire Arnold, Carlin Black, Jerry Sheahan, Venna Bishop, Michael Barshow, Edward and Pamela Jajko, Sue Luptovic, Ellen Moore, Shadaj Laddad, Logan Stormo, Bernie Sheahan, Philip Dotson, Randall Shingay, Wenjie Li, Tristan Lorach, Joseph Coha, Charles Tucker, Bill Bruns and Abe Bromberg.

Speaking in support to upholding the appeal were Sherryl Mercer, Roark Barraclough, Jenny Luciano and John Christensen, Hope Services.

Mayor Reed closed the Public Hearing.

## 11.2 (Cont'd.)

Motion: Council Member Constant moved approval of the memorandum he cosigned with Council Member Campos, dated April 12, 2013, recommending approval of the Applicant's appeal, including several conditions of mitigation. Council Member Campos seconded the motion.

City Attorney Richard Doyle and Assistant Director of Planning, Building and Code Enforcement Laurel Prevetti responded to Council questions and concerns.

Vice Mayor Nguyen and Council Members Khamis and Herrera provided meeting disclosures.

Vice Mayor Nguyen and Council Members Rocha, Kalra, Liccardo, Chu and Herrera expressed opposition to the motion on the floor.

On a call for the question, the motion on the floor failed. (4-7. Noes: Chu, Kalra, Herrera, Liccardo, Nguyen, Oliverio, Rocha.)

Council Member Liccardo offered the second motion as follows.

Action: Upon motion by Council Member Liccardo, seconded by Vice Mayor Nguyen and carried, the recommendation of the Planning Commission and Planning Director was approved, and Resolution No. 76606, entitled: "A Resolution of the Council of the City of San José Denying a Conditional Use Permit to Allow the Development of an Approximately 3,911 Square Foot Public Eating Establishment With a Drive Through use on An Approximately 13.1 Gross Acre Parcel Located on the East Side of Miller Avenue Approximately 350 Feet Southerly of Bollinger Road Within the Orchard Farm Center Shopping Center (6148 Bollinger Road)", was adopted. (7-4. Noes: Campos, Constant, Khamis; Reed.)

## 11.3 **Conduct an Administrative Hearing and consider a Planned Development Permit and Determination of Public Convenience or Necessity to allow off-sale of alcohol (wine) in association with wine pairing events and classes within an existing 1,484 square foot restaurant (Savory Kitchen), located on the south side of The Alameda between Wilson Avenue and Bush Street (754 The Alameda) (Bay Apartment Communities Inc, Owner). Council District 6. CEQA: Final Supplemental EIR, "Westpark Apartments," Resolution No. 68748. Planning Commission recommends approval (6-0-1).**

**PD12-049/ABC12-015 – District 6**

### 11.3 (Cont'd.)

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated April 3, 2013, transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PD12-049/ABC12-015, dated April 3, 2013, on the subject rezoning. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated April 12, 2013, transmitting the Planning Commission recommendation. (3) Proof of Publication of Notice of Public Hearing, executed on March 22, 2013, submitted by the City Clerk.

Public Comments: Mayor Reed opened the Public Hearing. There was no testimony from the floor. Mayor Reed closed the Public Hearing.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Kalra and carried unanimously, the recommendation of the Planning Commission was approved, Resolution No. 76607, entitled: "A Resolution of the Council of the City of San José Approving a Planned Development Permit and a Request for a Determination of Public Convenience or Necessity to Use Certain Real Property Described Herein for the Purpose of Providing Off-Saale of Alcoholic Beverages (Wine) in Association with Wine Pairing Events in an Existing 1,484 Square Foot Restaurant (Savory Kitchen) Situated Within a Mixed Residential and Commercial Development (Avalon Cahill) on a 5.06 Gross Acre Site Located on the South Side of The Alameda Between Wilson Avenue and Bush Street", was adopted. (11-0.)

### 11.4 **Consideration of an ordinance rezoning the real property located between Race Street and Grand Avenue, approximately 300 feet southerly of Park Avenue (253 Race Street) from the CP-Commercial Pedestrian Zoning District to the A(PD) Planned Development Zoning District to allow for the development of up to 70 attached residential units and 13,080 square feet of ground floor commercial space on a 2.3 gross acre site. CEQA: Mitigated Negative Declaration, Resolution to be adopted. Planning Commission recommends approval (6-0-1). PDC11-005 – District 6**

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated April 3, 2013, transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C11-005, dated April 2, 2013, on the subject rezoning. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated April 12, 2013, transmitting the Planning Commission recommendation. (3) Proof of Publication of Notice of Public Hearing, executed on March 22, 2013, submitted by the City Clerk.

Assistant Director of Planning, Building and Code Enforcement Laurel Prevetti stated that the correct legal description is included.

Mayor Reed opened the Public Hearing.

## 11.4 (Cont'd.)

Public Comments: Lorie Bird, Hanchett Park Heritage Project, spoke in support to the Staff recommendations

Mayor Reed closed the Public Hearing.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Campos and carried unanimously, the recommendation of the Planning Commission was approved, Ordinance No. 29244, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated Between Race Street and Grand Avenue, Approximately 300 Feet Southerly of Park Avenue, From the CP Commercial Pedestrian Zoning District to A(PD) Planned Development Zoning District”, was passed for publication and CEQA Resolution No. 76608, entitled: “A Resolution of the Council of the City of San José Adopting the Race Street Terrace 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.)

## ADJOURNMENT

The Council of the City of San José was adjourned at 11.08 p.m.

## ADJOURNMENT

The Council of the City of San José was adjourned at 11.08 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Toni J. Taber, CMC  
Acting City Clerk

smd/04-16-13 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.ty>. For information on any ordinance that is not hyperlinked to this document, please contact the Office of the City Clerk at (408) 535-1266.