

## MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, MAY 14, 2013

The Council of the City of San José convened in Regular Session at 9:05 a.m. in the Council Chambers at City Hall.

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

Absent: Council Members - All Present.

### STRATEGIC SUPPORT SERVICES

#### 3.2 Accept Labor Negotiations Update.

Office of Employee Relations Senior Executive Analyst, Jennifer Schembri reported on proposals from Association of Engineers & Architects (AEA); and the International Brotherhood of Electrical Workers (IBEW).

Action: The report was accepted.

### 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 (d)(1) with respect to existing litigation: Mulholand, et al. v. City, et al.; Names of Partie(s) Involved: Paul Mulholand, James Unland, and Mary Follenweider; Russell Crosby, Mike Moehle, each in his capacity as a fiduciary of the San José Federated City Employees Retirement System of the City of San José Police and Fire Retirement Plan, City of San José, a Municipal entity and Does 1 through 10; the Board of Directors of the San José Police and Fire Retirement Board, and the Board of Directors of the City of San José Federated City Employers' Retirement System; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-219748; Amount of Money or Other Relief Sought: Damages according to proof; (B) to confer with Legal Counsel pursuant to Government Code Section 54956.9, Subsection (b) with respect to anticipated litigation (claim filed) in one (1) matter; Claimant: in re: Claim of Ghenis; City Department:

## CLOSED SESSION (Cont'd.)

PRNS; (C) to confer with Legal Counsel pursuant to Government Code Section 54956.9 (d)(1) with respect to existing litigation: (1) Citizens Against Airport Pollution v. City, et al., Names of Partie(s) Involved: Citizens Against Airport Pollution, an unincorporated association, and Does 1 to 5, City of San José, City Council of the City of San José, and Does 6 to 10, Does 10 to 30; Real Parties in Interest; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-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; (2) Carrillo, Alexandra v. City, Names of Partie(s) 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; (3) City v. International Association of Firefighters, et al.; Names of Partie(s) Involved: City of San José, 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; (4) City v. International Association of Firefighters, et al.; Names of Partie(s) Involved: City of San José, International Association of Firefighters, Local 230; Court: Superior Court of California, County of Santa Clara; Case No: 1-09-CV-133786; Amount of Money or Other Relief Sought: Arbitration of Fire Fighters Bill of Rights (FBOR); (5) Parker, et al. v. City of San José, et al.; Names of Partie(s) Involved: David Parker, James Williams, Jason Bivens, Debra Ward and Shannon Blean, City of San José, and Does 1 through 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. (6) American Federation of State, County & Municipal Employees, et al. v. City; Names of Partie(s) Involved: American Federation of State, County & Municipal Employees, City of San José; Court: State of CA Public Employment Relations Board; Case No. SF-CE-837-M; (7) IAFF Local 230 v. City; Names of Partie(s) Involved: International Association of Firefighters Local 230, City of San José; Court: State of CA Public Employment Relations Board; Case No.: SF-CE-941-M; Amount of Money or Other Relief Sought: Damages According to Proof; (8) American Federation of State, County & Municipal Employees v. City; Names of Partie(s) Involved: American Federation of State, County & Municipal Employees, City of San José; Court: State of CA Public Employment Relations Board; Case No.: SF-CE-942-M; Amount of Money or Other Relief Sought: Damages According to Proof; (9) IAFF Local 230 v. City; Names of Partie(s) Involved: IAFF Local 230, City of San José; Court: State of CA Public Employment Relations Board; Case No.: SF-CE-969-M; Amount of Money or Other Relief Sought: Damages According to Proof; (10) OE#3 v. City of San José; Names of Partie(s) Involved: Operating Engineers Local Union No. 3, City of San José; Court: State of CA Public Employment Relations Board; Case No.: SF-CE-900-M; Amount of Money or Other Relief Sought: Damages According to Proof; (11) IFPTE Local 21 v. City of San José; Names of Partie(s) Involved: International Federation of Professional and Technical Engineers Local 21, City of San José; Court: State of CA Public Employment Relations Board; Case No.: SF-CE-996-M; Amount of Money or Other Relief Sought: Damages According to Proof; (12) American Federation of State, County & Municipal Employees, et al. v. City; Names of Partie(s) Involved: American Federation of State, County & Municipal Employees, City of San José; Court: State of CA Public Employment Relations Board; Case No.: SF-CE-945-M; Amount of Money or Other Relief Sought:

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

Damages According to Proof; (13) IAFF Local 230 v. City; Names of Partie(s) Involved: International Association of firefighters Local 230, City of San José; Court: State of CA Public Employment Relations Board; Case No.: SF-CE-970-M; Amount of Money or Other Relief Sought: Damages According to Proof; (14) American Federation of State, County & Municipal Employees, et al. v. City; Names of Partie(s) Involved: American Federation of State, County & Municipal Employees, City of San José; Court: State of CA Public Employment Relations Board; Case No.: SF-CE-972-M; Amount of Money or Other Relief Sought: Damages According to Proof; (15) City of San José v. SJPOA; Names of Partie(s) Involved: City of San José, San José Police Officers' Association; Case No. CSMCS ARB 11-0477; (16) City of San José v. SJPOA; City of San José, San José Police Officers' Association; Case No. CSMCS ARB 12-0171; (17) City of San José v. SJPOA; City of San José, San José Police Officers' Association; Case No. CSMCS ARB 11-0136; (18) City of San José v. SJPOA; City of San José, San José Police Officers' Association; Case No. CSMCS ARB 11-0412; (19) Great Oaks Water, Inc. v. City, et al.; Names of Partie(s) Involved: Great Oaks Water Company, 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, South Bay Water Recycling, Does 1 through 100; Court: Superior Court of California, County of Santa Clara; Case No: 1-04-CV-012008; Amount of Money or Other Relief Sought: Damages according to proof. (20) County of Alameda, et al. v. AMBAC Financial, et al.; Names of Partie(s) 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 Municipal Utility District; City of San José; City of Stockton; The Redevelopment Agency of the City of Stockton; the Public Financing Authority 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 Assurance Corporation; MBIA, Inc.; MBIA Insurance Corporation; MBIA Insurance Corp. of Illinois, a/k/a National Public Finance Guarantee Corporation; Syncora Guarantee, Inc. f/k/a XL Capital Assurance, Inc.; Financial Guaranty Insurance Company; Financial Security Assurance, Inc.; CIFG Assurance North America, Inc.; Assured Guaranty Corp.; Jason Kissane; Does 1 through 50; Case No.: CJC-08-004555; Amount of Money or Other Relief Sought: Damages According to Proof; (21) RDA/City vs. Bank of America, N.A., et al.; Names of Partie(s) Involved: City of San José, the San José Redevelopment Agency, Bank of America N.A., Merrill Lynch & 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.;

## CLOSED SESSION (Cont'd.)

Court: United States District Court, Northern District of California; Case No.: CV 10-2199; Amount of Money or Other Relief Sought: Damages According to Proof; (22) Sipple, et al. v. City of Alameda, et al., Names of Partie(s) 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 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 Gardenia, 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 LaVerne, City of Lawndale, City of Lindsey, City of Long Beach, City of Los 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 José, 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 of 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; (23) Konnick v. Kaiser, et al.; Names of Partie(s) Involved: Michi Konnick, by her Guardian Ad Litem, Mircea G. Dragomir, CLPF and George Konnick, Kaiser Foundation Heathplan, 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, and 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

## CLOSED SESSION (Cont'd.)

According to Proof; (24) Seibert v. City of San José; Names of Partie(s) 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: 1-11-CV-204096; Amount of Money or Other Relief Sought: Damages According to Proof; (25) California Building Industry Association v. City, et al., Names of Partie(s) 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; (26) Bernal, et al. v. City, et al.; Names of Partie(s) Involved: Mike C. Bernal, Susan R. Bernal, Nanetta Bernal, Lilian Bernal Auvinen, Katherine Lira, Diana Bernal-Tuyor, Mmike 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. (27) Andy's BP, Inc., et al. v. City of San José, et al.; Names of Partie(s) Involved: Andy's BP, Inc., a California corporation, and 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: U.S. District Court San José Division; Amount of Money or Other Relief Sought: Damages According to Proof; (28) Berg & Berg Enterprises, LLC v. City, et al.; Names of Partie(s) 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. (30) California Clean Energy Committee v. City. Et al., Names of Partie(s) 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: Damages according to proof. (31) City of Milpitas v. City, et al., Names of Partie(s) 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. (32) People/City v. Bevan, Warren; Names of Partie(s) 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 through 10; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV-118193; Amount of Money or Other Relief Sought: Injunctive relief. (33) City v. Marquez, Rita and Avalos, Luzmarie; Names of Partie(s) 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. (34) People/City v. Rosales; Collins & Constant; Robert Collins; John Seaman, et al.; Names of Partie(s) Involved: People of the State of California, ex rel., City Attorney of the City of San José, and City of San José, Julian Rosales, an individual, dba Beautiful

## CLOSED SESSION (Cont'd.)

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-CV-235487; Amount of Money or Other Relief Sought: Injunctive relief. (35) Ahluwalia, et al., v. City of San José, et al.; Names of Partie(s) 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: U.S. District Court, San José Division; Case No.: C13-0114-PSG; Amount of Money or Other Relief Sought: Injunctive relief; (36) Carter v. City of San José, et al.; Names of Partie(s) Involved: Jamil Carter, the City of San José, the San José Police Department (“SJPD”); Michael Sullivan, individually and in his 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; (37) Cicala, et al. v. City, et al.; Names of Partie(s) Involved: Paul Cicala, Enrico Sagullo, Erick Sanchez, City of San José, Robert Davis, Officers Ordaz, Higgins, Marfia, Kyono and 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; (38) Chahal v. City of San José, et al.; Names of Partie(s) Involved: Lakhbir Singh Chahal; Baljit Chahal, city, Bach Thai Tran, and 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; (39) Correa v. City of San José, et al.; Names of Partie(s) 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 her official capacity as Sergeant, SJPD; Court: U.S. District Court, San José Division; Case No.: CV12-05436 HRL; Amount of Money or Other Relief Sought: Damages According to Proof; (40) Fujikawa, Michael v. City, Chief Chris Moore, et al., Names of Partie(s) Involved: Michael Fujikawa, the City of San José; Police Chief Chris Moore, Officers Payne (Badge No. 3971), Officer Pfiefer (Badget No. 3951), Office Jeffrey (Badge No. 3926), Officer Burke (Badge No. 3949), Officer Akery (Badge No. 3495) and Does 1-50; (41) Galindo, Celina et al. v. Tassio, Kilmer, et al.; Names of Partie(s) Involved: Celina Galindo, Sabrina Galindo, and 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: U.S. District Court, San José Division; Case No.: CV13-0105 HRL; Amount of Money or Other Relief Sought: Damages According to Proof (42) Garden City, Inc. dba Casino M8trix, et al. v. City, et al.; Names of Partie(s) Involved: Garden City, Inc., dba Casino M8trix a California Corporation, Airport

## CLOSED SESSION (Cont'd.)

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, and Does 1 through 100; 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; (43) Garden City, Inc. dba Casino M8trix, et al. v. City, et al.; Names of Partie(s) 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: U.S. District Court; Case No: CV-13-0577 PSG; Amount of Money or Other Relief Sought: Damages According to Proof; (44) Swallow, et al. v. City of San José; Names of Partie(s) 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; (45) Gonzales, Mary Lou v. City, et al.; Names of Partie(s) 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 individual and official capacity; SJPD Officers Doe 1 to Doe 7 in their individual and official capacities; SJPD Officers and Detectives and Employees Doe 8-50; Court: U.S. District Court, San José Division; Case No.: CV13-0695 PJH; Amount of Money or Other Relief Sought: Damages According to Proof; (46) Gonzales-Guerrero, Javier v. City, Brian Johst, Mark Stephens, et al.; Names of Partie(s) Involved: Javier Gonzales-Guerrero, City of San José, Brian Johst, Mark Stephens, Gary Petrokovitz, and Tim Stephens; Court: United States District Court, Northern District of California; Case No.: CV12-03541 PSG; Amount of Money or Other Relief Sought: Damages According to Proof; (47) Hellams, John, Charles Bernard and Marlene Anderson v. City, et al.; Names of Partie(s) Involved: John Hellams, Charles Bernard, Marlene Anderson, City of San José and 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. (48) Hernandez, Luis & Cindy Calderon v. City of San José, et al, Names of Partie(s) Involved: Luis Hernandez, Cindy Calderon, City of San José, Ernie Alcantar individually and in his official capacity as Captain,k CJPD; and James Werkema, individually and in his official capacity as Lieutenant, SJPD; Court: U.S. District Court, San José Division; Case No.: CV12-02952 HRL; Amount of Money or Other Relief Sought: Damages According to Proof; (49) Kerkeles v. City of San José, et al.; Names of Partie(s) Involved: Michael Kerkeles, a.k.a. Michael Kerk, City of San José, Matthew Christian, and Does 1 through 25; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV-103523; (50) Montiel v. City, et al.; Names of Partie(s) Involved: Jermaine Montiel; Officer M. Williams, Officer C. Sheppard, Officer Hernandez, Officer Rodriguez, John Doe and

## CLOSED SESSION (Cont'd.)

Richard Doe, Robert Davis, City of San José, and Does. Court: United States District Court, Northern District of California; Case No.: C07 05490 PSG; Amount of Money or Other Relief Sought: Damages According to Proof; (51) City of San José, et al. v. BKD Investments, LLC, et al; Names of Partie(s) 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 through 100; Court: 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; (52) People/City v. Stanley A. Fimowicz, et al.; Names of Partie(s) Involved: People of the State of California, ex rel., City Attorney of the City of San José, and the City of San José, Stanley A. Fimowicz, an individual; Stella L. Fimowicz, an individual; and Does 1 through 10; Court: Superior Court of California, County of Santa Clara; Case No: 1-13-CV-243896; Amount of Money or Other Relief Sought: Damages According to Proof; (53) People/City v. Chinh Hoang Nguyen dba La Visage Salon, et al.; Names of Partie(s) 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 Hoant 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; (54) Naymark, et al. v. City, et al.; Names of Partie(s) Involved: Janice Naymark, Ronald Naymmark, City of San José, San José Police Department, Robert Davis, City of Capbell, 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 through 25; Court: Superior Court of California, County of Santa Clara; Case No: 1-07-CV-080008; Amount of Money or Other Relief Sought: Injunctive relief; (55) Rice, JoAnn, America Savin, et al. v. City, et al.; Names of Partie(s) Involved: Rice, JoAnn, America Savin, et al. v. City, et al.; Names of Partie(s) Involved: JoAnn Rice, America Savin, Perry Nelson, and W.N., a minor, by and through his Guardian ad Litem, America Savin, City of San José, San José Police Department, Does 1-10; Court: U.S. District Court; Case No.: 2:13-CV-00334-KJM-CKD; Amount of Money or Other Relief Sought: Damages According to Proof; (56) Valdez, et al v. City, et al.; Names of Partie(s) Involved: Francisco 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 through 2500; United States District Court, Northern District of California; Case No.: C09 00176 RMW; Amount of Money or Other Relief Sought: Damages According to Proof; (57) Pham/Do v. City, et al.; Names of Partie(s) 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 in his official capacity as a police officer, and Does 1-100; Court: United States District

## CLOSED SESSION (Cont'd.)

Court, Northern District of California; Case No. CV11-01526 EJD; Amount of Money or Other Relief Sought: Damages According to Proof; (58) Pugh v. City, et al; Names of Partie(s) Involved: Dwayne Pugh, City of San José and Does 1-100; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV-189429; Amount of Money or Other Relief Sought: Damages according to proof. (59) Salinas, Roberta, George & Frances Salinas, et al. v. City, et al; Names of Partie(s) 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; (60) Noreen Salinas v. City, et al.; Names of Partie(s) Involved: Noreen Salinas, City of San José, Chief Robert Davis, Taser International, Inc., Does 1 to 10; Court: United States District Court, Northern District of California; Case No.: C08-02625 RS (consolidated with C09-04410RS); Amount of Money or Other Relief Sought: Damages According to Proof; (61) Vasquez v. City, et al.; Names of Partie(s) Involved: Ramon José Vasquez, Brian Ferrante, Individually and as an Officer of the San José Police Department and Tom Morales, individually as an Officer of the San José Police Department, Does 1 through 50; Court: United States District Court, Northern District of California; Case No.: CV10-00948 LKH; Amount of Money or Other Relief Sought: Damages According to Proof; (62) Watson-Stalker, et al. v. City, et al.; Names of Partie(s) 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 Attorneys' Office; Santa Clara Valley Medical Center; Evergreen School District; City of San José; San José Police Department; Norma Sparks, Yazmina Letona; Sharon Burgan; Jewels Ramirez, 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; Case No.: C06-04029 RMW; Amount of Money or Other Relief Sought: Damages According to Proof; (63) City v. Western Roofing; Names of Partie(s) Involved: City of San José, Western Roofing; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV-123029; Amount of Money or Other Relief Sought: Damages according to proof. (64) City v. Rossdruiscesenbery Architecture, Inc. aka Micheal Ross Charles Drulis Architects & Planners, a purported California Corporation; and 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; ; (65) Shahrivar, Farid v. City, et al., Names of Partie(s) 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 Tsao, 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 Strempele, an individual; Steve Pagan, an individual, Angela Chen, an individual; Mark Danaj, an individual; Robert Fabela, an individual; Susan Lacy, and

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

Does 1 through 45; Court: U.S. District Court, Oakland Division; Case No.: CV10-01029 PSG; Amount of Money or Other Relief Sought: Damages According to Proof (66) Vagts, Hale and Patty Vagts v. State of California, et al.; Names of Partie(s) Involved: Hale Vagts & 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; (67) Flores, Valerie v. City of San José, et al.; Names of Partie(s) Involved: Valerie Flores, City of San José, and 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. Amount of Money or Other Relief Sought: Damages According to Proof; (68) Leath, Vicky Kim v. City, County of Santa Clara, et al.; Names of Partie(s) Involved: Vicky Kim Leath, 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; (69) McLaughlin, Shirli v. City of San José; Names of Partie(s) Involved: Shirli McLaughlin, City of San José; 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; (70) Ortiz v. City, et al; Names of Partie(s) Involved: Esmeralda Galan and José 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-CV-199150; Amount of Money or Other Relief Sought: Damages according to proof. (71) Perez, Cynthia v. City of San José; 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; (72) Stand for San José, et al. v. City, et al.; Names of Partie(s) 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; (73) City of San José v. County of Santa Clara; Names of Partie(s) Involved: City of San José, A municipal corporation, as Successor Agency to the Redevelopment Agency of the City of San José, Vinod Sharma, individually, and in his 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. (74) Ted Smith. v. City, et al.; Names of Partie(s) 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 a Councilmember for the City of San José; Ash Kalra, in his official capacity as a Councilmember for the City of San José; Sam Liccardo, in his official capacity as a Councilmember for the City of San José; Pierluigi Oliverio, in his official capacity as a Councilmember for the City of San José; Madison Nguyen, in her official capacity as a Councilmember for the City of San José; Rose Herrera, in her official capacity as a Councilmember for the City of San José; Judy

## CLOSED SESSION (Cont'd.)

Chirco, in her official capacity as a Councilmember for the City of San José; Kansen Chu, in his official capacity as a Councilmember for the City of San José; Nora Campos, in her official capacity as a Councilmember for the City of San José; Nancy Pyle, in her official capacity as a Councilmember for 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; (75) Vietnamese-American Community of Northern California v. City, et al; Names of Partie(s) 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: 1-08-CV-107082; Amount of Money or Other Relief Sought: for Declaratory and injunctive relief according to proof; (D) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) Association of Building, Mechanical and Electrical Inspectors Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and ABMEI. (2) Association of Engineers & Architects (AEA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AEA. (3) Association of Maintenance Supervisory Personnel (AMSP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: City of San José – Association of Maintenance Supervisory Personnel (AMSP) Benefit & Compensation Summary; (4) City Association of Management Personnel Agreement (CAMP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Benefit & Compensation Summary - City of San José and City Association of Management Personnel Agreement; (5) Confidential Employees' Organization, AFSCME Local 101 (CEO); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CEO. (6) International Association of Firefighters, Local 230 (IAFF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Association of Firefighters. (7) International Brotherhood of Electrical Workers (IBEW); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and IBEW. (8) Municipal Employees' Federation, AFSCME Local 101, AFL-CIO (MEF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and MEF; (9) International Union of Operating Engineers, Local No. 3 (OE#3); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Union of Operating Engineers, Local No. 3. (10) San José Police Officers' Association (SJPOA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association. (11) Association of Legal Professionals of San José (ALP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Web: <http://www.sanjoseca.gov/?nid=186>; Telephone for Employee Relations: 408-535-8150.

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

By unanimous consent, Council recessed from the Closed Session at 12:20 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, Rocha; Reed.

Absent: Council Members - All Present.

## **INVOCATION**

Bloco del Sol, a Brazilian percussion and dance ensemble from the School of Arts and Culture at the Mexican Heritage Plaza offered a percussion performance for the Invocation.

## **PLEDGE OF ALLEGIANCE**

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

## **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. (11-0.)

## **CEREMONIAL ITEMS**

### **1.1 Presentation of a proclamation recognizing the Month of May as “Hepatitis B Awareness Month” in the City of San José. (Chu)**

Mayor Reed and Council Member Chu presented a proclamation recognizing the Month of May as “Hepatitis B Awareness Month” in the City of San José.

### **1.2 Presentation of a commendation to West Valley Community Services for 40 years of remarkable non-profit services and honorable assistance to the West Valley communities of Santa Clara County. (Constant)**

Mayor Reed and Council Member Constant presented a proclamation recognizing the West Valley Community Services for 40 years of valuable services and assistance to the West Valley communities of Santa Clara County.

**1.3 Presentation of a commendation to San José Police Officers Bruce Barthelemy, Gustavo Perez, and Hau Ngo for their courageous actions in the line of duty to apprehend suspects who were armed and dangerous. (City Manager’s Office)**

Mayor Reed, Acting Police Chief Esquivel and City Manager Debra Figone presented a commendation to San José Police Officers Bruce Barthelemy, Gustavo Perez, and Hau Ngo for their courageous actions in the line of duty to apprehend suspects who were armed and dangerous.

**1.4 Presentation of a commendation to Ysabel Duron for over 42 years of meritorious work in broadcast journalism, as well as her work in being the founder and CEO of the non-profit Latinas Contra Cancer. (Campos)**

Mayor Reed, Council Member Campos, Vice Mayor Nguyen and Council Member Herrera presented a commendation to Ysabel Duron for over 42 years of meritorious work in broadcast journalism, as well as her work in being the founder and CEO of the non-profit Latinas Contra Cancer, among her many other accomplishments.

**CONSENT CALENDAR**

Upon motion by Vice Mayor Nguyen, seconded by Council Member Khamis 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. 29246 – Amending Title 23 of the San José Municipal Code by amending Section 23.02.1045 and adding new Sections 23.02.155, 23.02.385, 23.02.424, 23.02.920 and 23.02.1045 to Chapter 23.02, and amending Section 23.04.020 of Chapter 23.04, all to add pedestrian wayfinding signs as signs that do not reduce signage otherwise allowable under Title 23, to allow for additional attached signs for large shopping center buildings and specify the maximize size of such signs, and to allow for entryway signs as a new type of attached sign on large shopping center buildings, and making other nonsubstantive, ministerial, technical, or typographical changes to said Chapters 23.02 and 23.04 of Title 23 of the San José Municipal Code.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29246 executed on May 3, 2013, submitted by the City Clerk.

Action: Ordinance No. 29246 was adopted. (11-0.)

- (b) **ORD. NO. 29247 – Granting a Commercial Solid Waste and Recyclables Collection Franchise to American Debris Box Service, Inc. DBA American Portables.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29247 executed on May 3, 2013, submitted by the City Clerk.

Action: Ordinance No. 29247 was adopted. (11-0.)

- (c) **ORD. NO. 29248 – Granting a Commercial Solid Waste and Recyclables Collection Franchise to Best Deal Transport LLC.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29248 executed on May 3, 2013, submitted by the City Clerk.

Action: Ordinance No. 29248 was adopted. (11-0.)

- (d) **ORD. NO. 29245 – Amending the San José Municipal Code to amend Sections 4.04.010, 4.04.020, and 4.04.085 of Chapter 4.04 of Title 4 and Chapter 4.20 of Title 4 in its entirety, all related to streamlining real estate processes in connection with the sale of surplus property.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29245 executed on May 6, 2013, submitted by the City Clerk.

Action: Ordinance No. 29245 was adopted. (11-0.)

### **2.3 Approval of Council Committee Reports.**

- (a) **Ad Hoc Committee on Economic Competitiveness Report of April 8, 2013.  
(Mayor)**

Documents Filed: The Ad Hoc Committee on Economic Competitiveness Report dated April 8, 2013.

Action: The Ad Hoc Committee on Economic Competitiveness Report was 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 settlement of *Esmeralda Galan, et al. v. City of San José, et al.*, and authorize the City Attorney to execute a Settlement Agreement and Release with Esmeralda Galan, Jose Rios, and their attorneys, in the amount of \$325,000. CEQA: Not a Project; File No. PP10-066(h), Settlement Agreements. (City Attorney's Office).**

Documents Filed: (1) Memorandum from City Attorney Richard Doyle, dated May 2, 2013, recommending approval of a settlement. (2) "Statement of José Ortiz, Husband and Father", dated May 14, 2013.

Public Comments: José Ortiz spoke on the loss of his son and the need to maintain the City's trees.

Action: The settlement of *Esmeralda Galan, et al. v. City of San José, et al.*, and authorization by the City Attorney to execute a Settlement Agreement and Release with Esmeralda Galan, Jose Rios, and their attorneys, in the amount of \$325,000, was approved. (11-0.)

**2.8 Authorize travel for City Manager Debra Figone to New York, New York, on May 29, 2013 to June 2, 2013, to receive the Great Rosarians of the World Rose Garden Hall of Fame Award for 2013. Source of Funds: City Manager's Non Personal Services Appropriation. CEQA: Not a Project, File No. PP10-069, Administrative Activities. (City Manager's Office)**

Documents Filed: Memorandum from City Manager Debra Figone, dated April 29, 2013, requesting authorization to travel.

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

**2.9 Authorize the City Manager to:**

- (a) **Execute a Purchase Order with Security Alert Systems of California, Inc. (Gilroy, CA), in the total amount not-to-exceed of \$475,000 for the initial twelve month period of May 14, 2013 through May 13, 2014, to provide security and fire alarm monitoring and as-required repairs citywide; and**
- (b) **Execute up to four one-year options to extend the term, subject to the annual appropriation of funds.**

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

Documents Filed: City Council Action Request from Director of Finance Julia H. Cooper, dated May 14, 2013, regarding execution of a purchase order.

Action: Execution of a Purchase Order with Security Alert Systems of California, Inc. (Gilroy, CA), in the total amount not-to-exceed of \$475,000 for the initial twelve month period of May 14, 2013 through May 13, 2014, to provide security and fire alarm monitoring and as-required repairs citywide, with options to extend as noted, was approved. (11-0.)

**2.10 Approve the following actions:**

- (a) **Adopt a resolution authorizing the City Manager to execute an Agreement between the City of San José and the City and County of San Francisco, acting as fiscal agent for the Bay Area UASI, to accept the 2012 UASI grant allocation in the amount of \$1,000,000 and to negotiate and execute additional amendments and related documents without further Council action.**
- (b) **Adopt the following Appropriation Ordinance and Funding Sources Resolution Amendments in the General Fund:**
  - (1) **Establish a City-wide appropriation to the Police Department for the Urban Areas Security Initiative (UASI) Grant- Police 2012 in the amount of \$547,500;**
  - (2) **Establish a City-wide appropriation to the Fire Department for the Urban Areas Security Initiative (UASI) Grant- Fire 2012 in the amount of \$65,000; and**
  - (3) **Increase the estimate for Revenue from the Federal Government by \$612,500.**

**CEQA: Not a Project, File No. PP10-066, Agreements and Contracts. (Police/Fire/City Manager's Office)**

Documents Filed: Joint memorandum from Acting Chief of Police Larry Esquivel, Fire Chief William McDonald and Budget Director Jennifer Maguire, dated April 22, 2013, recommending adoption of a resolution and appropriation ordinance and funding sources resolution amendments.

Action: Resolution No. 76628, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute an Agreement between the City of San José and the City and County of San Francisco, Acting as Fiscal Agent for the Bay Area Urban Areas Security Initiative (UASI), to Accept 2012 UASI Grant Allocation in the

**2.10 (Cont'd.)**

Amount of \$1,000,000 and to Negotiate and Execute Additional Amendments and Related Documents without Further Council Action”; Ordinance No. 29251, entitled: “An Ordinance of the City of San José Amending Ordinance No. 29102 to Appropriate Monies in the General Fund – City-Wide Public Safety for the Urban Areas Security Initiative (UASI) Grant – Fire 2012 and for the Urban Areas Security Initiative (UASI) Grant – Police 2012; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”; and Resolution No. 76629, 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”, were adopted. (11-0.)

**2.11 Approve an agreement with the State of California for a Bicycle Transportation Account grant related to the Park Avenue Crosstown Bikeway project, in the amount of \$265,000 with a local match of \$45,000. CEQA: Exempt, File No. PP13-032, Under the provisions of Section 15304(h) and (d) and 15304. (Transportation)**

Documents Filed: Memorandum from Director of Transportation Hans Larsen, dated April 22, 2013, recommending approval of an agreement.

Action: An agreement with the State of California for a Bicycle Transportation Account grant related to the Park Avenue Crosstown Bikeway project, in the amount of \$265,000 with a local match of \$45,000, was approved. (11-0.)

**2.12 As recommended by the Rules and Open Government Committee on May 8, 2013, approve a support position for AB 532 (Gordon) – Local Housing Trust Fund. (Housing)**

Documents Filed: Memorandum from Acting City Clerk Toni Taber, dated May 9, 2013, transmitting the recommendations of the Rules and Open Government Committee.

Action: A support position was approved for AB 532 (Gordon) – Local Housing Trust Fund as recommended by the Rules and Open Government Committee on May 8, 2013. (11-0.)

**2.13 As recommended by the Rules and Open Government Committee on May 8, 2013, approve a support position for AB ~~631~~ 361 (Mitchell, Principal Coauthor; Atkins, Coauthor; Ammiano, Beall) Medi-Cal: Health Homes for Medi-Cal Enrollees and 1115 Waiver Demonstration Populations with Chronic and Complex Conditions. (Housing)**

Documents Filed: Memorandum from Acting City Clerk Toni Taber, dated May 9, 2013, transmitting the recommendations of the Rules and Open Government Committee.

Senior Executive Analyst Gloria Schmanek corrected agenda language as noted above.

**2.13 (Cont'd.)**

Action: A support position was approved for AB 361 (Mitchell, Principal Coauthor; Atkins, Coauthor; Ammiano, Beall) Medi-Cal: Health Homes for Medi-Cal Enrollees and 1115 Waiver Demonstration Populations with Chronic and Complex Conditions, as recommended by the Rules and Open Government Committee on May 8, 2013, with agenda language corrected to identify bill as “AB 361”, not AB 631. (11-0.)

- 2.14 (a) Approve National Night Out Community Brainstorming Forum as a City Council Special Event; and**  
**(b) Approve and accept donations from various individuals, businesses, or community groups to support the event.**  
**CEQA: Not a Project. (Campos)**

Documents Filed: Memorandum from Acting City Clerk Toni Taber, dated May 9, 2013, transmitting the recommendations of the Rules and Open Government Committee.

Action: The National Night Out Community Brainstorming Forum as a City Council Sponsored Special Event was approved and authorization to accept donations from various individuals, businesses or community groups to support the event, was approved. (11-0.)

- 2.15 (a) Approve the following events sponsored by Council District Four as City-sponsored Special Events:**  
**(1) The Crime Prevention Community Meeting on Wednesday, May 15, 2013.**  
**(2) The Noble Dog Park Community Meeting on Thursday, May 30, 2013.**  
**(b) Approve and accept donations from various individuals, businesses, or community groups to support the event.**  
**CEQA: Not a Project. (Chu)**

Documents Filed: Memorandum from Acting City Clerk Toni Taber, dated May 9, 2013, transmitting the recommendations of the Rules and Open Government Committee.

Action: The Crime Prevention Community Meeting and Noble Dog Park Community Meeting as City Council Sponsored Special Events were approved and authorization to accept donations from various individuals, businesses or community groups to support the events, were approved. (11-0.)

**END OF CONSENT CALENDAR**

## STRATEGIC SUPPORT SERVICES

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

City Manager Debra Figone reported that the City of San José will be participating in the Golden Guardian disaster preparedness exercise on May 15, 2013.

### 3.2 Public Hearing on the City's Proposed Operating and Capital Budgets for the Fiscal Year 2013 -2014, the Proposed Five-Year Capital Improvement Program for 2014-2018, and the Proposed Fees and Charges Report for the Fiscal Year 2013-2014. (City Manager's Office)

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on April 19, 2013 submitted by the City Clerk.

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

Action: No action required.

### 3.3 As recommended by the Council Salary Setting Commission, approve an ordinance setting the salaries and benefits of the Mayor and City Council for Fiscal Years 2013-2014 and 2014-2015 as follows:

- (a) For the Mayor, increase the authorized salary as recommended by the Commission for FY 2013-14 and FY 2014-15 from \$114,000 annually to \$119,700 annually;
- (b) For each Councilmember, increase the authorized salary as recommended by the Commission for FY 2013-14 and FY 2014-15 from \$81,000 annually to \$85,050 annually;
- (c) Retain the levels of health, dental, life insurance and other benefits through FY 2014-2015 in accordance with the benefits provided to management employees in Unit 99 and salary continuation insurance benefits;
- (d) For the current Mayor and Councilmembers who were in office prior to July 1, 2011, maintain the City's participation and contributions to CalPERS defined benefit or PTC 457 defined contribution plans through their terms of office. For Councilmembers who assume office on or after July 1, 2011, maintain the City's participation and contribution in the CalPERS defined benefit plan applicable to participants based upon date of assumption of office, or the PTC 457 defined contribution plan, or any retirement plan equivalent to that established by the City for its non-sworn employees including management employees in Unit 99 management employees that may also be made available to the Councilmembers;
- (e) Maintain the vehicle allowance of \$350 per month for the Mayor and each member of the City Council; and
- (f) Continue to require Councilmembers to pay \$250 for each unexcused absence at scheduled Council meetings, pursuant to City Charter Section 407.

(City Clerk)

### 3.3 Council Salary Setting Recommendations (Cont'd.)

Documents Filed: (1) Memorandum from Council Member Constant, dated May 10, 2013, recommending approval of the Council Salary Setting Commissions' recommendations with modifications. (2) Memorandum from Council Member Kalra, dated May 10, 2013, recommending approval of Council Salary Setting Commissions' recommendations with modifications. (3) Joint memorandum from Acting City Clerk Toni Taber, and City Attorney Richard Doyle, dated May 6, 2013, providing the Council Salary Setting Commissions' recommendations.

Public Comments: Mark Ruffing, Yolanda Cruz (AFSCME-MEF), Matt Newton and Ross Signorino, expressed that there be no increase in salaries or benefits for the Mayor and Council until all employee benefits and pay are restored.

Acting City Clerk Toni Taber outlined the Council Salary Setting Commissions' recommendations and responded to questions from Council.

Council Member Kalra referenced his memorandum of May 10, 2013, and reiterated that the Mayor and Council should not receive increases in salaries or benefits until the City can fully restore the 10% reduction in pay all employees have taken.

Motion: Council Member Constant moved approval of his memorandum of May 10, 2013. The motion was seconded by Vice Mayor Nguyen.

Action: All a call for the question, the motion carried unanimously, and Ordinance No. 29252, entitled: "An Ordinance of the City of San José Adopting Salaries and Other Compensation for the Mayor and Councilmembers Pursuant to City Charter Section 407", was adopted, with recommendations as outlined in Council Member Constant's memorandum of May 10, 2013, to (1) Retain the current authorized salary of \$114,000 annually for the Mayor (2) Retain the current authorized salary of \$81,000 for each Councilmember, (3) For current Mayor and Councilmembers who were in office prior to July 1, 2011, maintain the City's participation and contributions to CalPERS defined benefit or PTC457 defined contribution plans through their terms of office. For Councilmembers who assume office on or after July 1, 2011, require auto-enrollment in the PTC 457 defined contribution plan; and with additional direction that staff do further analysis on a future amendment to the City Charter whereby salary is set by a method that does not require the City Council to vote on an ordinance setting their own salaries and benefits. (11-0.)

## COMMUNITY & ECONOMIC DEVELOPMENT

- 4.1 (a) Conduct a Public Hearing and consider an ordinance amending the San José Municipal Code to amend Sections 6.54.110, 6.54.260, and 6.54.265 of Chapter 6.54 of Title 6 of the San José Municipal Code to modify the conditions for Approved Location Peddlers and authorize the City Manager to promulgate regulations on behalf of all Approved Location Peddlers' and adding Section 6.54.320 to extend the term of Approved Location Peddler Permits and Mobile Unit Peddler Permits;
- (b) Conduct a Public Hearing and consider an ordinance amending Title 20 of the San José Municipal Code (the Zoning Ordinance) to amend: Section 20.30.100 of Chapter 20.30 (Residential Zoning Districts) to allow Outdoor Vending of Fresh Fruits and Vegetables on School, Library, Community Center, and Religious Assembly sites; Sections 20.40.100 and 20.40.520 of Chapter 20.40 (Commercial Zoning Districts) to allow Outdoor Vending of Fresh Fruits and Vegetables in Commercial Zoning Districts; Section 20.50.100 of Chapter 20.50 (Industrial Zoning Districts) to allow Outdoor Vending of Fresh Fruits and Vegetables in Industrial Zoning Districts; Section 20.70.100 of Chapter 20.70 (Downtown Zoning Districts) to allow Outdoor Vending of Fresh Fruits and Vegetables, and to allow Banquet Facilities as Ground-floor Space Uses, in Downtown Zoning Districts; Sections 20.75.200 and 20.75.320 of Chapter 20.75 (Pedestrian Oriented Zoning Districts) to allow Certified Farmers' Markets, Neighborhood Agriculture and Outdoor Vending of Fresh Fruits and Vegetables in Pedestrian Oriented Zoning Districts; and Sections 20.80.810 and 20.80.820 of Chapter 20.80 (Specific Use Regulations, Outdoor Vending Facilities) to allow Outdoor Vending of Fresh Fruits and Vegetables and other products in conformance with specific criteria without an Administrative Permit all to further implement the Design for a Healthful Community Major Strategy, the Vibrant Neighborhoods Goals and Policies, the Economic Development Goals and Policies, and the Land Use Goals and Policies set forth within the Envision San José 2040 General Plan and to make other technical, formatting or other nonsubstantive changes within Title 20. Planning Commission recommends approval (6-0-1).

**CEQA: Envision San José 2040 General Plan Update Final Program EIR, Resolution No. 76041, File No. PP13-024. (City Manager's Office/Police/Planning, Building, and Code Enforcement) (Deferred from 5/7/13 – Item 4.2)**

Documents Filed: (1) Joint memorandum from Mayor Reed, Vice Mayor Nguyen and Council Member Campos and Kalra, dated May 10, 2013, recommending approval of Staff's recommendation. (2) Joint memorandum from Assistant to the City Manager, Angelique Gaeta and Acting Chief of Police Larry Esquivel, dated April 29, 2013, recommending consideration of ordinances. (3) Memorandum from Planning Commission Secretary Joseph Horwedel, dated April 17, 2013, transmitting the Planning Commission recommendations of approval. (4) Proof of Publication of Notice of Public Hearings, executed on March 22, 2013, submitted by the City Clerk. (5) Letters from County of Santa Clara Public Health Department Health Officer Marty Fenstersheib,

#### 4.1 (Cont'd.)

MD., dated March 19, 2013; Senior Planner & Program Director, Change Lab Solutions, Heather Wooten, dated March 20, 2013, and Jaime Alvarado, Executive Director SOMOS Mayfair, dated March 21, 2013, expressing support for the proposed City ordinance and policy changes.

Assistant to the City Manager, Angelique Gaeta and Assistant Director of Planning, Building and Code Enforcement Laurel Prevetti responded to questions from Council.

Mayor Reed opened the public hearing.

Public Comment: Aurelia Sanchez spoke on more stringent regulations for food safety, and Rachel Poplack, the Health Trust, offered support to the Staff's recommendations.

Mayor Reed closed the public hearing.

Motion: Council Member Campos moved approval of the staff report and the memorandum he cosigned with Mayor Reed, Vice Mayor Nguyen and Council Member Kalra. The motion was seconded by Council Member Kalra.

Assistant to the City Manager, Angelique Gaeta spoke to the need for resources to enforce the proposed ordinances.

Council Member Rocha asked to amend the motion to have policy discussion referred to September 2013. Council Members Campos and Kalra accepted the amendment to the motion.

Action: On a call for the question, the motion carried unanimously, and Ordinance No. 29253, entitled: "An Ordinance of the City of San José Amending Sections 6.54.110, 6.54.260, and 6.54.265 and Adding Section 6.54.320 of Chapter 6.54 of Title 6 of the San José Municipal Code to Modify the Conditions of for Fixed Location Peddlers and Authorize the City Manager to Promulgate Regulations on Behalf of All Fixed Location Peddlers"; and Ordinance No. 29254, entitled: "An Ordinance of the City of San José Amending Title 20 of the San José Municipal Code (the Zoning Ordinance) to Amend: Section 20.30.100 of Chapter 20.30 (Residential Zoning Districts) to Allow Outdoor Vending of Fresh Fruits and Vegetables on School, Library, Community Center, and Religious Assembly Sites in Residential Zoning Districts; Sections 20.40.100 and 20.40.520 of Chapter 20.40 (Commercial Zoning Districts) to Allow Outdoor Vending of Fresh Fruits and Vegetables in Commercial Zoning Districts; Section 20.50.100 of Chapter 20.50 (Industrial Zoning Districts) to Allow Outdoor Vending of Fresh Fruits and Vegetables in Industrial Zoning Districts; Section 20.70.100 of Chapter 20.70 (Downtown Zoning Districts) to Allow Outdoor Vending of Fresh Fruits and Vegetables, and to Allow Banquet Facilities as Ground-Floor Space Uses, in Downtown Zoning Districts; Sections 20.75.200 and 20.75.320 of Chapter 20.75 (Pedestrian Oriented Zoning Districts) to Allow Certified Farmers' Markets, Neighborhood Agriculture and

#### 4.1 (Cont'd.)

Outdoor Vending Of Fresh Fruits and Vegetables in Pedestrian Oriented Zoning Districts; Sections 20.80.810 And 20.80.820 of Chapter 20.80 (Specific Use Regulations, Outdoor Vending Facilities) to Allow Outdoor Vending of Fresh Fruits and Vegetables and Other Products in Conformance With Specific Regulations Without an Administrative Permit; and to Renumber Sections 20.200.400 (Flag Lot) and 20.200.410 (Fixed Based Host) of Chapter 20.200 (Definitions) Without Substantive Amendment; all to further implement the Design for a Healthful Community Major Strategy, the Vibrant Neighborhoods Goals and Policies, the Economic Development Goals and Policies, and the Land Use Goals and Policies Set Forth Within the Envision San Jose 2040 General Plan and to Make Other Technical, Formatting or Other Nonsubstantive Changes Within those Sections of Title 20”, were passed for publication, including the joint memorandum from Mayor Reed, Vice Mayor Nguyen and Council Members Campos and Kalra, dated May 10, 2013, was approved, and as outlined in the April 26, 2013 staff report, with further policy discussion to continue in September 2013. (11-0.)

- 4.2 (a) **Adopt a resolution adopting the Mitigated Negative Declaration prepared for the Spreckles Force Main Supplement and Pump Station Rehabilitation Project (File No. PP11-104), as having been completed in compliance with the California Environmental Quality Act (CEQA) reflecting the City’s independent judgment and analysis, and adopting a mitigation monitoring and reporting program;**
- (b) **Report on bids and award of contract for the Spreckles Force Main Supplement and Pump Station Rehabilitation Project to the low bidder, Sanco Pipelines, Inc., in the amount of \$2,774,444, and approval of a contingency in the amount of \$416,000.**

**CEQA: Mitigated Negative Declaration to be adopted, File No. PP11-104. Council District 4. (Public Works/Planning, Building and Code Enforcement)**

Documents Filed: Memorandum from Director of Public Works David Sykes and Director of Planning, Building and Code Enforcement Joseph Horwedel, dated April 22, 2013, recommending adoption of a resolution and acceptance of a report.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Constant and carried unanimously, Resolution No. 76630, entitled: “A Resolution of the Council of the City of San José Adopting the Spreckles Sanitary Sewer Force Main Supplement and Pump Station Rehabilitation Project 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, and the Report on bids and award of contract for the Spreckles Force Main Supplement and Pump Station Rehabilitation Project to the low bidder, Sanco Pipelines, Inc., in the amount of \$2,774,444 with related contingencies, was approved. (11-0.)

## NEIGHBORHOOD SERVICES

- 5.1 Conduct a Public Hearing and adopt a resolution to be effective August 1, 2013 to:**
- (a) Set forth the new Schedule of Parkland Fees charged pursuant to the San José Municipal Code Chapters 14.25 (“Park Impact Ordinance”) and 19.38 (“Parkland Dedication Ordinance”) to reflect the 2012 Residential Land Value Study; and**
  - (b) Authorize the City Manager to determine the applicable parkland fees for any residential units in the City of San José that are not included in the Schedule of Parkland Fees based on the nearest Multiple Listing Service zones.**

**CEQA: Not a Project, File No. PP10-067(a), Adjustments to fees, rates, and charges. (Parks, Recreation and Neighborhood Services)  
(Deferred from 4/23/13 – Item 5.1, 4/30/13 – Item 5.2, and 5/7/13 – Item 5.1)**

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Julie Edmonds-Mares, dated April 2, 2013, recommending adoption of a resolution.

Mayor Reed opened the public hearing.

Public Comment: Crisand Giles, BIA Bay Area, encouraged more funds be made available.

Mayor Reed closed the public hearing.

Council Member Constant expressed opposition as some districts that have had a greater fluctuation in land values, such as District One, where parkland fees aren't reflected accordingly. Council Members Liccardo and Khamis also expressed concerns that parkland fees were not being calculated fairly, and asked that Staff continue to look at the methodology being used.

Parks, Recreation and Neighborhood Services Division Manager Matt Cano responded to Councilmembers' concerns regarding distribution of funds.

Action: Upon motion by Council Member Kalra, seconded by Vice Mayor Nguyen and carried, Resolution No. 76631, entitled: “A Resolution of the Council of the City of San José Setting Forth the Schedule of Parkland Fees Charged Pursuant to Chapters 14.25 and 19.38 of the San José Municipal Code to Reflect the 2012 Residential Land Value Study, and Authorizing the City Manager to Determine the Applicable Parkland Fees for Any Residential Units in the City of San José that are Not Included in the Schedule of Parkland Fees Based on the Nearest Multiple Listing Service Zones”, was adopted, with Staff directed to put further effort into assessing the methodology being utilized. (10-1. Noes: Constant.)

## TRANSPORTATION & AVIATION SERVICES

- 6.1 Conduct a Public Hearing on recording liens on property for the reimbursement of cost for sidewalk repairs and adopt a resolution to approve the report from the Director of Finance on the reimbursement of cost for sidewalk repairs, confirming the assessments contained in the Report and directing the recording of liens on the property tax roll for the cost of sidewalk repairs. CEQA: Not a Project, File No. PP10-067(a), Specific Funding mechanism for Increase or Adjustment to Fees, Rates and Fares. (Finance)**

Documents Filed: Memorandum from Director of Finance Julia H. Cooper, dated April 25, 2013, recommending adoption of a resolution.

Public Comment: 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 Khamis, seconded by Vice Mayor Nguyen and carried unanimously, Resolution No. 76632, entitled: “A Resolution of the Council of the City of San José Approving the Report of the Director of Finance on the Reimbursement of Cost for Sidewalk Repairs, Confirming the Assessments Contained in the Report and Directing the Recording of Liens on the Property Tax Roll for the Cost of Sidewalk Repairs”, was adopted. (10-0-1. Absent: Liccardo.)

- 6.2 Consent retroactive to October 12, 2012, to substitute in place of Dillard Environmental Services, the trucking subcontractor that the general contractor Pavex listed for the 6938 - 2010 STP Resurfacing and Rehabilitation Project, the following trucking subcontractors: (1) D&S Trucking, LLC through November 19, 2012, and for the remainder of the project, and (2) MAG Trucking, Inc. and Charles F. Gagliasso Trucking, Inc. through November 19, 2012. CEQA: Exempt, File No. PP06-035. (Transportation)**

Documents Filed: Memorandum from Director of Transportation Hans Larsen, dated April 22, 2013, recommending trucking subcontractors.

Public Comments: Alec Ching, representing Granite Rock Company, offered support to staffs’ recommendations.

Director of Transportation Hans Larsen, Director of Public Works David Sykes and Deputy Director Department of Transportation Kevin O’Connor provided an overview.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, Consent retroactive to October 12, 2012, to substitute in place of Dillard Environmental Services, the trucking subcontractor that the general contractor Pavex listed for the 6938 - 2010 STP Resurfacing and Rehabilitation Project, the following trucking subcontractors: (1) D&S Trucking, LLC through November 19, 2012, and for the remainder of the project, and (2) MAG Trucking, Inc. and Charles F. Gagliasso Trucking, Inc. through November 19, 2012, was approved. (9-0-2. Absent: Campos, Kalra.)

## **PUBLIC SAFETY SERVICES**

### **8.1 As recommended by the Public Safety, Finance and Strategic Support Committee on April 18, 2013, accept the Audit of Fire Prevention. (City Auditor) [Public Safety, Finance and Strategic Support Committee referral 4/18/13 – Item D(4)]**

Documents Filed: (1) Joint memorandum from Council Members Campos and Council Member Kalra, dated May 10, 2013, recommending approval of Staffs' recommendations with additional direction as noted. (2) Memorandum from Acting City Clerk Toni Taber, dated April 24, 2013, transmitting the recommendations of the Public Safety, Finance and Strategic Support Committee.

City Auditor Sharon Erickson provided an overview of the audit. Fire Chief William McDonald followed with further details and a proposed action plan on audit findings.

Motion: Council Member Constant moved approval of the Staff recommendations, including the memorandum coauthored by Council Member Campos and Kalra, dated May 10, 2013. Council Member Liccardo seconded the motion.

Fire Marshall Curtis Jacobson responded to questions regarding the use of firefighter staff for inspections. Fire Chief William McDonald and City Auditor Sharon Erickson responded to extensive questions from Council.

Public Comments: Ross Signorino thanked the Fire Chief, City Auditor and Staff for their work on this project and suggested that fire sprinklers should be mandatory for all new construction.

Action: On a call for the question, the motion carried unanimously, and the Audit of Fire Prevention Audit was accepted, with approval of the joint memorandum from Council Members Campos and Kalra, dated May 10, 2013 (1) Accepting the Audit of Fire Prevention, and (2) Directing staff to study the audit's findings to discover the reasons surrounding the increase in the areas of response times, damage to structures, and loss of life; and with discussion to be continued at the May 16, 2013 Public Safety Study Session. (11-0.)

## **OPEN FORUM**

- (1) John Shepardson complained of toxic levels of lead at Watson Park, claiming that burn ash indicators near the school indicate that this area had not been remediated.
- (2) Ross Signorino offered suggestions to eradicate graffiti.

## **ADJOURNMENT**

The Council of the City of San José adjourned at 4:51 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Toni J. Taber, CMC  
Acting City Clerk

rmk/5-14-13MIN