



MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, AUGUST 20, 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.

Deputy City Manager Alex Gurza reported on the San José Police Officers' Association (SJPOA) Proposal.

Documents Filed: Letter from Gregg McLean Adam, Carroll, Burdick & McDonough LLP, to Office of Employee Relations Senior Executive Analyst, Jennifer Schembri, dated August 19, 2013, regarding "Response to City Letter of August 14, 2013".

Action: The report was accepted.

CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:10 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 (claim not filed) in one (1) matter; (B) to confer with Legal Counsel pursuant to Government Code Section 54956.9 (d)(1) with respect to existing litigation: (1) In re: Claim of Miller; Amount of Money or Other Relief Sought: Administrative Appeal; (2) In re: Claim of Silva; Amount of Money or Other Relief Sought: Administrative Appeal; (3) 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

CLOSED SESSION (Cont'd.)

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; (4) Stand for San José, et al. v. City, et al.; Names of Partie(s) Involved: Stand for San José; Eileen Hannan; Michelle Brenot; Robert Brown; and Robert Shields; City of San José; City Council of the City of San José; Successor Agency to the Redevelopment Agency of the City of San José; Successor Agency Oversight Board; Diridon Development Authority; Does 1 through 10, inclusive; Athletics Investment Group, LLC; Does 1 through 20, inclusive; Court: Superior Court of California, County of Santa Clara; Case No: 1-13-CV-250372; Amount of Money or Other Relief Sought: Writ of Mandamus and Complaint for Declaratory Relief and Injunction Relief and for Attorney Fees; (5) City of San José v. Eagle Recycling, Inc.; Names of Partie(s) Involved: City of San José; Eagle Recycling, Inc., a California Corporation, and Does 1 through 50; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-227467; Amount of Money or Other Relief Sought: Damages according to proof; (6) San José Police Officers' Association v. City, et al.; Names of Partie(s) Involved: San José Police Officers' Association, City of San José, Board of Administration for Police and Fire Department Retirement Plan of City of San José and Does 1-10; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-225926; Amount of Money or Other Relief Sought: Declaratory and injunctive relief; (7) San José Retired Employees Association, et al. v. City, et al.; Names of Partie(s) Involved: San José Retired Employees Association, Howard E. Fleming, Donald S. Macrae, Frances J. Olson, Gary J. Richert and Rosalinda Navarro, City of San José Does 1 through 50, Board of Administration for the Federated City Employees Retirement System; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-233660; Amount of Money or Other Relief Sought: Declaratory Relief and Verified Petition for Writ of Mandate; (8) Sapien, et al. v. City of San José, et al.; Names of Partie(s) Involved: Robert Sapien, Mary Kathleen McCarthy, Thanh Ho, Randy Sekany, Ken Heredia, City of San José, Debra Figone in her official capacity as City Manager of the City of San José, Does 1 through 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: 1-12-CV-225928; Amount of Money or Other Relief Sought: Challenge to Measure B; (9) Harris, et al. v. City of San José, et al.; Names of Partie(s) 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 through 15; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-226570; Amount of Money or Other Relief Sought: Challenge to Measure B; (10) Mukhar, et al. v. City of San José, et al.; Names of Partie(s) Involved: John Mukhar, Dale Dapp, James Atkins, William Buffington, Kirk Pennington, City of San José, Debra Figone, in her official capacity as City Manager of the City of San José; the Board of Administration for the 1975 Federated City Employees' Retirement Plan, and Does 1 through 15; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-226570; Amount of Money or Other Relief Sought: Challenge to Measure B; (11) AFSCME, et al. v. City of San José, et al.; Names of Partie(s) Involved: American

CLOSED SESSION (Cont'd.)

Federation of State, County and Municipal Employees, Local 101 on behalf of its members; City of San José, Debra Figone, in her official capacity as City Manager of the City of San José; the Board of Administration for the Federated City Employees' Retirement Plan; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-225928; Amount of Money or Other Relief Sought: Challenge to Measure B; (C) Confer with Real Property Designated Representatives Pursuant to Government Code Section 54956.8: (1) Property Street Address, Parcel Number, or Other Unique Reference of Property: Municipal Stadium, 588 E. alma Avenue, San José; Negotiating Parties: Nanci Klein and Matt Morley for the City of San José and Dan Orum for Baseball Acquisition Company, Inc.; Under Negotiation: the direction will concern price and terms of payment; Likely Range of Value of Property: Negotiated price based on appraisal and comparable property values; (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 11:45 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

Pastor Danny Sanchez, Calvary Chapel San José provided the Invocation.

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Herrera, seconded by Vice Mayor Nguyen, and carried unanimously, the Orders of the Day and the Amended Agenda were approved, with item 2.12, "Approval of a Subordination Agreement for the Boys and Girls Club of Silicon Valley," added, and Item 11.1(b) deferred to September 17, 2013. (11-0.)

CEREMONIAL ITEMS

- 1.1 Presentation of certification from The Greenroads Foundation to the City of San José, for the Monterey Road pavement rehabilitation and LED streetlighting project in south San José, the first Greenroads certified project in California. (Mayor)**

Mayor Reed and Council Member Kalra commended The Greenroads Foundation for the Monterey Road pavement rehabilitation and LED streetlighting project in south San José.

CEREMONIAL ITEMS

- 1.2 Presentation of a commendation recognizing Dean Sala and his small business Suntactics for perfecting solar charging technology for cellular devices and contributing to the advancement of green business practices. (Constant)**

Mayor Reed and Council Member Constant recognized and commended Dean Sala and his small business Suntactics for perfecting solar charging technology for cellular devices and contributing to the advancement of green business practices.

- 1.3 Presentation of a commendation recognizing the Local Agency Formation Commission of Santa Clara County for its outstanding work managing growth and encouraging the orderly formation of local agencies for 50 years. (Constant)**

Mayor Reed and Council Member Constant recognized and commended the Local Agency Formation Commission of Santa Clara County for its outstanding work managing growth and encouraging the orderly formation of local agencies for 50 years.

CONSENT CALENDAR

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

- 2.1 Approval of Minutes.**

None provided.

- 2.2 Final Adoption of Ordinances.**

- (a) **ORD. NO. 29281 - Amending Section 20.85.020 of Chapter 20.85 of Title 20 of the San José Municipal Code to clarify the maximum allowable building height within geographical employment centers including the Norman Y. Mineta San José International Airport.**

Documents Filed: (1) Memorandum from City Attorney Richard Doyle, dated August 19, 2013, offering response to letters regarding the proposed zoning ordinance to clarify the maximum allowable building heights at the airport; (2) Letter from Ash Pirayou, Rutan & Tucker, LLP, dated August 20, 2013, regarding proposed amendments to the zoning ordinance; (3) Proof of publication of the Title of Ordinance No. 29281 executed on August 16, 2013, submitted by the City Clerk.

Action: Ordinance No. 29281 was adopted. (11-0.)

2.3 Approval of Council Committee Reports.

(a) Rules and Open Government Committee Report of June 12, 2013. (Mayor)

Documents Filed: Rules and Open Government Committee Report, dated June 12, 2013.

Action: The Committee Report was accepted. (11-0.)

2.4 Mayor and Council Excused Absence Requests.

None provided.

2.5 City Council Travel Reports.

No Reports.

2.6 Report from the Council Liaison to the Retirement Boards.

No Report.

2.7 Adopt a resolution authorizing the City Manager to execute the First Amendment to the Zero Waste Project Ground Lease by and between the City of San José and Zero Waste Energy Development Company, LLC, permitting the tenant to sublease certain portions of the ground lease area for parking at the discretion of the City Manager. CEQA: Mitigated Negative Declaration, File No. SP09-057. Council District 4. (Environmental Services/Economic Development) (Deferred from 6/18/13 – Item 2.12)

Documents Filed: (1) Letter from Treatment Plant Advisory Committee Chair Chuck Reed, dated August 15, 2013, stating concurrence with the Staff recommendations (2) Two “City Council Action Requests” from Director of Economic Development/Chief Strategist Kim Welsh and Environmental Services Director Kerrie Romanow, dated June 18, 2013 and August 10, 2013, recommending a first amendment to a ground lease.

Action: Resolution No. 76757, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Execute the First Amendment to the Zero Waste Project Ground Lease by and Between the City of San José and Zero Waste Energy Development Company, LLC, Permitting the Tenant to Sublease Certain Portions of the Ground Lease Area for Passenger Vehicle Parking at the Discretion of the City Manager”, was adopted. (11-0.)

2.8 Adopt a resolution authorizing the City Manager to:

- (a) Execute the First Amendment to the Lease by and between the City of San José and Habitat for Humanity Silicon Valley to extend the date for delivery of the premises to no later than March 1, 2014, and to provide the tenant a right to terminate for convenience with 180 days notice; and**
- (b) Negotiate and execute future amendments to the Lease to modify the dates for delivery and payment of rent in the event there are additional delays to the construction of the Environmental Innovation Center.**

CEQA: Mitigated Negative Declaration, File No. PP09-138. Council District 3. (Economic Development)

2.8 (Cont'd.)

Documents Filed: City Council Action Request from Economic Development Deputy Director Nanci Klein, dated August 10, 2013, recommending approval of a first amendment to a lease.

Public Comments: David Wall pulled Item 2.8 to comment on the Habitat for Humanity lease agreement.

Action: Upon motion by Council Member Herrera, seconded by Vice Mayor Nguyen and carried unanimously, Resolution No. 76758, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to (1) Execute the First Amendment to the Lease by and Between the City of San José and Habitat for Humanity Silicon Valley to Extend the Date for Delivery of the Premises to January 1, 2014, and to Provide the Tenant a Right to Terminate for Convenience with 180 Days’ Notice, and (2) Negotiate and Execute Future Amendments to the Lease to Modify the Dates for Delivery and Payment of Rent in the Event there are Additional Delays to the Construction of the Environmental Innovation Center”, was adopted. (11-0.)

2.9 **Approve the First Amendment to the Master Agreement with ERM-West Inc. for environmental health and safety consulting services to increase the total compensation by \$300,000 for a maximum not to exceed amount of \$550,000. CEQA: Not a Project, File No. PP10-066(d), Consultant Services. Council District 4. (Environmental Services)**

Documents Filed: (1) Letter from Treatment Plant Advisory Committee Chair Chuck Reed, dated August 15, 2013, stating concurrence with the Staff recommendations. (2) City Council Action Request from Assistant Director of the Environmental Services Ashwini Kantak, dated August 10, 2013, recommending approval of a first amendment to a master agreement.

Council Member Chu pulled Item 2.9 to question the strategy for filling full-time positions at the Water Treatment Plant. Sustainability and Compliance Manager, Rene Eyerly, responded to questions from Council.

Action: Upon motion by Council Member Chu, seconded by Council Member Herrera, and carried unanimously, the First Amendment to the Master Agreement with ERM-West Inc. for environmental health and safety consulting services to increase the total compensation by \$300,000 for a maximum not to exceed amount of \$550,000, was approved. (11-0.)

- 2.10 Adopt a resolution authorizing the Director of Finance to negotiate and execute agreements with Wells Fargo Bank for The WellsOne Commercial Card Service and Wells Fargo Supplier Analysis and Onboarding Commercial Card Conversion Service, and related documents, which enhance the vendor payment options to allow vendors to receive electronic payments in lieu of checks in a substantially shortened timeframe. CEQA: Not a Project, File No. PP10-066(a), Purchase Order/Cooperative Purchase of Supplies, Equipment & Professional Services with no changes in the physical environment. (Finance)**

Documents Filed: Memorandum from Director of Finance Julia H. Cooper, dated July 28, 2013, recommending adoption of a resolution.

Action: Resolution No. 76759, entitled: “A Resolution of the Council of the City of San José Authorizing the Director of Finance to Negotiate and Execute Agreements with Wells Fargo Bank for the Wellstone Commercial Card Service and Wells Fargo Supplier Analysis and Onboarding Commercial Card Conversion Service, and Related Documents, Which Enhance the Vendor Payment Options to Allow Vendors to Receive Electronic Payments in Lieu of Checks in a Substantially Shortened Timeframe”, was adopted. (11-0.)

- 2.11 As recommended by the Rules and Open Government Committee on August 14, 2013:**

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

CEQA: Not a Project. (Khamis)

Documents Filed: Memorandum from Acting City Clerk Toni Taber, dated August 14, 2013, transmitting the recommendations of the Rules and Open Government Committee.

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

- 2.12 (a) Council by motion waive the 10-day noticing requirement for the following item, approve its placement on the agenda, and consider the following recommendation.**
- (b) Approve a Subordination Agreement to subordinate the City’s existing Deed of Trust, as amended by a First Amendment to the Deed of Trust, on real property located at 2195 Cunningham Avenue, to a \$500,000 loan from Focus Bank.**

CEQA: Not a Project, File No. PP10-066, Agreements for activities involving no physical changes to the environment. Council District 8. (Housing)

2.12 Approval of a Subordination Agreement for the Boys and Girls Club (Cont'd.)

Documents Filed: Memorandum from Director of Housing Leslye Corsiglia, dated August 16, 2013, recommending approval of an agreement.

Council Member Herrera pulled Item 2.12 for clarification on cash reserves for the project. Assistant Director of Housing Jacky Morales-Ferrand responded to questions from Council.

Action: Upon motion by Council Member Herrera, seconded by Vice Mayor Nguyen and carried unanimously, a Subordination Agreement to subordinate the City's existing Deed of Trust, as amended by a First Amendment to the Deed of Trust, on real property located at 2195 Cunningham Avenue, to a \$500,000 loan from Focus Bank, and the 10-day noticing requirement for the following item, approve its placement on the agenda, and consideration of the recommendation, was 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 provided an update on the evacuation at San José Family Camp due to the Rim Fire, adding that the evacuation advisory remains in place and an information memo will be provided to Council with further updates.

3.3 As recommended by the Rules and Open Government Committee on August 7, 2013, discuss the Elections Commission response to the referrals from Rules and Open Government regarding the following: (1) campaign contribution limits; (2) electioneering communications disclosures; and (3) elections and recounts. CEQA: Not a project, File No. PP10-068(c), Code or Policy change that involves no physical changes to the environment. (City Clerk) [Rules Committee referral 8/7/13 – Item G(9)]

Documents Filed: (1) Memorandum from Council Member Kalra, dated August 20, 2013, recommending approval of the Election Commission's recommendations. (2) Memorandum from Acting City Clerk Toni Taber, dated August 8, 2013, transmitting the recommendations of the Rules and Open Government Committee.

Acting City Clerk Toni Taber, provided an overview of the Elections Commission response and Ethics Commission Title 12 and Administrative Procedure Revisions.

Public Comments: Offering agreement with the League of Women Voters' recommendations, keeping current limits and leaving campaign funds in place, were: Trudy LaFrance (League of Women Voters), John Fioretta, Craig Dunkerley (California Clean Money Campaign), and Gerry Hunt. Mark Trout alleged voter fraud during his campaign for City Council.

3.3 (Cont'd.)

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

Action: On a call for the question, the motion carried unanimously, the Elections Commission's response to the referrals from Rules and Open Government regarding the following: (1) campaign contribution limits; (2) electioneering communications disclosures; and (3) elections and recounts, were approved. (11-0.)

3.4 **Ethics Commission Title 12 Revisions and Revisions to Administrative Procedures: As recommended by the Rules and Open Government Committee on August 7, 2013:**

- (a) **Discussion and direction relating to Title 12, Disclosure of Electioneering Communications.**
- (b) **Approve an ordinance amending Chapters 12.05 and 12.06 of Title 12 of the San José Municipal Code to amend Sections 12.05.040, 12.06.295, 12.06.510, 12.06.910, 12.06.915, and 12.06.1010, and adding a new section 12.06.215 relating to Elections.**

Documents Filed: (1) Memorandum from Acting City Clerk Toni Taber, dated August 8, 2013, transmitting the recommendations of the Rules and Open Government Committee. (2) Supplemental memorandum from City Attorney Richard Doyle, dated August 15 2013, providing additional information relevant for proposed revisions.

Motion: Vice Mayor Nguyen moved approval of the recommendations as presented by the Rules and Open Government Committee on August 7, 2013. Council Member Kalra seconded the motion.

Council Member Constant requested to amend the motion to include "Specify the electioneering communication size for signs is 5% of the *printable* height of the publication". Council Member Kalra and Vice Mayor Nguyen accepted the amendment.

Council Member Liccardo requested to amend the motion to add clarification language and to include changes to reflect a 45-day period after the election for a candidate to deposit personal funds into their campaign account as indicated below in "Action". Council Member Kalra and Vice Mayor Nguyen accepted the amendment.

Action: On a call for the question, the motion carried unanimously, and Ordinance No. 29282, passed for publication, with revisions as follows:

- (1) Add clarification language to 12.06.915: "Each candidate, candidate controlled committee and independent committee *for whom the City Clerk is the regular filing official . . .*";
- (2) Change Section 12.06.295 to reflect a 45-day period after the election for a candidate to deposit personal funds into their campaign account for the purpose of paying outstanding debt, but not to exceed 5% of the voluntary expenditure limit;

3.4 (Cont'd.)

Action: (Cont'd.)

(3) Specify the electioneering communication size for signs is 5% of the printable height of the publication. (11-0.)

(c) Direct staff relating to amendments to Chapter 12.08, the Gift Ordinance. CEQA: Not a project, File No. PP10-068(c), Code or Policy change that involves no physical changes to the environment. (City Clerk) [Rules Committee referral 8/7/13 – Item G(10)]

Action: No Action Taken

3.5 As recommended by the Rules and Open Government Committee on August 7, 2013:

- (a) Direct the City Attorney to work with the City Clerk and City Manager to draft an ordinance that codifies Open Government policies and practices previously adopted in pilot form to ensure ethical and open government. These policies include the Reed Reforms, Sunshine Reforms, and Procurement Reform;**
- (b) Direct staff to draft a single procedural document (Council Resolution or Council Policy) incorporating process and procedures to provide practical guidance and ensure compliance with the purpose and goals of the Open Government Ordinance;**
- (c) Direct staff to include any recommendation for modification to current policies that may be desirable to make the ordinance clear or easier to administer; and**
- (d) Direct staff to work with the Rules and Open Government Committee on development of the ordinance and procedural document.**

CEQA: Not a project, File No. PP10-068(c), Code or Policy change that involves no physical changes to the environment. (Mayor) [Rules Committee referral 8/7/13 – G(14)]

Documents Filed: (1) Supplemental memoranda from Mayor Reed, dated August 8 and August 15, 2013, providing additional recommendations to the Mayor's Biennial Ethics Review Rules Committee memorandum dated August 1, 2013. (2) Memorandum from Acting City Clerk Toni Taber, dated August 8, 2013, transmitting the recommendations of the Rules and Open Government Committee.

Public Comment: Mark Trout made comments on open government.

Action: Upon motion by Council Member Herrera, seconded by Vice Mayor Nguyen and carried unanimously, (1) the City Attorney was directed to work with the City Clerk and City Manager to draft an ordinance that codifies Open Government policies and practices previously adopted in pilot form to ensure ethical and open government, including the

3.5 (Cont'd.)

Action: (Cont'd.)

Reed Reforms, Sunshine Reforms, and Procurement Reform; (2) Staff was directed to draft a single procedural document (Council Resolution or Council Policy) incorporating process and procedures to provide practical guidance and ensure compliance with the purpose and goals of the Open Government Ordinance; (3) Staff was directed to include any recommendation for modification to current policies that may be desirable to make the ordinance clear or easier to administer; and (4) Staff was directed to work with the Rules and Open Government Committee on development of the ordinance and procedural document. (10-0-1. Absent: Khamis.)

3.6 **Approve an ordinance amending various sections of Chapters 3.38 and 3.49 of Title 3 of the San José Municipal Code to implement changes to retiree healthcare benefits in the Tier 2 pension plan for new employees in the Federated City Employees Retirement Plan. CEQA: Not a Project; File No. PP10-068(c), Municipal Code or Policy change that involves no changes in the physical environment. (City Attorney's Office)** **(Deferred from 8/13/13 – Item 3.5)**

Documents Filed: (1) Memorandum from City Attorney Richard Doyle, dated August 1, 2013, recommending approval of an ordinance. (2) Supplemental memorandum from Deputy City Manager Alex Gurza, dated August 15, 2013, providing supplemental information regarding retiree healthcare benefits.

Action: Upon motion by Council Member Herrera, seconded by Vice Mayor Nguyen, and carried unanimously, Ordinance No. 29283, entitled: “An Ordinance of the City of San José Amending Various Sections of Chapter 3.28 of Title 3 of the San José Municipal Code to Implement Changes to Medical and Dental Coverage for the Federated City Employees’ Retirement System”, was passed for publication. (11-0.)

NEIGHBORHOOD SERVICES

5.1 **As recommended by the Public Safety, Finance, and Strategic Support Committee on June 20, 2013, accept the Audit of Graffiti Abatement. (City Auditor)** **[Public Safety, Finance, and Strategic Support Committee referral 6/20/13 – Item D(7)]** **(Deferred from 8/13/13 – Item 5.3)**

Documents Filed: (1) Joint memorandum from Council Members Rocha and Campos, dated August 16, 2013, accepting the staff’s report with additional recommendations. (2) Memorandum from Acting City Clerk Toni Taber, dated August 1, 2013, transmitting the recommendations of the Public Safety, Finance and Strategic Support Committee.

City Auditor Sharon Erickson provided an overview of the Graffiti Abatement audit.

5.1 (Cont'd.)

Public Comment: Aurelia Sanchez complained of a decrease in the level of service since the contractor has taken over.

Motion: Council Member Rocha moved approval of the staffs' recommendations, including additional direction as outlined in the memorandum he co-authored with Council Member Campos. Council Member Campos seconded the motion.

Extensive Council discussion followed.

Action: On a call for the question, the motion carried unanimously, the audit of the Graffiti Abatement with additional direction as outlined in the memorandum co-authored by Council Member Rocha and Campos was accepted. (11-0.)

TRANSPORTATION & AVIATION SERVICES

6.1 Report on Request for Proposal for Shuttle Bus Service at the Norman Y. Mineta San José International Airport and adopt a resolution authorizing the City Manager to:

- (a) Execute an agreement with Veolia Transportation Services, Inc. (Lombard, IL) to provide Airport Shuttle Bus Services, for an initial four year term ending August 31, 2017, with maximum compensation not to exceed \$3,861,541 for the period September 1, 2013 through August 31, 2014;
- (b) Adjust the maximum compensation annually consistent with the terms of the agreement, subject to changes in the Consumer Price Index, not to exceed 3% annually and subject to the appropriation of funds;
- (c) Execute amendments and change orders to the agreement to add or delete routes and schedules due to service requirements at the Airport, subject to the appropriation of funds; and
- (d) Execute up to six one-year options to extend the agreement, subject to the appropriation of funds.

CEQA: San Jose International Airport Master Plan Update EIR (File No. PP95-110), Resolution No. 67380 and SEIR (File No. PP02-226), Resolution No.71451. (Finance)

Action: Deferred to August 27, 2013 per Administration.

ENVIRONMENTAL & UTILITY SERVICES

7.1 Actions Related to the Issuance of Commercial Solid Waste and Recyclables Collection Franchises.

- (a) Conduct a public hearing on the applications of ECO Box Recycling Inc., Peninsula Debris Box Service LLC, and Ta Trucking for Commercial Solid Waste and Recyclables Collection Franchises for the nonexclusive collection and transport of residential clean-out material and construction and demolition debris.
- (b) Approve the ordinances granting the franchises to ECO Box Recycling Inc., Peninsula Debris Box Service LLC, and Ta Trucking.
- (c) Approve the Commercial Solid Waste and Recyclables Collection Franchise Agreements with ECO Box Recycling Inc., Peninsula Debris Box Service LLC, and Ta Trucking for the non-exclusive collection and transport of residential clean-out material and construction and demolition debris for a term from November 1, 2013, to June 30, 2014, with the option of up to three, one-year extensions. CEQA: Exempt, File No. PP08-228. (Environmental Services)

Documents Filed: Memorandum from Environmental Services Director Kerrie Romanow, dated July 29, 2013, recommending approval of ordinances and Commercial Solid Waste and Recyclables Collection Franchise agreements.

Action: Upon motion by Council Member Chu, seconded by Vice Mayor Nguyen and carried unanimously, Ordinance No. 29284, entitled: “An Ordinance of the City of San José Granting a Commercial Solid Waste and Recyclables Collection Franchise to Eco Box Recycling, Inc.”; Ordinance No. 29285, entitled: “An Ordinance of the City of San José Granting a Commercial Solid Waste and Recyclables Collection Franchise to Peninsula Debris Box Service LLC,”; and Ordinance No. 29286, entitled: “An Ordinance of the City of San José Granting a Commercial Solid Waste and Recyclables Collection Franchise to Phi Ta, an Individual, Doing Business as TA Trucking” were passed for publication. (11-0.)

7.2 As recommended by the Transportation and Environment Committee on August 12, 2013, provide direction to staff on potential grant application to City Energy Project for commercial building energy efficiency program. CEQA: Not a Project, File No. PP10-068(a), Grant Application.

[Transportation and Environment Committee referral 8/12/13 – Item D(3)]

Documents Filed: (1) Memorandum from Acting City Clerk Toni Taber, dated August 16, 2013, transmitting the recommendations of the Transportation and Environment Committee. (2) Powerpoint presentation “City Energy Project Overview & Funding Opportunity”, dated August 20, 2013.

7.2 (Cont'd.)

Environmental Services Director Kerrie Romanow introduced the project, and Sustainability and Compliance Manager, Rene Eyerly provided a presentation.

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Herrera and carried unanimously, the audit of the Airport's Parking Management Agreement as recommended by the Transportation and Environment Committee, was accepted. (10-0-1. Absent: Liccardo.)

REDEVELOPMENT – SUCCESSOR AGENCY

9.1 **Actions Related to the Merged Area Redevelopment Project Taxable Subordinate Housing Set-Aside Tax Allocation Variable Rate Bonds, Series 2010C.**

- (a) **Authorizing, subject to the approval of the Oversight Board of the Successor Agency (the “Oversight Board”) and review by the State Department of Finance (“DOF”), the execution and delivery, in substantially final form, of a First Supplement to Fiscal Agent Agreement between the Successor Agency and Wells Fargo Bank, National Association, as Fiscal Agent relating to the Redevelopment Agency of the City of San José Merged Area Redevelopment Project Taxable Subordinate Housing Set-Aside Tax Allocation Variable Rate Bonds, Series 2010C (the “2010C Bonds”);**
- (b) **Authorizing, subject to the approval of the Oversight Board and review by DOF, the execution and delivery, in substantially final form, of an Amended and Restated Continuing Covenant Agreement with Wells Fargo Bank, National Association, as initial bondholder of the 2010C Bonds; and**
- (c) **Authorizing the Executive Officer and Chief Financial Officer of the Successor Agency, or their designee, to take any actions and execute any and all documents necessary to complete this transaction.**

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

Documents Filed: Memorandum from Director of Finance Julia H. Cooper, dated July 29, 2013, recommending adoption of a resolution.

Director of Finance Julia H. Cooper responded to questions from Council.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera, the motion carried unanimously, the Successor Agency to the Redevelopment Agency Resolution No. 7023, “A Resolution of the Successor Agency to the Redevelopment Agency of the City of San José Approving and Authorizing the Negotiation, Execution and Delivery of an Amended and Restated Continuing Covenant Agreement and First Supplement to Fiscal Agent Agreement, and Approving and Authorizing Other Related Actions in Order to Allow for the Bank Bond Holder to Continue to Hold the Redevelopment Agency of the City of San José Merged Area Redevelopment Project Revenue Bonds, Series 2010C”, was adopted. (11-0.)

OPEN FORUM

- (1) Mark Trout offered personal viewpoints.
- (2) Jesse Singh (Bay Area Taxi Company Association) criticized illegal transportation for hire operations in San José.
- (3) Bikram Jeet Singh (Alpha Cab/California Cab Company) requested that an extended response period be allowed to the public regarding taxi cab transportation services.

ADJOURNMENT

The Council of the City of San José adjourned the afternoon session at 5:11 p.m.

RECESS/RECONVENE

The City Council recessed at 5:11 p.m. from the afternoon Council Session and reconvened at 7:03 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.

City Clerk Toni J. Taber, CMC read the requests for continuance of the applications. Upon motion by Council Member Herrera, 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 commendations to the 2013 Synopsys Championship participants in recognition of their achievement and innovation in the fields of science and engineering. (Kalra)

Mayor Reed, Council Member Kalra and former Council Member Forrest Williams recognized and commended the 2013 Synopsys Championship participants in recognition of their achievement and innovation in the fields of science and engineering.

PUBLIC HEARINGS

11.1 Public Hearings on Consent Calendar.

- (a) **Consideration of a resolution adopting a mitigated negative declaration and an ordinance rezoning the real property located on the southeast corner of Mabury Road and Educational Park Drive from the A-Agricultural Zoning District to the A(PD) Planned Development Zoning District to allow up to 18 single-family detached residences on a 3.42 gross acre site (Sabatino Murphy A Jr Trustee & Et Al, Owner). CEQA: Mitigated Negative Declaration to be adopted. Planning Commission recommends approval (7-0-0).**

PDC12-010 – District 4

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated July 17, 2013, transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC12-010. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated July 24, 2013, transmitting the Planning Commission recommendation of approval. (3) Proof of Publication of Notice of Public Hearing, executed on June 21, 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: Upon motion by Council Member Liccardo, seconded by Council Member Kalra and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, and Ordinance No. 29287, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated at the Southeast Corner of Mabury Road and Educational Park Drive, from the A-Agriculture Zoning District to the A(PD) Planned Development Zoning District”, was passed for publication; Resolution No. 76760, entitled: “A Resolution of the Council of the City of San José Adopting the Sabatino Townhomes 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. (10-0-1. Absent: Herrera.)

- (b) **Consideration of a resolution adopting a mitigated negative declaration and an ordinance rezoning the real property located on the southwest corner of Guadalupe Mines Road and Camden Avenue (6055 Guadalupe Mines Road) from the R-1-1 Single Family Zoning District to the A(PD) Planned Development Zoning District to allow up to six (6) single-family detached homes (including one existing single-family detached residence) on a 7.2 gross acre site (Margolis Adele P Trustee, Owner). CEQA: Mitigated Negative Declaration to be adopted. Planning Commission recommends approval (7-0-0). PDC12-024 – District 10**

Action: Deferred to September 17, 2013 per Orders of the Day.

**11.2 Consideration of a Conditional Use Permit and Determination of Public Convenience or Necessity request to allow the off-sale of alcoholic beverages within a neighborhood grocery store (Walmart) in an existing building on a 1.061 gross acre site within the CG Commercial General Zoning District, located on the south side of Stevens Creek Blvd between Kiely Blvd and Saratoga Ave (4080 Stevens Creek Boulevard) (Smythe European Inc, Owner). CEQA: Exempt. Planning Commission recommends approval (5-2-0).
CP13-029/ABC13-003 – District 1**

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated August 5, 2013, transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. CP13-029 and ABC13-003. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated August 16, 2013, transmitting the Planning Commission recommendation of approval. (3) Transmittal Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated August 7, 2013, providing additional information. (4) Letter from Kate Slama and Jerry Pickett dated July 10, 2013, including a petition signed by 164 residents, expressing opposition to the Conditional Use Permit. (5) Proof of Publication of Notice of Public Hearing, executed on August 2, 2013, submitted by the City Clerk.

Mayor Reed opened the public hearing

Public Comment: Offering opposition to the Conditional Use Permit, citing negative impacts on the surrounding neighborhood, oversaturation of liquor licenses in the area, and threats to surrounding small businesses, were: Brice McQueen, Richard Graeber, Kate Slama, Vickie Jarvis, Don Slama, Don Jarvis, Jerry Pickett, Teej, Eun Young Hong, Heung Sik Byeun and Linda Montgomery.

Mayor Reed closed the public hearing.

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

Action: Upon motion by Council Member Constant, seconded by Vice Mayor Nguyen, the motion carried, and the recommendation of the Planning Commission and the Planning Director was approved, Resolution No. 76761, entitled: “A Resolution of the Council of the City of San José Approving a Conditional Use Permit and a Request for a Determination of Public Convenience or Necessity to Use Certain Real Property Described Herein for the Purpose of Providing the Off-Sale of the Full Range of Alcoholic Beverages for a New Neighborhood Market (Walmart) in an Existing Building on a 5.27 Gross Acre Site Located on the South Side of Stevens Creek Boulevard between Kiely Boulevard and Saratoga Avenue (4080 Stevens Creek Boulevard), was adopted. (10-1. Noes: Kalra.)

11.3 Actions Related to the Real Property Located at the Southwest Corner of West San Carlos and Sunol Streets Extending to Auzerais Avenue.

- (a) Consideration of an ordinance rezoning the real property located at the southwest corner of West San Carlos and Sunol Street extending to Auzerais Avenue (860 West San Carlos Street) from the A(PD) Planned Development Zoning District to the A(PD) Planned Development Zoning District for a previously approved development to allow the following: (1) a change in the range of multi-family residential units from 680-800 to 600-800 units; (2) a change in the range of commercial square footage from 24,000-30,000 to 12,500-30,000 square feet; and (3) a reduction in building height on Block C from 140-150 feet to 50-80 feet, on an 8.0 gross acre site (Santa Clara County Transit District (VTA), Owner). CEQA: Ohlone Mixed Use EIR, File No. PDC08-061, Resolution No. 75192. PDC13-004 – District 6
- (b) Consideration of an ordinance approving a Development Agreement with Green Republic, LLLP, Valley Transportation Authority (VTA), Dianne Ryan Trust, 861 Auzerais Investment, Green Valley Corporation, and Carolyn Pahle Trust, to develop up to 800 multi-family attached residential units and a minimum of 14,000 square feet of ground floor commercial space on three blocks with a minimum of two tower structures and one structure with a minimum height of 70 feet, consistent with the proposed Planned Development Zoning (File No, PDC13-004), and subject to the performance by Green Republic, LLLP for the dedication of parkland, contribution of funds for public transportation improvements serving the development, accelerated construction of street and utility infrastructure, submittal of building permits for the first high rise and commencement of construction and subsequent occupancy per deadlines of performance included in this agreement, on an 8.0 gross acre site, located at the southwest corner of West San Carlos and Sunol Streets extending to Auzerais Avenue (860 W. San Carlos Street). CEQA: Ohlone Mixed Use EIR, File No. PDC08-061, Resolution No. 75192. DA13-002 – District 6

Action: Deferred to September 17, 2013 per Administration.

11.4 Actions Related to the Real Property Located on the North Side of The Alameda.

- (a) **Consideration of a resolution adopting a mitigated negative declaration and an ordinance rezoning the real property located on the north side of The Alameda approximately 310 feet west of Stockton Avenue from the CG – Commercial General and LI – Light Industrial Zoning Districts to the A(PD) Planned Development Zoning District to allow up to 70 residential units and a minimum of 22,651 square feet of commercial uses on a 1.04 gross acre site.**
- (b) **Consideration of adoption of a resolution approving a Planned Development Permit to allow the construction of up to 70 residential units on a minimum of 22,651 square feet of commercial uses.**

CEQA: Mitigated Negative Declaration to be adopted. Planning Commission recommends approval (7-0-0).

PDC13-007/PD13-010 – District 6

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated July 17, 2013, transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC13-007 and PD13-010. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated July 29, 2013, transmitting the Planning Commission recommendation of approval. (3) Proof of Publication of Notice of Public Hearing, executed on July 12, 2013, submitted by the City Clerk.

Mayor Reed opened the public hearing.

Public Comment: Jeff Holmes, property owner, offered support to the staffs' recommendations.

Mayor Reed closed the public hearing.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Constant, and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, and Ordinance No. 29288, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the North Side of the Alameda Approximately 310 Feet West of Stockton Avenue (APN: 261-01-003, -004, -005, -006), from the CG – Commercial General and LI – Light Industrial Zoning Districts to the A(PD) Planned Development Zoning District ", was passed for publication, and Resolution No. 76762, entitled: "A Resolution of the Council of the City of San José Approving the 785 – 807 The Alameda 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", and Resolution No. 76763, entitled: "A Resolution of the Council of the City of San José Approving a Planned Development Permit, Subject to Conditions, to Allow Development of up to 70 Attached Residential Units and a Minimum of 22,650 Square Feet of Commercial Uses on a 1.04 Gross Acre Site Located on the North Side of the Alameda Approximately 310 Feet West of Stockton Avenue", were adopted (11-0.)

**11.5 Consideration of a Conditional Use Permit and Determination of Public Convenience or Necessity request to allow the sale of the full range of alcoholic beverages (Type 21) for off-site consumption at an existing full-service grocery store on a 4.75 gross acres site, within the CG Commercial General Zoning District, located on the west side of Senter Road, approximately 150 feet north of Lewis Road (2889 Senter Road) (Ngu Hanh Son, Inc. Owner). CEQA: Exempt. Planning Commission recommends approval (7-0-0).
CP12-040/ABC12-012 – District 7**

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on July 26, 2013, submitted by the City Clerk.

Mayor Reed opened the public hearing.

Public Comment: Gregg Kays, representing Applicant Ngu Hanh Son, Inc.; and David Ngar spoke in support of a Conditional Use Permit. Aurelia Sanchez spoke recommended denial of the permit, citing too much existing blight in the area.

Mayor Reed closed the public hearing.

Assistant Director of Planning, Building and Code Enforcement Laurel Prevetti offered Staff's recommendations for denial.

Director of Planning, Building and Code Enforcement Joseph Horwedel, asked that this item be returned to the Consent Calendar in two weeks, adding a resolution will need to be prepared.

Action: Upon motion Vice Mayor Nguyen, seconded by Council Member Herrera, the continuation of the adoption of a resolution to the September 10, 2013 Council Meeting Consent Calendar per Staff's recommendation, was approved. (10-1. Noes: Liccardo.)

ADJOURNMENT

The Council of the City of San José adjourned at 8:30 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Toni J. Taber, CMC
Acting City Clerk

rmk/8-20-13MIN