



MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, AUGUST 27, 2013

The Council of the City of San José convened in Regular Session at 9:30 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.

CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:31 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) Public Employment/Public Employee Appointment Pursuant to Government Code Section 54957: Department or Agency: Airport; Title: Airport Director; (C) to confer with Legal Counsel pursuant to Government Code Section 54956.9 (d)(1) with respect to existing litigation: (1) 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 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; (2) City v. IAFF Local 230, 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: 1-12-CV-237635; Amount of Money or Other Relief Sought: Petition for Writ of Mandate/Petition to Compel Arbitration; (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:

CLOSED SESSION (Cont'd.)

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.

By unanimous consent, Council recessed from the Closed Session at 10:45 a.m. and reconvened to Regular Session at 1:33 p.m. in the Council Chambers.

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

Absent: Council Members - All Present.

INVOCATION

Pastor Jorge Mendoza of Sunrise Bible Church 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. (10-0-1. Absent: Constant.)

CLOSED SESSION REPORT

City Manager Debra Figone announced that Assistant Airport Director Kim Aguirre was selected to succeed the Mineta San José International Airport Director Bill Sherry upon his retirement at the end of September.

CEREMONIAL ITEMS

- 1.1 Presentation of a commendation to Laurie Laird, Associate Director of the Ignatian Center at Santa Clara University, for her work in improving the quality of life for the residents of the Washington Neighborhood through her volunteerism and advocacy at Sacred Heart Community Services and as the liaison for the Arrupe Partnership for Community-based Learning. (Liccardo)**

Mayor Reed, Vice Mayor Nguyen and Council Member Liccardo recognized and commended Laurie Laird, Associate Director of the Ignatian Center at Santa Clara University, for her work in improving the quality of life for the residents of the Washington Neighborhood through her volunteerism and advocacy at Sacred Heart Community Services.

- 1.2 Presentation of a commendation to Wells Fargo for its environmental leadership, support of clean technology commercialization efforts in the region, and for its contributions to the San José economy and community. (Mayor)**

Mayor Reed commended Wells Fargo for its environmental leadership, support of clean technology commercialization efforts in the region, and for its contributions to the San José economy and community.

- 1.3 Presentation of a commendation to NorCal Tennis Academy in recognition of their 10-year anniversary and excellence in training top tier athletes. (Kalra)**

Mayor Reed and Council Member Kalra presented a commendation to NorCal Tennis Academy in recognition of their 10-year anniversary and excellence in training top tier athletes.

CONSENT CALENDAR

Upon motion by Vice Mayor Nguyen, seconded by Council Member Herrera and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (10-0-1. Absent: Constant.)

- 2.1 (a) **Regular Minutes of March 5, 2013.**
(b) **Regular Minutes of March 12, 2013.**
(c) **Special Minutes of the Green Vision Implementation of March 18, 2013.**
(d) **Regular Minutes of March 19, 2013.**
(e) **Regular Minutes of March 26, 2013.**

Documents Filed: Regular Minutes of March 5, March 12, March 19 and March 26, 2013, and the Special Minutes of the Green Vision Implementation of March 18, 2013.

Action: The Minutes were approved. (10-0-1. Absent: Constant.)

- 2.2 (a) **ORD. NO. 29280 – Amending Chapters 4.46 and 4.47 of Title 4 of the San José Municipal Code to suspend the collection of a portion of the building and structure construction tax and the commercial residential mobilehome park building tax on downtown commercial or industrial structures.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29280 executed on August 16, 2013, submitted by the City Clerk.

Action: Ordinance No. 29280 was adopted. (10-0-1. Absent: Constant.)

- (b) **ORD. NO. 29283 – 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.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29283 executed on August 23, 2013, submitted by the City Clerk.

Action: Ordinance No. 29283 was adopted. (10-0-1. Absent: Constant.)

- 2.3 (a) Transportation and Environment Committee Report of August 12, 2013. (Liccardo)**
(b) Rules and Open Government Committee Report of August 7, 2013. (Mayor)

Documents Filed: (1) Transportation and Environment Committee Report of August 12, 2013. (2) Rules and Open Government Committee Report of August 7, 2013.

Staff pulled Item 2.3 (a) to indicate a correction as indicated below in “Action”.

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Herrera and carried unanimously, the reports were approved, with a correction to Item (a) Transportation and Environment Committee Report, indicating Director of Economic Development/Chief Strategist Kim Walesh attended the August 12, 2013 meeting in place of Assistant City Manager Ed Shikada. (10-0-1. Absent: Constant.)

2.4 Mayor and Council Excused Absence Requests.

None provided.

2.5 City Council Travel Reports.

None provided.

2.6 Report from the Council Liaison to the Retirement Boards.

None provided.

- 2.7 (a) Consent to Assignment of the Food and Beverage Concession Agreement (the “Concession Agreement”) between the City and Areas USA SJC, LLC (“Areas”) to Pacific Gateway Concessions, LLC (“PGC”), in accordance with the terms of the Assignment and Assumption of Concession Agreement between Areas and PGC;**
(b) Approve the Third Amendment to the Concession Agreement providing for PGC’s assumption of the Agreement, approving new concession concepts and authorizing the City to reimburse PGC for costs associated with the construction of the approved concession concepts that are a direct result of protecting sensitive baggage system and CTX explosive detection equipment in an amount to be paid by the City not to exceed \$500,000.

CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment. (Airport)

Action: Dropped per Administration.

- 2.8 (a) **Adopt the following Appropriation Ordinance and Funding Sources Resolution Amendments in the Parks and Recreation Bond Projects Fund:**
- (1) **Increase the Beginning Fund Balance by \$543,000; and**
 - (2) **Increase the Happy Hollow Park and Zoo Renovation and Improvements appropriation to the Parks, Recreation, and Neighborhood Services Department by \$543,000.**
- (b) **Adopt the following Appropriation Ordinance and Funding Sources Resolution Amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District #1:**
- (1) **Increase the Beginning Fund Balance by \$389,000; and**
 - (2) **Increase the Calabazas Basketball Court Renovation appropriation to the Parks, Recreation, and Neighborhood Services Department by \$389,000.**
- (c) **Adopt the following Appropriation Ordinance and Funding Sources Resolution Amendments in the Water Utility Capital Fund:**
- (1) **Increase the Beginning Fund Balance by \$125,000; and**
 - (2) **Increase the Water Management System Enhancements appropriation to the Environmental Services Department by \$125,000.**
- (d) **Adopt the following Appropriation Ordinance and Funding Sources Resolution Amendments in the Construction and Conveyance Tax Fund: City-wide Parks Purposes Fund:**
- (1) **Increase the Beginning Fund Balance by \$106,000; and**
 - (2) **Increase the Strategic Capital Replacement and Maintenance Needs appropriation to the Parks, Recreation and Neighborhood Services Department by \$106,000.**
- (e) **Adopt the following Appropriation Ordinance and Funding Sources Resolution Amendments in the Convention and Cultural Affairs Fund:**
- (1) **Increase the Beginning Fund Balance by \$88,800; and**
 - (2) **Increase the Center for Performing Arts Improvements appropriation to the Convention Facilities Department by \$88,800.**
- (f) **Adopt the following Appropriation Ordinance and Funding Sources Resolution Amendments in the Neighborhood Security Bond Fund:**
- (1) **Increase the Beginning Fund Balance by \$70,000; and**
 - (2) **Increase the Fire Station 24 - Silver Creek/Yerba Buena appropriation to the Fire Department by \$70,000.**

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

Documents Filed: Memorandum from Budget Director Jennifer Maguire, dated August 5, 2013 recommending adoption of a resolution and appropriation ordinance and funding sources resolution amendments.

2.8 (Cont'd.)

Action: Ordinance No. 29289 entitled: “An Ordinance of the City of San José Amending Ordinance No. 29271 to Appropriate Monies in the Parks and Recreation Bond Projects Fund for the Happy Hollow Park and Zoo Renovation and Improvements Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”; Ordinance No. 29290 entitled: “An Ordinance of the City of San José Amending Ordinance No. 29271 to Appropriate Monies in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District No. 1 for the Calabazas Basketball Court Renovation Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”; Ordinance No. 29291 entitled: “An Ordinance of the City of San José Amending Ordinance No. 29271 to Appropriate Monies in the Water Utility Capital Fund for the Water Management System Enhancements; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”; Ordinance No. 29292 entitled: “An Ordinance of the City of San José Amending Ordinance No. 29271 to Appropriate Monies in the Construction and Conveyance Tax Fund: City-Wide Parks Purposes for the Strategic Capital Replacement and Maintenance Needs; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”; Ordinance No. 29293 entitled: “An Ordinance of the City of San José Amending Ordinance No. 29271 to Appropriate Monies in the Cultural Affairs Fund for the Center for Performing Arts Improvements Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”;

Action (Cont'd.): Ordinance No. 29294 entitled: “An Ordinance of the City of San José Amending Ordinance No. 29271 to Appropriate Monies in the Neighborhood Security Bond Fund for the Fire Station 27 – Silver Creek/Yerba Buena Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”; Resolution No. 76764, entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 76677 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2013-2014 to Adjust Revenues in the Parks and Recreation Bond Projects Fund”; Resolution No. 76765, entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 76677 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2013-2014 to Adjust Revenues in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District No. 1”; Resolution No. 76766, entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 76677 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2013-2014 to Adjust Revenues in the Water Utility Capital Fund”; Resolution No. 76767, entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 76677 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2013-2014 to Adjust Revenues in the Construction Tax and Conveyance Tax Fund: City-Wide Parks Purposes”; Resolution No. 76768, entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 76677 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2013-2014 to Adjust Revenues in the Convention and Cultural Affairs Fund”; and Resolution No. 76769, entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 76677 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2013-2014 to Adjust Revenues in the Neighborhood Security Bond Fund”, were adopted. (10-0-1. Absent: Constant.)

- 2.9 Authorize City Manager Debra Figone’s travel to Boston, Massachusetts on September 20 – 26, 2013, for the ICMA 99th Annual Conference. 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 August 14, 2013, requesting authorization to travel on City-related business.

Action: The travel request was approved. (10-0-1. Absent: Constant.)

- 2.10 (a) Accept the update on the 2012-2013 Stormwater Permit Annual Report developed in conformance with the Municipal Regional Stormwater National Pollutant Discharge Elimination System Permit (Stormwater Permit) requirements, pursuant to the Federal Clean Water Act; and**
- (b) Authorize certification and submittal of the 2012-2013 Stormwater Permit Annual Report to the San Francisco Bay Regional Water Quality Control (Water Board) in conformance with the Stormwater Permit requirements.**
- CEQA: Not a Project, File No. PP10-069(a), Annual Reports. (Environmental Services)**

Documents Filed: (1) Memorandum from Acting City Clerk Toni Taber, dated August 14, 2013, transmitting the recommendations of the Transportation and Environmental Committee. (2) Supplemental memorandum from Environmental Services Director Kerrie Romanow, dated August 14, 2013, recommending approval of the report.

Action: The update on the 2012-2013 Stormwater Permit Annual Report developed in conformance with the Municipal Regional Stormwater National Pollutant Discharge Elimination System Permit (Stormwater Permit) requirements, pursuant to the Federal Clean Water Act, was accepted, and certification and submittal of the 2012-2013 Stormwater Permit Annual Report to the San Francisco Bay Regional Water Quality Control (Water Board) in conformance with the Stormwater Permit requirements, was authorized. (10-0-1. Absent: Constant.)

- 2.11 (a) Adopt a resolution authorizing the City Manager to negotiate and execute an agreement with the County of Santa Clara (County) to accept program funds from the County for 2012 Emergency Management Performance Grant (EMPG) funding for the Fire Department in the amount of \$233,106 and negotiate and execute additional amendments to the agreement and all related documents without further City Council action, other than the appropriation of funds;**
- (b) Adopt the following 2013-2014 Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund:**
- (1) Increase the Estimate for Earned Revenue from Local Agencies by \$233,106;**

2.11 (Cont'd.)

- (b) (2) Establish a city-wide appropriation to the Fire Department for the Emergency Management Performance Grant (EMPG) 2012 in the amount of \$80,193; and**
- (3) Increase the city-wide appropriation to the Fire Department for Emergency Response and Preparedness in the amount of \$152,913.**

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

Documents Filed: Joint memorandum from Acting Fire Chief Ruben Torres and Budget Director Jennifer Maguire, dated August 5, 2013, recommending adoption of a resolution and appropriation ordinance and funding sources resolution amendments.

Action: Ordinance No. 29295, entitled: "An Ordinance of the City of San Amending Ordinance No. 29271 to Appropriate Monies in the General Fund – City-Wide Public Safety for the Emergency Management Performance Grant (3MPG) 2012 and for the Emergency Response and Preparedness; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption"; Resolution No. 76670, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute: (1) An Agreement with the County of Santa Clara (County) to Accept Program Funds from the County for 2012 Emergency Management Performance Grant Funding for the Fire Department in the Amount of \$233,106, and (2) Additional Amendments to the Agreement and all Related Documents Without Further City Council Action, Other Than the Appropriation of Funds"; and Resolution No. 76771, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 7677 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2013-2014 to Adjust Revenues in the General Fund", were adopted. (10-0-1. Absent: Constant.)

- 2.12 Adopt a resolution authorizing the Director of Housing to negotiate and execute an amendment to the Agreement with the Health Trust for Destination:Home extending the current contract for an additional year to October 31, 2014; requiring the addition of case managers dedicated to serving residents of homeless encampments, and increasing the amount of the contract by \$625,000 for a total contract amount of \$1,035,000. CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment. (Housing)**

Action: Deferred to September 17, 2013 per Administration.

- 2.13 Approve the Continuation Agreement with the VTA for the Route 101/De La Cruz Boulevard/Trimble Road Interchange Reconstruction Project and extending the term of the Agreement from June 30, 2013 to December 31, 2013, with no increase in the contract amount of \$850,000. CEQA: EIR Resolution No. 72768, adopted June 21, 2005. Council Districts 3 and 4. (Transportation)**

Documents Filed: City Council Action Request from Director of Transportation Hans Larsen, dated August 13, 2013, recommending approval of the Agreement with VTA.

Action: The Continuation Agreement with the VTA for the Route 101/De La Cruz Boulevard/Trimble Road Interchange Reconstruction Project and extending the term of the Agreement from June 30, 2013 to December 31, 2013, with no increase in the contract amount of \$850,000, was approved. (10-0-1. Absent: Constant.)

- 2.14 (a) Approve a Fourth Amendment to the existing consultant agreement between the City and Field Paoli Architects to increase the compensation for consultant services by \$188,000 from \$1,179,000 to an amount not to exceed \$1,367,000 in order to complete the Diridon Station Area Plan-Preferred Plan Report, Near-Term Development Plan, and Environmental Impact Report; and**
- (b) Adopt the following 2013-2014 Appropriation Ordinance Amendments in the Construction Excise Tax Fund:**
- (1) Decrease the Ending Fund Balance in the amount of \$188,000; and**
 - (2) Increase the citywide appropriation to the Department of the Transportation for Diridon Station Planning in the amount of \$188,000.**

CEQA: Exempt, File No. PP10-066(d), Consultant Services. Council Districts 3 and 6. (Transportation/City Manager's Office)

Documents Filed: Joint memorandum from Director of Transportation Hans Larsen and Budget Director Jennifer Maguire, dated August 13, 2013, recommending approval of an amendment and adoption of appropriation ordinance amendments.

Action: Ordinance No. 29296 entitled: "An Ordinance of the City of San José Amending Ordinance No. 29271 to Appropriate Monies in the Construction Excise Tax Fund for the Diridon Station Planning Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", was adopted. (10-0-1. Absent: Constant.)

- 2.15 (a) Approve travel by Councilmember Constant to Lake Tahoe – Olympic Valley, CA on August 28 – August 30, 2013, to represent San José as a Commissioner on the Santa Clara County Local Agency Foundation Commission. Source of Funds: Santa Clara County Local Agency Foundation Commission. (Constant)**
- (b) Request for an excused absence for Councilmember Constant from the Regular Meeting of the Rules and Open Government Committee on August 28, 2013 due to Authorized City Business: Santa Clara County LAFCO 2013 Annual Conference. (Constant)**

2.15 (Cont'd.)

Documents Filed: Memorandum from Council Member Constant, dated August 14, 2013, requesting approval to travel and an excused absence due to Authorized City Business.

Action: The travel request and excused absence was approved. (10-0-1. Absent: Constant.)

2.16 Approve travel by Vice Mayor Nguyen to Suwon City, Korea on September 24 – 30, 2013, to attend the 50th Suwon Hwaseong Culture Festival and engage with the leadership of Suwon City to continue the cultural and economic partnership between San José and Korea. Source of Funds: Government of Suwon City, Korea. (Nguyen)

Documents Filed: Memorandum from Vice Mayor Nguyen, dated August 14, 2013, requesting authorization to travel on City business.

Action: The travel request was approved. (10-0-1. Absent: Constant.)

**2.17 (a) Approve the District 10 Safe Teen Driving Video Contest as a Council-Sponsored Special Event; and
(b) Approve expending funds and accepting donations from various individuals, businesses and community groups to support this event.
CEQA: Not a Project. (Khamis)**

Documents Filed: Memorandum from Acting City Clerk Toni Taber, dated August 21, 2013, transmitting the recommendations of the Rules and Open Government Committee.

Action: The District 10 Safe Teen Driving Video Contest 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. (10-0-1. Absent: Constant.)

**2.18 (a) Approve the Ethiopian Flag Raising as a City Council sponsored Special Event;
(b) Approve expending funds and accepting donations from various individuals, businesses, or community groups to support the event.
CEQA: Not a Project. (Liccardo)**

Documents Filed: (1) Memorandum from Acting City Clerk Toni Taber, dated August 21, 2013, transmitting the recommendations of the Rules and Open Government Committee. (2) Letter from the Ethiopian American Council (EAC) urging the use of the Ethiopian Heritage flag.

Action: The Ethiopian 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. (10-0-1. Absent: Constant.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

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

City Manager Debra Figone reminded the Council that a Study Session to discuss potential revenue ballot measures to support the continuation and restoration of City services will be held September 3, 2013 in lieu of a regular Council Meeting.

3.3 Conduct a public hearing and adopt a resolution setting a new Fee Schedule for the City of San José's Tow Services Agreements to become effective September 10, 2013, as follows:

- (a) **Basic Tow Service: \$200.00 per tow**
- (b) **Service Call:**
 - (1) **Class "A" regular duty tow trucks \$50.00 per quarter hour**
 - (2) **Class "B" medium duty tow trucks \$87.50 per quarter hour**
 - (3) **Class "C" and "D" heavy duty tow trucks \$117.50 per quarter hour**
- (c) **Extraordinary Service Tows:**
 - (1) **Class "A" regular duty tow trucks \$100.00 per hour**
 - (2) **Class "B" medium duty tow trucks \$350.00 per hour**
 - (3) **Class "C" and "D" heavy duty tow trucks \$470.00 per hour**
- (d) **After Hours Gate Fee (one hour after close of San José Police Department desk hours until the desk re-opens): \$85.00**
- (e) **Vehicle Storage Fee:**
 - (1) **\$85.00 per day, per space outside**
 - (2) **\$95.00 per day per space indoors.**
- (f) **Contractual Rates of Compensation to the City of San José:**
 - (1) **\$80.00 per tow**
 - (2) **\$8.00 per dispatch**

CEQA: Not a Project, File No. PP10-067(a), Adjustment to Fees and Charges. (Planning, Building and Code Enforcement)

Documents Filed: (1) Replacement memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated August 13, 2013, recommending adoption of a resolution. (2) Affidavit of Mailing from Acting City Clerk Toni Taber, dated August 9, 2013, noticing the public hearing for tow fees.

Mayor Reed opened the public hearing.

Public Comment: Nick Alongi, representing Alongi Brothers, spoke in support of the rate change.

Mayor Reed closed the public hearing.

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Herrera and carried unanimously, Resolution No. 76772, entitled: "A Resolution of the Council of the City of San José Adopting a Fee Schedule for Tow Services Agreements", was adopted. (9-0-2. Absent: Constant, Khamis.)

- 3.4 (a) Amend the City of San José Pay Plan effective no earlier than September 1, 2013, to create the following classifications:
- (1) Wastewater Maintenance Superintendent (3625)
 - (2) Wastewater Operations Foreperson I/II (3656/3657)
- (b) Amend the City of San José Pay Plan effective no earlier than September 1, 2013, to change the salary ranges and titles for the following classifications:
- (1) Senior Airport Operations Specialist I/II/III (3514/3516/3518) (formerly Senior Airport Operations Specialist)
 - (2) Airport Operations Supervisor I/II/III (3524/3527/3528) (formerly Airport Operations Supervisor)
 - (3) Airport Operations Superintendent I/II (3525/3532) (formerly Airport Operations Superintendent)
 - (4) Airport Operations Manager I/II (3526/3534) (formerly Airport Operations Manager)
 - (5) Wastewater Mechanic I/II (3622/3672) (formerly Plant Mechanic and Heavy Diesel Equipment Operator/Mechanic)
 - (6) Wastewater Senior Mechanic I/II (3623/3673) (formerly Senior Plant Mechanic and Senior Heavy Diesel Equipment Operator/Mechanic)
- (b) (7) Wastewater Mechanical Supervisor I/II (3624/3674) (formerly Plant Mechanical Supervisor and Heavy Diesel Equipment Supervisor)
- (8) Wastewater Operator I/II/III (3612/3652/3653) (formerly Plant Operator I/II/III)
 - (9) Wastewater Operations Superintendent I/II (3617/3619) (formerly Plant Assistant Operations Manager I/II)
- (c) Amend the City of San José Pay Plan effective no earlier than September 1, 2013, to retitle the following classifications:
- (1) Wastewater Attendant (3621) (formerly Plant Attendant)
 - (2) Apprentice Wastewater Mechanic (3627) (formerly Apprentice Plant Mechanic)
 - (3) Wastewater Operator Trainee (3611) (formerly Plant Operator Trainee)

CEQA: Not a Project, File No. PP10-068(b), Municipal Code, Title 3. (Human Resources)

Documents Filed: Memorandum from Deputy City Manager Alex Gurza, dated August 15, 2013, recommending adoption of a resolution.

Deputy City Manager Alex Gurza provided an overview of staffs' recommendations and responded to questions from Council. He clarified that there are many classification changes, indicating which ones have nine steps in the pay range and will be moving to ten steps.

Council Member Constant arrived at 2:00 p.m.

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Khamis and carried unanimously, Resolution No. 76673, entitled: "A Resolution of the Council of the City of San José Amending the City of San José Pay Plan for Various Classifications", was adopted. (11-0.)

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.1 Approve a Services Agreement with the San José Downtown Association for the period of July 1, 2013 through June 30, 2014, for an amount not to exceed \$390,000. CEQA: Exempt, File No. PP13-079. (Economic Development)**

Documents Filed: Memorandum from Director of Economic Development/Chief Strategist Kim Walesh, dated August 5, 2013, recommending execution of a service agreement.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, a Services Agreement with the San José Downtown Association for the period of July 1, 2013 through June 30, 2014, for an amount not to exceed \$390,000, was approved. (11-0.)

- 4.2 (a) Utilize San José Municipal Code Section 4.12.235 (Unique Services Purchases) for a sole-source agreement with the work2future Foundation for a pilot program to operate work2future’s one-stop service sites to provide direct workforce development services to work2future’s Adult, Dislocated Worker, and Youth clients;**
- (b) Negotiate and execute the agreement for the period September 1, 2013 through June 30, 2016, with compensation for Program Year 2013-2014 not to exceed \$1,700,000; and**
- (c) Negotiate and execute subsequent amendments to the sole-source agreement to include compensation for Program Years 2014-2015 and 2015-2016, subject to the annual appropriation of funds.**

CEQA: Not a Project; File No. PP10-066(e), Services that involve no physical changes to the environment. (Economic Development)

Documents Filed: (1) Joint memorandum from Vice Mayor Nguyen, Council Members Herrera and Campos, dated August 23, 2013, offering support to staffs’ recommendations. (2) Memorandum from Director of Economic Development/Chief Strategist Kim Walesh, dated August 5, 2013 recommending adoption of a resolution.

Office of Economic Development Director of Strategic Partnership Development Jeff Ruster offered a presentation on the sole source agreement.

Public Comments: Joe Flynn, Chair of the Work2Future Board, expressed appreciation to City Staff for their dedication.

Action: Upon motion by Council Member Herrera, seconded by Vice Mayor Nguyen and carried unanimously, Resolution No. 76774, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Utilize San José Municipal Code Section 4.12.235 (Unique Services Purchases) to Negotiate and Execute a Sole-Source Agreement and Subsequent Amendments with the Work2Future Foundation for the Period September 1, 2013 through June 30, 2016 for a Pilot Program to Operate Work2Future’s One-Stop Service Sites to Provide Direct Workforce Development Services to Work2Future Clients”, was adopted. (11-0.)

- 4.3 Conduct a Public Hearing and consider an ordinance amending Title 23 of the San José Municipal Code (the Sign Code) as follows:**
- (a) Amending various sections of Chapter 23.02, Part 1, Definitions, including to revise Section 23.02.102 Commercial Speech; to add sections 23.02.355 non-commercial speech and 23.02.494 shopping center corner sign; to revise section 23.02.410 programmable electronic sign; and to add new section 23.02.505 sign ordinance; and**
 - (b) Amending various sections of Chapter 23.02, Part 2, General Provisions, including to add Section 23.02.805 Authority, revise Section 23.02.820 Conformity Required, add new Section 23.02.825 Message Substitution, revise Section 23.02.870 Administrative Authority; Appeals, delete Sections 23.02.1130 Master Sign Program and 23.02.1190 No Limitation on Message, and revise Section 23.02.1370 Sign Variances;**
 - (c) Amending various sections of Chapter 23.04, Part 1, CO, CP, CN, CG, IP, LI, and HI commercial and industrial zoning districts and neighborhood business districts, including to amend Section 23.04.020, Attached Signs, to allow shopping center corner signs at or above the top of a roof on corner buildings located within shopping center sites; and**
 - (d) Making other nonsubstantive, ministerial, technical, or typographical changes to various sections of said Chapters 23.02 and 23.04 of Title 23 of the San José Municipal Code.**

Documents Filed: (1) Proof of Publication of Notice of Public Hearing, executed on August 9, 2013 submitted by the City Clerk.

Action: Deferred to September 17, 2013 per Administration.

NEIGHBORHOOD SERVICES

- 5.1 Conduct a public hearing and adopt a resolution:**
- (a) Accepting the summary of costs and findings of the Summary 33433 Report pursuant to Health and Safety Code Section 33433 for the conveyance and disposition of the property at 15520 Almaden Expressway located at the Northeast corner of Almaden Expressway and Coleman Road under the terms and conditions of the proposed Disposition and Development Agreement (“DDA”); and**
 - (b) Approving a DDA between the City of San José and Sycamore Grove Terrace LLP, or another Barry Swenson Builder affiliate, enabling the development of Sycamore Terrace, a 27-unit for-sale housing development that will include nine below-market rate homes, and authorizing the Director of Housing to negotiate, execute, and record, if applicable, all documents reasonably necessary to effectuate the terms of the DDA.**
- CEQA: Addendum to a Negative Declaration, File No. PDC04-064. Council District 10. (Housing)**
(Deferred from 6/11/13 – Item 5.1 and 8/13/13 – Item 5.1)

5.1 (Cont'd.)

Documents Filed: (1) Memorandum from Director of Housing Leslye Corsiglia, dated August 5, 2013, recommending adoption of a resolution. (2) Proof of Publication of Notice of Public Hearing, executed on July 30 and August 6, 2013 submitted by the City Clerk.

Action: Dropped per Administration.

5.2 Approve an Ordinance amending Chapter 2.08 of Title 2 of the San José Municipal Code to add a new Part establishing a Neighborhoods Commission. CEQA: Not a Project, File No. PP10-069, City Organizational and Administrative Activities. (City Manager's Office)

Documents Filed: (1) Joint memorandum from Council Members Herrera and Campos, dated August 23, 2013, recommending approval of an ordinance. (2) Memorandum from Deputy City Manager Norberto Duenas, date August 5, 2013, recommending approval of an ordinance.

Deputy City Manager Norberto Duenas provided an introduction of the establishment of a permanent Neighborhoods Commission.

Public Comments: Richard McCoy offered support to the Staffs' recommendations.

Council Member Chu indicated that although he voted against this ordinance when it was first presented, he is now willing to give it a try.

Action: Upon motion by Council Member Herrera, seconded by Vice Mayor Nguyen and carried, Ordinance No. 29297, entitled: "An Ordinance of the City of San José Amending Chapter 2.08 of Title 2 of the San José Municipal Code to Add a New Part Establishing a Neighborhoods Commission", was passed for publication. (9-2. Noes: Khamis, Oliverio.)

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;

6.1 (Cont'd.)

- (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 José International Airport Master Plan Update EIR (File No. PP95-110), Resolution No. 67380 and SEIR (File No. PP02-226), Resolution No. 71451. (Finance)
(Deferred from 8/20/13 – Item 6.1)**

Documents Filed: Memorandum from Director of Finance Julia H. Cooper, dated July 29, 2013, recommending approval of an RFP for shuttle bus service.

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Herrera, the motion carried unanimously, and Resolution No. 76775, entitled: “A Resolution of the Council of the City of San José the City Manager to Execute an Agreement with Veolia Transportation Services, Inc. for Shuttle Bus Service at the Norman Y. Mineta San José International Airport”, was adopted. (11-0.)

ENVIRONMENTAL & UTILITY SERVICES

- 7.1 Adopt a resolution to authorize the City Manager to execute the first one-year option to extend the Agreement for August 17, 2013, through August 16, 2014, for a maximum compensation not to exceed \$1,670,000, and to execute up to three one-year options through August 16, 2017, to extend the Agreement, subject to the appropriation of funds. CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment. (Environmental Services)**
- Environmental Services Director Kerrie Romanow offered a correction to the Cost Summary and Implications section in her memorandum of August 5, 2013, noting the annual compensation adjustment is 2.6% higher than the \$115/ hour indicated. Resolution No. 76776 was adopted, with the decision of whether Staff needs to return to Council with a status report to be made when the City does its annual appropriations.**
- (a) **Adopt a resolution adopting the Negative Declaration analyzing the regional environmental impacts of a phase-out of expanded polystyrene food ware;**
 - (b) **Approve an ordinance to phase-out the use of expanded polystyrene food service ware, with the first phase implementation effective January 1, 2014, and financial hardship exemption provisions as specified.**
- CEQA: Negative Declaration, File No. PP13-043. (Environmental Services)**

7.1 (Cont'd.)

Documents Filed: (1) Letter from Treatment Plant Advisory Committee Chair Chuck Reed, dated August 15, 2013, stating concurrence with the Staff recommendations. (2) Memorandum from Environmental Services Director Kerrie Romanow, dated August 5, 2013, recommending adoption of a resolution.

Environmental Services Director Kerrie Romanow offered a correction to the Cost Summary and Implications section in her memorandum of August 5, 2013 recommendation as outlined below in "Action".

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

Council Member Chu requested to amend the motion, asking that the decision of whether Staff needs to return to Council with a status report be made when the City does its annual appropriations. Vice Mayor Nguyen and Council Member Herrera accepted the amendment.

Action: On a call for the question, the motion carried unanimously, the Staff's recommendations were accepted, and Resolution No. 76776, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute the Continuation and First Amendment to the Master Agreement with Telstar Instruments for Wastewater Pollution Control Plan Staffing Services to Exercise the First One-Year Option to Extend the Term from August 17, 2013 through August 16, 2014 for a Maximum Compensation Not to Exceed \$1,670,000, Subject to Appropriation of Funds", was adopted, with a correction made to the Cost Summary and Implications section of Environmental Services Director Kerrie Romanow's memorandum of August 5, 2013, noting the annual compensation adjustment is 2.6% higher than the \$115/ hour indicated, and with the decision of whether Staff needs to return to Council with a status report to be made when the City does its annual appropriations. (11-0.)

- 7.2 (a) **Adopt a resolution adopting the Negative Declaration analyzing the regional environmental impacts of a phase-out of expanded polystyrene food ware;**
(b) **Approve an ordinance to phase-out the use of expanded polystyrene food service ware, with the first phase implementation effective January 1, 2014, and financial hardship exemption provisions as specified.**

CEQA: Negative Declaration, File No. PP13-043. (Environmental Services)

Documents Filed: (1) Joint memorandum from Mayor Reed, Council Member Liccardo and Herrera, dated August 23, 2013, offering support to staff recommendations with addition recommendations. (2) Memorandum from Council Member Kalra, dated August 23, 2013, offering approval with the inclusion of a "sunset" provision. (3) Memorandum from Council Member Campos, dated August 26, 2013, offering approval with one amendment.

7.2 (Cont'd.)

Documents Filed (Continued): (4) Memorandum from Environmental Services Director Kerrie Romanow, dated August 5, 2013, recommending adoption of a resolution and ordinance. (5) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated August 21, 2013, providing letters from the public during the circulation of the draft environmental review documents. (6) Letter from Mark Murray, Environmental Director of Californians Against Waste, dated August 23, 2013, urging adoption of the ordinance. (7) Twenty email from members of the public offering support of the EPS ban.

Environmental Services Director Kerrie Romanow provided a presentation on the phase-out of Styrofoam.

Public Comments: Kevin Utilla suggested that people will stop doing business in San José should this ban be approved. Offering support to Staffs' recommendations and phasing out the use of expanded polystyrene food service ware, were the following: Allison Chan (Save the Bay); Samantha Meyer (Clean Water Action); Andria Ventura; Rachel Kippen, Laura Kasa and Brad Hunt (Save Our Shores); Ross Signorino; Diane Fisher (JCRC); Sudhanshu Jain; Cheryl Donnelly; Greg Kerekes (Santa Clara Valley Audubon Society); Cynthia Palacio (City of Mountain View); Kristal Caidoy and David Wall.

Motion: Council Member Liccardo moved approval of the staff recommendations with amendments as included in Council Member Campos' memorandum of August 26, 2013, with a one-time amnesty exemption during the first two years of the program's implementation as recommended by Council Member Campos and Kalra, and including actions as outlined in the memorandum he coauthored with Mayor Reed and Council Member Herrera. Council Member Herrera seconded the motion.

Council Member Kalra requested to amend the motion to include "sunset" provision regarding a financial hardship exemption to be re-evaluated in two years. The amendment was accepted by Council Members Liccardo and Herrera.

Council Member Khamis expressed that he would not support the motion since he feels it would be a hindrance to business and that there are other sources of litter not addressed. Council Member Constant also offered opposition to the ban, citing that it does not adequately address hardship for small businesses.

Action: On a call for the question, the motion carried, the Staff's recommendations were accepted, and Resolution No. 76777, entitled: "A Resolution of the Council of the City of San José Adopting the Expanded Polystyrene Foam Food Ware Negative Declaration, for which an Initial Study was Prepared, all in Accordance with the California Environmental Quality Act, as Amended", and Ordinance No. 29298, entitled: "An Ordinance of the City of San José Amending Chapter 9.10 of Title 9 of the San José

7.2 (Cont'd.)

Municipal Code to Add a New Part 17 to Prohibit the Use of Polystyrene Foam Disposable Food Service Ware by Food Vendors”, was passed for publication, with inclusion of a “sunset” provision regarding a financial hardship exemption to be re-evaluated in two years, and with the first phase implementation effective January 1, 2014. Staff to bring to the Transportation and Environment Committee an educational outreach plan that includes the county, school districts and any youth service organization to be incorporated as part of the City’s litter reduction strategy. (9-2. Noes: Constant, Khamis.)

NOTICE OF CITY ENGINEER’S PENDING DECISION ON FINAL MAPS

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

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/ Units</u>	<u>Type</u>	<u>Proposed Decision</u>
10173	West side of Masonic Dr., approx. 520 ft. southerly of Canoas Garden Ave.	6	SA Challenger, Inc.	2 Lots/ 170 units	MFA	Approval

OPEN FORUM

- (1) David Wall expressed criticism of the Environmental Innovation Center.
- (2) Mark Trout offered religious viewpoints.

ADJOURNMENT

The Council of the City of San José adjourned at 4:16 p.m. in memory of Mary Ann West. In addition to being a teacher, mother, grandmother and world traveler, Mary Ann was a long-time community activist. She was instrumental in the 2007 revival of the Lynhaven Neighborhood Association in District 1. She was well known and respected for her effective community leadership and friendly enthusiasm. Mary Ann passed away after a brief illness June 19, 2013 at the age of 81. (Constant)

Minutes Recorded, Prepared and Respectfully Submitted by,

Toni J. Taber, CMC
Acting City Clerk

rmk/8-27-13MIN