

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, DECEMBER 17, 2013

The Council of the City of San José convened in Regular Session at 9:32 a.m. in the Council Chambers at City Hall.

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

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

STRATEGIC SUPPORT SERVICES

3.2 Accept Labor Negotiations Update.

There was no report.

CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:33 a.m. to a Closed Session in Room W133 (A) to confer with Legal Counsel pursuant to Government Code Section 54956.9(d)(1) with respect to existing litigation: (1) In re: Claim of Hendrix; Amount of Money or Other Relief Sought: Administrative Appeal. (2) SJJC Aviation Services, LLC v. City of San José, et al; Names of Parties Involved: SJJC Aviation Services, LLC, City of San José, City Council of the City of San José and Does 1 through 25; Court: Superior Court of California, County of Santa Clara; Case No: 1-13CV246057; Amount of Money or Other Relief Sought: Damages According to Proof. (3) State Department of Finance v. Commission on State Mandates (County of Los Angeles); Court: Second District Court of Appeals; California Supreme Court; Case No: B237153, S214855; Amount of Money or Other Relief Sought: Request for Amicus Support. (4) City, et al. v. Office of the Commissioner of Baseball, et al; Names of Parties Involved: City of San José, City of San José as Successor Agency to the Redevelopment Agency of the City of San José and the San José Diridon Authority, Office of the Commissioner of Baseball, an unincorporated association doing business as Major League Baseball and Allan Huber “Bud” Selig; Court: U.S. District Court, Northern Division of California, San José

CLOSED SESSION (Cont'd.)

Division; Case No: CV-13-02787-HRL; Amount of Money or Other Relief Sought: Damages According to Proof. (5) AFSCME v. City of San José; Names of Parties Involved: American Federation of State, County and Municipal Employees, Local 101, City of San José; Court: Public Employment Relations Board; Case No: SF-CE-837-M. (6) San José Police Officers' Association v. City, et al. Names of Parties Involved: San José Police Officers' Association, City of San José, Board of Administration for Police and Fire Department Retirement Plan of City of San José and Does 1-100; 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 Parties Involved: San José Retired Employees Association, Howard E. Fleming, Donald S. Macrae, Frances J. Olson, Gary J. Richert and Rosalinda Navarro, City of San José Does 1 – 50, Board of Administration for the Federated City Employees Retirement System; Court: Superior Court of California, County of Santa Clara; Case No: 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 Parties Involved: Robert Sapien, Marty Kathleen McCarthy, Thanh Ho, Randy Sekany, Ken Heredia, City of San José, Debra Figone in her official as City Manager of the City of San José, Does 1-15, The Board of Administration for the 1961 San José Police and Fire Department Retirement Plan; Court: Superior Court of California, County of Santa Clara; Case No: 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 Parties Involved: Teresa Harris, Jon Reger, Moses Serrano, Suzann Stauffer, City of San José, Debra Figone in her official as City Manager of the City of San José, The Board of Administration for the 1975 Federated City Employees' Retirement Plan, Does 1-15; Court: Superior Court of California, County of Santa Clara; Case: 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 Parties Involved: John Mukhar, Dale Dapp, James Atkins, William Buffington, Kirk Pennington, City of San José, Debra Figone in her official as City Manager of the City of San José, The Board of Administration for the 1975 Federated City Employees' Retirement Plan, Does 1-15; Court: Superior Court of California, County of Santa Clara; Case: 1-12-CV-226574; Amount of Money or Other Relief Sought: Challenge to Measure B. (11) AFSCME, et al. v. City of San José, et al. Names of Parties Involved: American Federation of State, County and Municipal Employees, Local 101 on behalf of its members, City of San José, The Board of Administration for the Federated City Employees' Retirement Plan; Court: Superior Court of California, County of Santa Clara; Case: 1-12-CV-225928; Amount of Money or Other Relief Sought: Challenge to Measure B. (B) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) Association of Building, Mechanical and Electrical Inspectors (ABMEI); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and ABMEI. (2) Association of Engineers & Architects (AEA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of

CLOSED SESSION (Cont'd.)

San José and AEA. (3) Association of Maintenance Supervisory Personnel (AMSP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AMSP. (4) City Association of Management Personnel Agreement (CAMP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CAMP. (5) Confidential Employees' Organization, AFSCME Local 101 (CEO); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CEO. (6) International Association of Firefighters, Local 230 (IAFF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Association of Firefighters. (7) International Brotherhood of Electrical Workers (IBEW); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and IBEW. (8) Municipal Employees' Federation, AFSCME Local 101, AFL-CIO (MEF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and MEF; (9) International Union of Operating Engineers, Local No. 3 (OE#3); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Union of Operating Engineers, Local No. 3. (10) San José Police Officers' Association (SJPOA); Nature of Negotiations: Salaries, Hours, Working Conditions, etc; Name of Existing Wages 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 11:50 a.m. and reconvened to Regular Session at 1:33 p.m. in the Council Chambers.

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

Absent: Council Members - All Present.

INVOCATION (MAYOR)

Pastor Ed Snyder, East Valley Pentecostal Church offered a prayer for 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, and Item 3.5 was deferred to January 14, 2014. (10-0-1. Absent: Kalra.)

CLOSED SESSION REPORT

City Attorney Doyle disclosed the following Closed Session actions of December 17, 2013:

A. Authority for Amicus Support:

Case Name: State Department of Finance v. Commission on State Mandates (County of Los Angeles)

Adverse Party of Parties: Commission on State Mandates

Substance of Litigation: Request for Amicus Support

Council Vote: Ayes: Campos, Chu, Herrera, Kalra, Khamis, Liccardo, Nguyen, Oliverio, Rocha; Reed.

Noes: Constant.

Abstain: None.

Not Present: None.

CEREMONIAL ITEMS

1.1 Presentation of a commendation to New Leaf Community Markets for becoming the first grocer in California to achieve B Corporation Certification. (Herrera)

Mayor Reed and Council Member Herrera recognized and commended New Leaf Community Markets.

**1.2 Presentation of a commendation to NVIDIA Corporation for bringing Project Inspire to Ocala Middle School. (Campos)
(Rules Committee referral 12/11/13)**

Mayor Reed and Council Members Campos and Herrera recognized and commended NVIDIA Corporation.

1.3 Presentation of a commendation to City Manager Debra Figone for her years of dedication and service to the community and the City of San José. (Mayor/Council)

Mayor Reed and the City Council recognized and commended City Manager Debra Figone for her tireless dedication, extraordinary commitment and exemplary service to the community and the City of San José. Mayor Reed and the Council Members presented City Manager Debra Figone with a gift basket consisting of a varied selection of each Council Member's favorite children's book. City Manager Debra Figone will present the gift basket to the "Partners In Reading Program".

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. (11-0.)

2.1 Approval of Minutes.

There were none.

2.2 Final adoption of ordinances.

- (a) **ORD. NO. 29352 - Amending Sections 6.64.130, 6.64.150 and 6.64.465 of Chapter 6.64 of Title 6 of the San José Municipal Code to suspend the license and permit requirements for taxicab businesses and persons that only drop off passengers in the city; and amending Sections 25.08.700 and 25.08.750 of Chapter 25.08 of Title 25 of the San José Municipal Code to suspend the permit requirements for ground transportation providers of taxicab services that only drop off passengers at the Norman Y. Mineta San José International Airport.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29352 executed on December 13, 2013, submitted by the City Clerk.

Action: Ordinance No. 29352 was adopted. (11-0.)

- (b) **ORD. NO. 29353 – Rezoning certain real property situated on the east side of South Jackson Avenue on a 1.47 gross-acre site (70 South Jackson Avenue) to the CP Commercial Pedestrian Zoning District.**

Documents Filed: (1) Proof of Publication of the Title of Ordinance No. 29353 executed on December 13, 2013, submitted by the City Clerk. (2) Statement and Declaration of Conflict of Interest Form from Council Member Liccardo, dated December 17, 2013, disclosing that his wife works for Rocketship.

Action: Ordinance No. 29353 was adopted. (10-0-0-1. Abstain: Liccardo.) (First Reading: 9-1-0-1. Noes: Oliverio. Abstain: Liccardo)

2.3 Approval of Council Committee Reports.

- (a) **Neighborhood Services and Education Committee Report of November 14, 2013. (Nguyen)**
- (b) **Community and Economic Development Committee of November 18, 2013. (Herrera)**
- (c) **Rules and Open Government Committee Report of November 20, 2013. (Mayor)**
- (d) **Public Safety, Finance, and Strategic Support Committee on November 21, 2013. (Constant)**
- (e) **Transportation and Environment Committee Report of December 2, 2013. (Liccardo)**

Documents Filed: (1) The Neighborhood Services and Education Committee Report dated November 14, 2014. (2) The Community and Economic Development Committee Report dated November 18, 2013. (3) The Rules and Open Government Committee Report dated November 20, 2013. (4) The Public Safety, Finance and Strategic Support Committee Report dated November 21, 2013. (5) The Transportation and Environment Committee Report dated December 2, 2013.

Public Comments: David Wall presented comments on the various Council Committee Reports.

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Herrera and carried unanimously, the Council Committee Minutes were approved. (11-0.)

2.4 Mayor and Council Excused Absence Requests.

There were none.

2.5 City Council Travel Reports.

There were none.

2.6 Report from the Council Liaison to the Retirement Boards.

There were none.

2.7 Adopt a resolution authorizing the City Attorney to negotiate and execute a Second Continuation Agreement with Berliner Cohen for legal services relating to California Building Industry Association v. City, et al., to extend the term through December 31, 2014, to modify the scope of services, and to increase compensation by \$80,000, to a total amount not to exceed \$290,000. CEQA: Not a Project; File No. PP10-066(e), Services that involve no physical changes to the environment. (City Attorney's Office)

Documents Filed: Memorandum from City Attorney Richard Doyle, dated December 5, 2013, recommending adoption of a resolution.

2.7 (Cont'd.)

Public Comments: David Wall expressed opposition to the Staff recommendations.

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Herrera and carried unanimously, Resolution No. 76881, entitled: “A Resolution of the Council of the City of San José Authorizing the City Attorney to Negotiate and Execute a Second Continuation Agreement with Berliner Cohen for Legal Services in Connection with California Building Industry Association v. City of San José, et al”, was adopted. (11-0.)

2.8 **Adopt a resolution authorizing the City Manager, or designee, to execute the fourth modification to Reimbursable Space Act Agreement and accompanying support agreement with the National Aeronautics and Space Administration Ames Research Center extending the City’s use of office and hangar space at Moffett Federal Airfield for Law Enforcement and Emergency Response Capabilities until September 30, 2014. CEQA: Not a Project, File No. PP10-066(f), Lease of equipment of existing space for the same use. (Economic Development)**

Documents Filed: City Council Action Request from Director of Economic Development Kim Welsh, dated December 4, 2013, recommending adoption of a resolution.

Council Member Campos expressed concern for the residents and asked Staff if there had been any outreach to the public about the plan. Deputy Director of Economic Development Nanci Klein replied that there is still work to be done on the project.

Motion: Council Member Campos moved approval of the Staff recommendations with the condition for Staff to hold a community meeting and to notify the public about the new tenant and the helicopter. Council Member Herrera seconded the motion.

Brief Council discussion ensued.

Action: On a call for the question, the motion carried unanimously, Resolution No. 76882, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager or Designee to Execute the Fourth Modification to the Reimbursable Space Act Agreement and Accompanying Support Agreement with the National Aeronautics and Space Administration Ames Research Center Extending City’s Use Through September 30, 2014”, was adopted, as amended, with Staff directed to include a condition to have a community meeting notifying the public of the new tenant and the helicopter. (11-0.)

- 2.9 (a) **Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments to the General Fund:**
- (1) **Establish a City-Wide appropriation to the Office of Economic Development for the BART Public Art Design and Construction Management Project in the amount of \$90,000.**
 - (2) **Increase the estimate for Revenue from Local Agencies in the amount of \$90,000.**

- 2.9 (b) **Adopt a resolution authorizing City Manager to negotiate and execute a three-party agreement with VTA and the artist to design, fabricate and install a public artwork for the Berryessa BART station in an amount not to exceed \$380,000 over the term of the agreement subject to appropriation of funds by City Council in subsequent fiscal years.**

CEQA: EIR Resolution No. 76126. Council District 4. (Economic Development/City Manager's Office)

Documents Filed: Memorandum from Director of Economic Development Kim Walesh and Deputy City Manager Jennifer A. Maguire, dated November 25, 2013, recommending adoption of an appropriation ordinance and funding sources resolution amendments and a resolution.

Action: Ordinance No. 29354, entitled: "An Ordinance of the Council of the City of San José Amending Ordinance No. 29271 to Appropriate Monies in the General Fund – Citywide Community and Economic Development for the BART Public Art Design Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption"; jj, 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 General Fund" and Resolution No. 76884, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Three Party Agreement with Valley Transportation Authority and the Artist to Design, Fabricate and Install a Public Artwork for the Berryessa BART Station In An Amount Not To Exceed \$380,000 Over the Term of the Agreement", was adopted. (11-0.)

- 2.10 **Approve the Second Amendment to the agreement between the City of San José and Environmental Science Associates, Inc. and Jones & Stokes Associates, Inc. doing business as ESA + J&S Joint Venture for California Environmental Quality Act (CEQA) support and other regulatory compliance services to amend the scope of services, and to increase the maximum compensation by \$179,672, for a not to exceed amount \$2,633,589 through the term of the contract ending June 30, 2014. CEQA: Not a Project, File No. PP10-066(a), Agreements and Contracts for purchase of professional services. (Environmental Services)**

Documents Filed: (1) Replacement memorandum from Director of Environmental Services Kerrie Romanow, dated December 6, 2013, providing a correction to the total agreement amount which was incorrect and has been changed to the corrected agreement amount of \$2,633,589. (2) Memorandum from the Treatment Plant Advisory Committee Chair Chuck Reed, dated December 13, 2013, expressing concurrence with the Staff recommendations.

Action: The Second Amendment to the agreement between the City of San José and Environmental Science Associates, Inc. and Jones & Stokes Associates, Inc. doing business as ESA + J&S Joint Venture for California Environmental Quality Act (CEQA) support and other regulatory compliance services to amend the scope of services, and to increase the maximum compensation by \$179,672, for a not to exceed amount \$2,633,589 through the term of the contract ending June 30, 2014, was approved. (11-0.)

2.11 Authorize the City Manager to:

- (a) **Execute a Purchase Order with Jeffco Painting and Coating, Inc. (Vallejo, CA) for sandblasting and painting services at the San José-Santa Clara Regional Wastewater Facility for the period December 17, 2013 through December 16, 2014, with total compensation not to exceed \$400,000.**
- (b) **Exercise four additional one-year options to renew the Purchase Order, subject to the appropriation of funds.**

CEQA: San José/Santa Clara Water Pollution Control Plant Master Plan EIR (Resolution No. 76858), File No. P11-043. (Finance)

Documents Filed: (1) City Council Action Request from Director of Finance Julia H. Cooper, dated December 2, 2013, recommending authorization for the City Manager to execute a purchase order with four additional one-year options to renew. (2) Memorandum from the Treatment Plant Advisory Committee Chair Chuck Reed, dated December 13, 2013, expressing concurrence with the Staff recommendations.

Action: The City Manager was authorized to execute a Purchase Order with Jeffco Painting and Coating, Inc. for sandblasting and painting services at the San José-Santa Clara Regional Wastewater Facility for the period December 17, 2013 through December 16, 2014, with total compensation not to exceed \$400,000 and four additional one-year options to renew the Purchase Order, subject to the appropriation of funds. (11-0.)

2.12 Adopt a resolution authorizing the City Manager to execute the First Amendment to the Citywide Security Guard Services Agreements with First Alarm Security & Patrol Services (San José, CA) and National Security Industries & Services (San José, CA), to require each vendor to pay employees paid on an hourly rate consistent with the paid time off requirement pursuant to the City's Living Wage Policy 3-3 as amended on June 4, 2013. CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment. (Finance)

Documents Filed: (1) Memorandum from Director of Finance Julia H. Cooper, dated November 25, 2013, recommending adoption of a resolution. (2) Memorandum from the Treatment Plant Advisory Committee Chair Chuck Reed, dated December 13, 2013, expressing concurrence with the Staff recommendations.

Action: Resolution No. 76885, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute the First Amendment to the Citywide Security Guard Services Agreements with First Alarm Security and Patrol Services and National Security Industries and Services to Pay Employees an Hourly Rate Consistent with the Paid Off Time Requirement in the City's Living Wage Policy 3-3", was adopted. (11-0.)

2.13 Adopt a resolution authorizing the City Manager to negotiate and execute a Memorandum of Understanding with the County of Santa Clara to accept payment in the amount of \$711,400 for first responder fees owed to the City for the period April 2013 through July 2013. CEQA: Not a Project, File No. PP10-066(g), Memorandum of Understanding. (Fire)

2.13 (Cont'd.)

Documents Filed: (1) Memorandum from Acting Fire Chief Ruben Torres, dated November 26, 2013, recommending adoption of a resolution. (2) Supplemental memorandum from Acting Fire Chief Ruben Torres, dated December 13, 2013, providing updates on the final amount that the City will receive from the County for first responder fees for the period April 2013 through July 2013.

Assistant City Manager Edward K. Shikada and Deputy Fire Chief Juan Diaz responded to questions and concerns from Council Member Liccardo with regard to reimbursement to the Fire Department for the first responder fees.

City Attorney Richard Doyle offered to look at the agreements and to appraise the Council.

Motion: Council Member Liccardo moved approval to defer this item. Council Member Rocha seconded the motion.

City Attorney Richard Doyle pointed out that the County has agreed to make the payments from April through July 2031, including the amounts that may be involved in the bankruptcy proceedings.

Council Member Liccardo withdrew his first motion.

Second Motion: Council Member Liccardo moved approval of the Staff recommendations, including the exception to any assignment of rights to ensure the City has fully preserved its rights to both the County and Rural/Metro and to direct the City Attorney to circulate an information memorandum to Council providing more information about the agreements. Council Member Constant seconded the motion.

Deputy Director of Fire Department Ron D'Acchioli noted that the department has a performance measure team working on improving the response times.

Action: On a call for the question, the second motion carried unanimously, Resolution No. 76886, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute a Memorandum of Understanding With the County of Santa Clara to Accept Payment in an Amount Not To Exceed \$749,000 for First Responder Fees Owed to the City for the Period April 2013 through July 2013", was adopted, as amended, with exception to any assignment of rights to ensure the City has fully preserved its rights to both the County and Rural/Metro. The City Attorney was directed to circulate an information memorandum to Council providing more information about the agreements. (11-0.)

2.14 Adopt the following Appropriation Ordinance amendments in the Subdivision Park Trust Fund (Fund 375):

- (a) **Decrease the Reserve: Future PDO / PIO Projects by \$250,000.**
- (b) **Establish the Agnews Property Acquisition appropriation to the Parks, Recreation and Neighborhood Services Department in the amount of \$250,000.**

CEQA: Not a Project, File No. PP10-067(b), Appropriation Ordinance. (Parks, Recreation and Neighborhood Services/City Manager's Office)

Documents Filed: Memorandum from Director of Finance Julia H. Cooper and Budget Director Manager Jennifer A. Maguire, dated December 4, 2013, recommending adoption of appropriation ordinance amendments.

Action: Ordinance No. 29335, entitled: "An Ordinance of the Council of the City of San José Amending Ordinance No. 29271 to Appropriate Monies in the Subdivision Park Trust Fund for the Agnews Property Acquisition; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", was adopted. (11-0.)

2.15 Approve a master agreement with Verde Design, Inc. for architectural, civil, landscape architectural and environmental consultant design services to advance the development of a BMX Bike Park at Lake Cunningham Park from the date of execution through June 30, 2018, in an amount not to exceed \$500,000. CEQA: Not a Project, File No. PP10-066(d), Consultant Services. (Public Works/Parks, Recreation and Neighborhood Services)

Documents Filed: (1) City Council Action Request from Director of Public Works David Sykes and Director of Parks, Recreation and Neighborhood Services Julie Edmonds-Mares, dated December 4, 2013, recommending approval of a master agreement in an amount not to exceed \$500,000. (2) Supplemental memorandum from Director of Parks, Recreation and Neighborhood Services Julie Edmonds-Mares, dated December 13, 2013, providing information on the status of development of the scope of work, cost data and maintenance impacts for the proposed Lake Cunningham Park Recreational Bike Facility.

Mayor Reed requested that this item return to Council once approximately \$200,000 has been expended for budget planning purposes.

Director of Public Works David Sykes responded to Council questions and concerns.

Motion: Council Member Herrera moved approval of the Staff recommendations with Staff directed to return to Council when the \$200,000 level has been reached. Vice Mayor Nguyen seconded the motion.

Action: On a call for the question, the motion carried unanimously, a master agreement with Verde Design, Inc. for architectural, civil, landscape architectural and environmental consultant design services to advance the development of a BMX Bike Park at Lake Cunningham Park from the date of execution through June 30, 2018, in an amount not to exceed \$500,000, was approved. Staff was directed to return to Council when the \$200,000 level has been reached. (10-0-1. Absent: Constant.)

2.16 Review of the Fiscal Year 2012 – 2013 Annual Development In-Lieu Fee Report regarding in-lieu fees collected by the City from developers in lieu of construction of public improvements. CEQA: Not a Project, File No. PP10-069(a), Staff Reports. (Public Works)

Documents Filed: Memorandum from Director of Public Works David Sykes, dated November 25, 2013, recommending acceptance of the report.

Action: The Fiscal Year 2012 – 2013 Annual Development In-Lieu Fee Report regarding in-lieu fees collected by the City from developers in lieu of construction of public improvements was accepted. (11-0.)

2.17 Adopt a resolution summarily vacating a portion of Auzerais Avenue adjacent to Assessor’s parcel numbers 264-15-028 and 264-15-031. CEQA: Mitigated Negative Declaration, File No. H13-008. Council District 6. (Public Works)

Documents Filed: Memorandum from Director of Public Works David Sykes, dated November 25, 2013, recommending adoption of a resolution.

Action: Resolution No. 76887, entitled: “A Resolution of the Council of the City of San José Summarily Vacating a Portion of Auzerais Avenue”, was adopted. (11-0.)

2.18 Adopt a resolution:

- (a) **Declaring 4,059 square feet of vacated street on Auzerais Avenue, south of San Carlos Street, surplus to the needs of the City.**
- (b) **Approving an agreement between the City of San José and National Retail Properties, LP for sale of the property in the amount of \$162,000.**
- (c) **Authorizing the City Manager or her designee to execute the sale agreement, the deed and all other documents necessary to complete the transaction.**

CEQA: Mitigated Negative Declaration, File No. H13-008. Council District 6. (Economic Development)

Documents Filed: Memorandum from Director of Economic Development Kim Welsh, dated December 5, 2013, recommending adoption of a resolution.

Action: Resolution No. 76888, entitled: “A Resolution of the Council of the City of San José Declaring 4,059 Square Feet of Vacated Street on Auzerais Avenue, South of San Carlos Street As Surplus to the Needs of the City, Approving an Agreement with National Retail Properties, LP For Sale of the Property in the Amount of \$162,000 and Authorizing the City Manager or Designee To Execute the Sale Agreement, The Deed and All Other Documents Necessary To Complete the Transaction”, was adopted. (11-0.)

2.19 Approve a Contract Change Order Number 6 with Granite Rock Company DBA Pavex Construction Division for the 2010 STP Resurfacing and Rehabilitation Project – Citywide in the amount of \$150,459.27. CEQA: Exempt, File No. PP11-035. (Transportation)

2.19 (Cont'd.)

Documents Filed: City Council Action Request from Director of Transportation Hans Larsen, dated December 3, 2013, recommending approval of Contract Change Order Number 6.

Action: The Contract Change Order Number 6 with Granite Rock Company DBA Pavex Construction Division for the 2010 STP Resurfacing and Rehabilitation Project Citywide in the amount of \$150,459.27 was approved. (11-0.)

2.20 Adopt a resolution to repeal Resolution No. 76430 and set forth the Master Parking Rate Schedule to establish a flexible rate (\$0 - \$25) for all-day parking, and a \$1 per hour rate option in the South First Street/University Business parking meter district. CEQA: Statutorily Exempt, File No. PP10-067 (a), CEQA Guidelines Section 15273, Rates, Tolls, Fares and Charges. Council District 3. (Transportation)

Documents Filed: Memorandum from Director of Transportation Hans Larsen, dated November 25, 2013, recommending adoption of a resolution.

Action: Resolution No. 76889, entitled: "A Resolution of the Council of the City of San José Setting Forth the Master Parking Rate Schedule for Municipal On and Off Street Parking Facilities to Establish a Flexible Rate (\$0-\$25) for All Day Parking and a \$1 Per Hour Rate Option in the South First Street/University Parking Meter District and To Repeal Resolution No. 76430 Effective On the Date Adopted by the City Council", was adopted. (11-0.)

2.21 Adopt the following Appropriation Ordinance amendments in the Construction Excise Tax Fund to allow for additional replacement of streetlight copper wire:

- (a) Increase the appropriation to the Department of Transportation for Copper Wire Replacement in the amount of \$500,000.**
 - (b) Decrease the Ending Fund Balance by \$500,000.**
- CEQA: Exempt, File No. PP13-076. (Transportation/City Manager's Office)**

Action: Renumbered to Item 6.1. See Item 6.1 for Action.

2.22 (a) Approve a parking agreement with Apigee Corporation, for the issuance of up to 200 parking permits for use at various City owned and/or operated parking facilities for up to 5-1/2 years.
(b) Adopt a resolution authorizing the City Manager, or designee, to execute future amendments to the parking agreement to increase or decrease the number of parking permits issued pursuant to the agreement, in an amount not to exceed 200 parking permits.
CEQA: Not a Project, File No. PP10-066(f), Lease of equipment of existing space. Council District 3. (Transportation/Economic Development)

Documents Filed: Memorandum from Director of Transportation Hans Larsen and Director of Economic Development Kim Walesh, dated November 25, 2013, recommending approving a parking agreement and adoption of a resolution.

2.22 (Cont'd.)

Council Member Liccardo thanked Staff for their hard work in implementing this parking agreement.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, the parking agreement with Apigee Corporation, for the issuance of up to 200 parking permits for use at various City owned and/or operated parking facilities for up to 5-1/2 years was approved and Resolution No.76890, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute Future Amendments to the Apigee Corporation Parking Agreement with the City To Increase or Decrease Parking Permits In An Amount Not To Exceed 200 Parking Permits", was adopted. (10-0-1. Absent: Constant.)

- 2.23 (a) **Increase the contingency for the 2012 Slurry Seal Project in the amount of \$200,000 for a total contingency amount of \$256,970.58 and a total contract amount of \$1,396,384.08.**
- (b) **Approve the following Contract Change Orders with Graham Contractors, Inc. Number 2 for the amount of \$148,361.44, Number 3 for the amount of \$1,891.00, and Number 4 for the amount of \$999.87.**
- CEQA: Exempt, File No. PP11-035. (Transportation)**

Documents Filed: City Council Action Request from Director of Transportation Hans Larsen, dated December 3, 2013, recommending increasing the contingency for the 2012 Slurry Seal Project and approve the Contract Change Orders.

Action: The contingency for the 2012 Slurry Seal Project in the amount of \$200,000 for a total contingency amount of \$256,970.58 and a total contract amount of \$1,396,384.08 and the Contract Change Orders with Graham Contractors, Inc. Number 2 for the amount of \$148,361.44, Number 3 for the amount of \$1,891.00, and Number 4 for the amount of \$999.87, were approved. (11-0.)

- 2.24 **Approve travel by Councilmember Campos to San Diego, CA on January 10 – 12, 2013 to attend the League of California Cities Latino Caucus Annual Board Retreat. Source of Funds: District 5 Council Funds. (Campos)**
(Rules Committee referral 12/11/13)

Documents Filed: Memorandum from Council Member Campos, dated December 4, 2014, requesting approval of travel.

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

- 2.25 (a) **Approve the showing of a pet documentary as a City Council sponsored Special Event and approving expenditure of funds.**
- (b) **Approve and accept donations from various individuals, businesses or community groups to support the event.**
- CEQA: Not a Project. (Oliverio)**
(Rules Committee referral 12/11/13)

2.25 (Cont'd.)

Documents Filed: Memorandum from Council Member Oliverio, dated December 2, 2013, recommending approval of the event, and approval to accept donations.

Action: The showing of a pet documentary as a City Council sponsored Special Event and expenditure of funds were approved and acceptance of donations from various individuals, businesses or community groups to support the event were authorized. (11-0.)

2.26 As recommended by the Rules and Open Government Committee on December 11, 2013:

(a) Approve the following appointments to the Council Appointment Advisory Commission:

- (1) D-2: Deanford Chan (Term expiring 12/31/16) – (D9 residency)**
- (2) D-5: Brenda Wu (Term expiring 12/31/16) – (D8 residency)**
- (3) D-7: Johnny Lee (Term expiring 12/31/16) – (D7 residency)**

(b) Determine that a change to the term end date of the following vacant position on the Human Services Commission with unexpired terms is in the best interest of the commission to realign with the City Clerk's Office recruitment schedule shall be as follows:

- (1) District 3 seat: Realign the term end date from December 31, 2014 to December 31, 2016;**
- (2) District 5 seat: Realign the term end date from June 30, 2014 to December 31, 2016;**

(c) Approve the following appointments to the Human Services Commission:

- (1) Mayor: Joe Lopez (Term expiring 12/31/16) – (D2 residency)**
- (2) D-2: Andy Le (Term expiring 12/31/14) – (D2 residency)**
- (3) D-3: Omar Teutle (Term expiring 12/31/14) – (D2 residency)**
- (4) D-5: Eric O'Grey (Term expiring 6/30/14) – (D5 residency)**
- (5) D-8: Martin Monica (Term expiring 12/31/14) – (D6 residency)**
- (6) D-9: Monique Migdol (Term expiring 12/31/16) – (D9 residency)**
- (7) D-10: Amal Sinha (Term expiring 12/31/16) – (D10 residency)**

CEQA: Not a Project. (City Clerk)

[Rules Committee referral 12/11/13 – Item F(1)(a)]

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated December 11, 2013, recommending approval of the appointments to the Advisory Commission and Human Resources Commission.

Action: The appointments to the Advisory Commission and the Human Resources Commission and changes to the term date end of the vacant positions, as described above, were approved. (11-0.)

- 2.27 As recommended by Rules and Open Government Committee on December 11, 2013, approve the following appointments to the Neighborhoods Commission:
- (a) Ramona Snyder (District 1) to a term expiring June 30, 2014;
 - (b) Juan Estrada (District 5) to a term expiring June 30, 2014;
 - (c) Richard Giammona (District 10) to a term expiring June 30, 2016; and
 - (d) Nick Labosky (District 10) to a term expiring June 30, 2016.
- CEQA: Not a Project. (City Clerk)
[Rules Committee referral 12/11/13 – Item F(1)(c)]

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated December 11, 2013, recommending approval of the Neighborhoods Commission Nominations.

Action: The Neighborhoods Commission appointments, as described above, were approved. (11-0.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

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

City Manager Debra Figone reported that the City of San José earned three awards last week from the Silicon Valley Leadership Group for the City's outstanding achievements, including the Mineta San José International Airport which responded to globalization; the San José High Rise Incentive Program which recognized efforts to boost a vibrant urban environment and the San José/Samsung project that recognized the innovative reuse of real estate to develop a landmark project.

Public Comments: David Wall expressed comments referring to environmental sustainability and Applegate Johnson, Inc.

- 3.3
- (a) **Authorize the City Manager to negotiate two proposed lease agreements that do not include living wage and labor peace requirements:**
 - (1) **City Hall Retail Space on Fourth Street; Don Imwalle Jr. as Master Tenant/Developer, City as Landlord, in the event that the space is not leased to the U.S. Patent Office.**
 - (2) **San José McEnery Convention Center Plaza Coffee Kiosk; Starbucks Coffee as Tenant, City as Landlord.**
 - (b) **Adopt a resolution approving modifications to the City's Living Wage Policy, Council Policy 3-3, to clarify living wage and labor peace requirements do not apply to leases, property agreements, operating agreement and concession agreements in which the City is Landlord, that do not provide City funds or City subsidies or involve direct services to the City or services that the City would normally provide to residents.**

CEQA: Not a Project, File No. PP10-068(c), Municipal Code or Policy change that involves no changes in the physical environment. Council District 3. (Economic Development/Public Works)

3.3 (Cont'd.)

Documents Filed: (1) Memorandum from Mayor Reed, Vice Mayor Nguyen and Council Members Herrera and Liccardo, dated December 13, 2013, recommending approval of the Staff recommendations. (2) Memorandum from Council Member Rocha, dated December 16, 2013, recommending deferring action in the Staff memorandum on recommendations (a) and (b), with direction to Staff. (3) Memorandum from Council Member Kalra, dated December 16, 2013, recommending denying the Staff recommendations to modify the living wage ordinance and denying the Staff recommendations to negotiate the leases. (4) Memorandum from Director of Economic Development Kim Welsh and Director of Public Works David Sykes, dated November 25, 2013, recommending authorizing the City Manager to negotiate the two proposed lease agreements and adoption of a resolution approving the modifications to the City's Living Wage Policy.

Mayor Reed and City Manager Debra Figone offered introductory comments.

Director of Economic Development Kim Welsh explained that there were questions that had been raised that required further analysis in order for the Council to have a more complete deliberation and Staff was recommending a month deferral.

Council discussion ensued.

Council Member Constant voiced opposition to the deferral of this item, citing that this item had been properly noticed and should move forward. Council Member Constant pointed out that over the past seven years the empty store front has lost the City revenue.

Motion: Council Member Kalra moved acceptance of the Staff request for a deferral of this item to January 28, 2014. Council Member Herrera seconded the motion.

Public Comments: Jim Reed, San José Silicon Valley Chamber of Commerce urged the Council to support the Staff recommendation and defer the item to January 2014. David Wall expressed his point of view to the modification of the living wage.

Council Member Rocha requested to amend the motion to include his memorandum dated December 16, 2013, with direction to Staff, as described below in "Action". The amendment was accepted by Council Members Kalra and Herrera.

Action: On a call for the question, the motion carried, Item 3.3 was deferred to January 28, 2014. The memorandum from Council Member Rocha, dated December 16, 2013, was approved, with the following direction to Staff to return to Council (in Open or Closed Session, as appropriate) with the following information: (1) The lease rate the City could expect to receive from the lease agreements contemplated in Staff's recommendation (a), assuming that the tenants are not required to comply with the Living Wage Policy, as Staff recommends. (2) An analysis of how much the City might need to discount the lease rate in exchange for a tenant to agree to pay the wage rates required by the City's Living Wage Policy. (3) An update on the status of efforts to locate the Patent Office at City Hall. (10-1. Noes: Constant.)

- 3.4 Adopt a resolution authorizing the City Manager to:**
- (a) Execute the Fourth Amendment to the Agreement with Air-Transport IT Services, Inc. to revise the scope of services to meet current operation needs, extend the term for an additional twelve months for the term January 1, 2014 through December 31, 2014, and increase compensation by \$1,852,555 for a revised maximum compensation of \$19,994,875.**
 - (b) Exercise two additional one-year options to extend the term of the Agreement, 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. (Finance)**

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

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Herrera and carried unanimously, Resolution No. 76891, entitled: “A Resolution of the Council of the City of San José Authorizing “A Resolution of the Council of the City of San José Authorizing the City Manager to Execute the Fourth Amendment to the Agreement with Air-Transport IT Services, Inc.”, was adopted. (11-0.)

- 3.5 As recommended by Rules and Open Government Committee on December 11, 2013, accept the 2014 Legislative Guide Principles as edited by the Council Committees, and the Legislative Priorities and Advocacy Issues for the second year of the two-year Legislative Session in Sacramento and the 113th Congress. (City Manager’s Office)**
- [Rules Committee referral 12/11/13 – Item G(2)]**

Action: Deferred to January 14, 2014.

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.1 (a) Approve the amended and restated lease between the City of San José and the San José Giants, dba, Baseball Acquisition Company, Inc., regarding the San José Municipal Stadium located at 588 E. Alma Avenue, in order to extend the existing lease for five years, with a new expiration date of December 31, 2018.**
- (b) Approve a memorandum of understanding between the City, San José Giants and Sharks Ice regarding the roles and responsibilities for the management of the Municipal Stadium parking lot.**
- CEQA: Exempt, File No. PP07-217. Council District 7. (Economic Development)**
(Deferred from 12/3/13 – Item 4.2)

4.1 (Cont'd.)

Documents Filed: (1) Memorandum from Mayor Reed, Vice Mayor Nguyen and Council Member Campos, dated November 26, 2013, recommending approving the Staff recommendations as outlined in the Staff report dated November 12, 2013. (2) Memorandum from Director of Economic Development Kim Walesh, dated November 12, 2013, recommending approving the amended and restated lease between the City and San José Giants and a memorandum of understanding between the City and San José Giants and Shark Ice.

Mayor Reed and Council Member Rocha offered meeting disclosures.

Motion: Vice Mayor Nguyen moved approval of the memorandum she cosigned with Mayor Reed and Council Member Campos, dated November 26, 2013, accepted the Staff recommendations as outlined in the Staff Report dated November 12, 2013. Council Member Campos seconded the motion.

Public Comments: Speaking in support to the motion on the floor were Dan Orum, San José Giants; Dan McFadden, San José Sharks and David Wall.

City Attorney Richard Doyle and Deputy Director of Economic Development Nanci Klein responded to Council questions and concerns.

Council Member Liccardo expressed opposition to the motion citing that currently the San José Giants, a corporate entity was suing the City in a frivolous lawsuit.

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

Action: On a call for the question, the motion carried, the memorandum from Mayor Reed, Vice Mayor Nguyen and Council Member Campos, dated November 26, 2013, was approved, the Staff recommendations as outlined in the Staff Report dated November 12, 2013, were accepted as follows: the amended and restated lease between the City of San José and the San José Giants, dba Baseball Acquisition Company, Inc., regarding the San José Municipal Stadium located at 588 E. Alma Avenue, in order to extend the existing lease for five years, with a new expiration date of December 31, 2018 and a memorandum of understanding between the City, San José Giants and Sharks Ice regarding the roles and responsibilities for the management of the Municipal Stadium parking lot, were approved. (10-1. Noes: Liccardo.)

4.2 Approve a non-binding Memorandum of Understanding with iStar San José, LLC, FWSH Partners II, LLC and Earthquakes Real Estate to explore and negotiate a Development Agreement for development of the iStar Property at Hwy 85 and Cottle Road with up to 720 homes, 24.5 acres of employment uses and significant retail user over 100,000 square foot, and a 4.2 acre fully improved park site, which development would finance construction of enhancements to the Earthquakes' professional soccer stadium at 1125 Coleman Avenue. CEQA: Not a Project, File No. PP10-166(g), Memorandum of Understanding. (Economic Development/ Planning, Building and Code Enforcement)

Documents Filed: (1) Memorandum from Mayor Reed and Council Member Kalra, dated December 12, 2013, recommending approval of the memorandum of understanding and preparation of an agreement. (2) Memorandum from Council Member Rocha, dated December 16, 2013, recommending approval of the memorandum coauthored by Mayor Reed and Council Member Kalra, dated December 12, 2013. (3) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel and Director of Economic Development Kim Walesh, dated November 25, 2013, recommending approval of the nonbinding memorandum of understanding. (4) Supplemental memorandum from City Attorney Richard Doyle, dated December 16, 2013, transmitting additional revisions to the memorandum of understanding. (5) Letter from Robert R. Moore, Allen Matkins Leck Gamble Mallory & Natsis LLP, Attorneys At Law, dated December 17, 2013, expressing disagreement with Staff's claim that approval of the memorandum of understanding with iStar San José, LLC, FWSH Partners II, LLC and Earthquakes Real Estate is not a project, under CEQA.

Director of Planning, Building and Code Enforcement Joseph Horwedel and Deputy Director of Economic Development Nanci Klein presented the report and responded to Council questions and concerns.

Public Comments: David Kaval, San José Earthquakes, expressed support to the Staff recommendations. David Wall voiced opposition to the Staff recommendations.

Motion: Council Member Kalra moved approval of the Staff recommendations and the memorandum of understanding and the preparation of a development agreement related to the iStar property, were approved. Council Member Rocha seconded the motion.

City Attorney Richard Doyle provided clarifications.

Council discussion ensued.

Council Member Oliverio expressed opposition to the motion on the floor and pointed out that the density should be higher.

4.2 (Cont'd.)

Action: On a call for the question, the motion carried, a non-binding Memorandum of Understanding with iStar San José, LLC, FWSH Partners II, LLC and Earthquakes Real Estate to explore and negotiate a Development Agreement for development of the iStar Property at Hwy 85 and Cottle Road with up to 720 homes, 24.5 acres of employment uses and significant retail user over 100,000 square foot, and a 4.2 acre fully improved park site, which development would finance construction of enhancements to the Earthquakes' professional soccer stadium at 1125 Coleman Avenue, was approved. (10-1. Noes: Oliverio.)

4.3 Adopt a resolution amending the North San José Area Development Policy to:

- (a) **Increase the total square footage available for the incentive program to 4 million square feet.**
- (b) **Reduce the Traffic Impact Fee to \$2.00/sf for any build-to-suit Office/R&D campus of over 1 million square feet that obtains planning and building approvals by December 31, 2014.**
- (c) **Require new development that receives the \$2.00/sf incentive, as a condition of its Development Agreement, to participate in the Business Cooperation Program.**
- (d) **Allow projects outside of the boundary area, that contribute traffic trips on roads within the Policy area that are consistent with the impacts identified in the NSJ EIR, to mitigate by payment of the Traffic Impact Fee following the preparation of a traffic impact analysis.**
- (e) **Provide additional flexibility with respect to the Urban Design Guidelines for campus style development within the Policy boundaries.**

CEQA: North San José Development Policies Update EIR, Resolution No. 72768 and Addenda thereto. Council Districts 3 and 4. (Economic Development/Planning, Building and Code Enforcement)

Documents Filed: (1) Memorandum from Mayor Reed, Vice Mayor Nguyen and Council Members Herrera and Liccardo, dated December 13, 2013, recommending approval of the Staff recommendations outlined in the November 25, 2013 report with the proposed modification to item (c). (2) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel and Director of Economic Development Kim Welsh, dated November 25, 2013, recommending adoption of a resolution. (3) Letter from Benjamin Grant, SPUR, dated December 16, 2013, expressed their opinion that San José should strengthen, not weaken its commitment to urban design.

Director of Economic Development/Chief Strategist Kim Welsh and Director of Transportation Hans Larsen provided the report.

Motion: Vice Mayor Nguyen moved approval of the memorandum she cosigned with Mayor Reed and Council Members Herrera and Liccardo, dated December 12, 2013 with modifications as described below in "Action". Council Member Herrera seconded the motion.

4.3 (Cont'd.)

City Attorney Richard Doyle, Director of Transportation Hans Larsen and Deputy Director of Economic Development Nanci Klein responded to Council questions and concerns.

Extensive Council discussion followed.

Council Member Rocha requested bifurcating the items and to vote on them separately. The request was accepted by Vice Mayor Nguyen and Council Member Herrera. See "Action" for the votes.

Public Comments: Ben Grant, SPUR, provided his perspective on the Urban Design Guidelines. David Wall expressed opposition to the Staff recommendations citing that it will incur too much debt.

Action: On a call for the question, the motions carried, the memorandum from Mayor Reed, Vice Mayor Nguyen, Council Members Herrera and Liccardo, dated December 13, 2013, was approved, accepting the Staff recommendations outlined in the November 25, 2013 report with the proposed modification to Item (c): From: Require new development that receives the \$2.00/sf incentive, as a condition of its Development Agreement, to participate in the Business Cooperation Program. To: Require the developer/owner of any new development that receives the Council approved \$2.00/sf incentive, to make every reasonable good faith effort in collaboration with its contractors, to include a provision in all construction contracts to record construction material purchases and sales, as sales originating within San José, as outlined in the Business Cooperation Program. Resolution No. 76892, entitled: "A Resolution of the Council of the City of San José Amending the North San José Area Development Policy to Increase the Total Square Footage Available for the Temporary Traffic Fee Reduction Incentive Program to Four Million Square Feet; Reduce the Traffic Impact Fee to \$2.00/SF for Build To Suit Office/R&D Campuses Under Certain Specified Conditions; Allow Projects Outside of the Policy Area to Mitigate Project Traffic Impacts Within the Policy Area by Payment of Traffic Impact Fee Under Certain Specified Conditions and Provide Additional Flexibility With Respect to the Urban Design Guidelines for Campus Style Development Within the Policy Area", was adopted, as amended. Items (a),(b),(c),(d): (10-1. Noes: Chu.), Item (c): (10-1. Noes: Rocha.) and Item (e): (11-0.)

- 4.4 As recommended by the Community and Economic Development Committee on November 18, 2013, accept staff's recommendation to direct the City Attorney to draft an ordinance amending Chapter 4.46 of Title 4 of the San José Municipal Code and Chapter 4.47 of Title 4 to extend the partial suspension of the collection of the building and structure construction tax and the suspension of the commercial-residential-mobile home park building tax for office, research and development uses, data center uses and installation of solar photovoltaic systems until March 31, 2017. CEQA: Not a Project, File No. PP10-067 (Statutory Exemption, Sec. No. 15273), Rates, Tolls, Fares, and Charges. (Economic Development/Planning, Building and Code Enforcement)
[Community and Economic Development Committee referral 11/18/13 – Item d(3)]**

4.4 (Cont'd.)

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated December 5, 2013, transmitting the recommendations of the Community and Economic Development Committee.

Director of Economic Development/Chief Strategist Kim Walesh offered introductory remarks.

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

Public Comments: David Wall expressed opposition to the Staff recommendations.

Action: On a call for the question, the motion carried unanimously, the City Attorney was directed to draft an ordinance amending Chapter 4.46 of Title 4 of the San José Municipal Code and Chapter 4.47 of Title 4 to extend the partial suspension of the collection of the building and structure construction tax and the suspension of the commercial-residential-mobile home park building tax for office, research and development uses, data center uses and installation of solar photovoltaic systems until March 31, 2017. (11-0.)

4.5 **Consideration of an ordinance rezoning the real property located on the northeast corner of Lorraine Avenue and South Montgomery Street (565 Lorraine Avenue) from the LI – Light Industrial Zoning District to the DC – Downtown Core Zoning District on a 0.102 gross acre site (Solari James Trustee, Owner). CEQA: Envision San José 2040 General Plan FEIR (Resolution No. 76041). (Planning, Building and Code Enforcement)** **C13-042 – District 3**

Documents Filed: (1) Memorandum from Council Member Liccardo, dated December 13, 2013, recommending deferral of the rezoning until after a community hearing is held. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C13-042, dated November 25, 2013. (3) Proof of Publication of Notice of Public Hearing executed on November 15, 2013, submitted by the City Clerk.

Motion: Council Member Liccardo moved approval of his memorandum dated December 13, 2013, as described below in “Action”. Council Member Kalra seconded the motion.

Action: On a call for the question, the motion carried unanimously, the memorandum from Council Member Liccardo, dated December 13, 2013, was approved: the rezoning of the real property located on the northeast corner of Lorraine Avenue and Montgomery Street was deferred until after a community meeting is held. Staff was directed to hold a community meeting to consider the rezoning of all parcels along Lorraine Avenue. (11-0.)

**4.6 Consideration of an ordinance rezoning the real property located on the west side of Lincoln Avenue, approximately 320 feet north of Auzerais Avenue (351 Lincoln Avenue) from LI – Light Industrial Zoning District to the CIC – Combined Industrial/Commercial Zoning District on a 0.5647 gross acre site (Lamantia Michael F Trustee, Owner). CEQA: Envision San José 2040 General Plan FEIR (Resolution No. 76041). (Planning, Building and Code Enforcement)
C13-043 – District 6**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C13-043, dated November 25, 2013. (2) Proof of Publication of Notice of Public Hearing executed on November 15, 2013, submitted by the City Clerk.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Kalra and carried unanimously, Ordinance No. 29356, entitled: “An Ordinance of the Council of the City of San José Rezoning Certain Real Property Situated on the West Side of Lincoln Avenue Approximately 320 Feet North of the Corner of Auzerais Avenue on a 0.5647 Gross Acre Site (351 Lincoln Avenue) From the LI Light Industrial Zoning District to the CIC Combined Industrial/Commercial Zoning District”, was passed for publication. (11-0.)

**4.7 Consideration of an ordinance rezoning the real property located between Grand Avenue and Race Street, approximately 300 feet southerly of Park Avenue (253 Race Street) from the A(PD) Planned Development Zoning District to the A(PD) Planned Development Zoning District to allow up to 80 multi-family attached residential units and up to 12,000 square feet of commercial uses in a four-story building on a 2.3 gross acre site (Race Street Investments, Owner). CEQA: Addendum to the Race Street Terrace Mitigated Negative Declaration. (Planning, Building and Code Enforcement)
PDC13-037 – District 6**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC13-037, dated November 25, 2013. (2) Proof of Publication of Notice of Public Hearing executed on November 29, 2013, submitted by the City Clerk.

Public Comments: David Wall expressed opposition to the Staff recommendations.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Kalra and carried unanimously, Ordinance No. 29357, entitled: “An Ordinance of the Council of the City of San José Rezoning Certain Real Property Situated Between Race Street and Grand Avenue, Approximately 300 Feet Southerly of Park Avenue, From the A(PD) Planned Development Zoning District to the A(PD) Planned Development Zoning District”, was passed for publication. (11-0.)

**4.8 Consideration of adoption of a resolution approving Conditional Use Permit to allow the conversion of an existing post office and the addition of a new 12,295 square foot building for an elementary school use on an approximately 1.47 gross acre site, located on the eastside of South Jackson Avenue, approximately 350 feet south of Alum Rock Avenue at 70 South Jackson Avenue. CEQA: Mitigated Negative Declaration, Resolution No. 76879. (To An N, Angela K Et Al, and City of San José, Owner). (Planning, Building and Code Enforcement)
C13-049/CP13-085 – District 5
[Continued from 12/10/13 – Item 11.5(c)]**

Documents Filed: (1) Memorandum from Council Member Campos, dated December 16, 2013, recommending including an additional condition to the Conditional Use Permit as described in “Action”. (2) Statement and Declaration of Conflict of Interest Form, dated December 17, 2013, from Council Member Liccardo, disclosing that his wife is employed by Rocketship Foundation. (3) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated November 27, 2013, transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C13-049/CP13-085, dated November 26, 2013. (4) Proof of Publication of Notice of Public Hearing, executed on November 22, 2013, submitted by the City Clerk.

Council Member Liccardo disclosed that his wife is employed by Rocketship Foundation recused himself from participating in the Council discussion and action.

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

Erik Schoennauer, representing the Applicant, Rocketship Education and Launchpad Development, spoke to the merits of the project and expressed his acceptance of the conditions in the memorandum from Council Member Campos.

Council Member Campos requested to amend the motion to include his memorandum dated December 16, 2013, to include an additional condition to the Conditional Use Permit. The amendment was accepted by Vice Mayor Nguyen and Council Member Herrera. (See “Action” for the full description.)

Mayor Reed opened the Public Hearing.

Public Comments: Speaking in support to the Staff recommendations were Matt Hammer and Jose Aceras, Innovate Public Schools; Fatima Flores, Rocketship and Emma Lu.

Mayor Reed closed the Public Hearing.

4.8 (Cont'd.)

Action: On a call for the question, the motion carried, the memorandum from Council Member Campos, dated December 16, 2013, was approved to include an additional condition to the Conditional Use Permit as follows: An escrow account to be created by Launchpad Development with sufficient funds to mitigate traffic related impacts that will be created due to the construction and establishment of a new elementary school located at 70 South Jackson Avenue. Staff was directed to add “no left hand turns” on Page 26, under the Conditions of the Conditional Use Permit, Condition 28(e) Traffic Circulation. Resolution No. 76893, entitled: “A Resolution of the Council of the City of San José Approving a Conditional Use Permit to Allow the Conversion of an Existing Post Office and the Addition of a New 12,295 Square Foot Building for an Elementary School Use for Up to 650 Students on a 1.47 Gross Acre Site Located on the East Side of South Jackson Avenue Approximately 350 Feet South of Alum Rock Avenue (70 South Jackson Avenue)”, was adopted, as amended. (8-1-1-1. Noes: Oliverio. Absent: Chu. Abstain: Liccardo.)

TRANSPORTATION & AVIATION SERVICES

- 6.1 Adopt the following Appropriation Ordinance amendments in the Construction Excise Tax Fund to allow for additional replacement of streetlight copper wire:**
- (a) Increase the appropriation to the Department of Transportation for Copper Wire Replacement in the amount of \$500,000.**
 - (b) Decrease the Ending Fund Balance by \$500,000.**
- CEQA: Exempt, File No. PP13-076. (Transportation/City Manager’s Office)**

Note: Item 6.1 was renumbered from Item 2.21.

Documents Filed: (1) Replacement memorandum from Council Members Liccardo and Herrera, dated December 10, 2013, recommending direction to the City Manager as described in “Action” on Page 27. (2) Memorandum from Director of Transportation Hans F. Larsen and Deputy City Manager Jennifer A. Maguire, dated November 25, 2013, recommending appropriation ordinance amendments.

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

Director of Transportation Hans Larsen provided a brief report and acknowledged the memorandum from Council Members Liccardo and Herrera, dated December 10, 2013.

Council Member Liccardo requested to amend the motion to include the replacement memorandum he cosigned with Council Member Herrera, dated December 10, 2013, providing direction to the City Manager as described in “Action” on Page 27. The amendment was accepted by Council Member Constant and Vice Mayor Nguyen.

6.1 (Cont'd.)

Council Member Constant requested to amend the motion to direct Staff, with regard to the combination poles and the wireless light LED poles, to coordinate with the Silicon Valley Wireless Group Joint Venture and the Silicon Valley Regional Interoperability Authority Wireless Group to ensure the City is not preempting any other possibilities in the future. The amendment was accepted by Vice Mayor Nguyen.

Public Comments: David Wall expressed support to the memorandum from Council Members Liccardo and Herrera.

Action: On a call for the question, the motion carried unanimously, Ordinance No. 29359, entitled: "An Ordinance of the Council of the City of San José Amending Ordinance No. 29271 to Appropriate Monies in the Construction Excise Tax Fund for the Copper Wire Replacement; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", was adopted. The replacement memorandum from Council Members Liccardo and Herrera, dated December 10, 2013, was approved, as amended: The City Manager and Staff were directed to return to the Rules and Open Government Committee in February 2014 with the following: (1) In coordination with Prospect Silicon Valley, and with the City's recently selected energy services company, Chevron Energy Solutions, explore the feasibility of creating a multi block or district wide project for the installation of "smart poles" consistent with Council Policy 0-140 (Framework for Establishing Demonstration Projects) over a geographic area that includes some portion of streets with longstanding street light outages (i.e. due to malfunction or wire theft). Include in those discussions Phillips and any other companies willing to construct and install "smart poles" without any capital cost to the City. (2) The City Manager/Staff was further directed: (a) To provide cost estimates for (1) the targeted installation of metal locking lids on the light poles located in the 20% most frequent locations for wire theft in the City and (2) the sealing of all light poles with epoxy treatment. (b) To begin discussions with relevant bargaining groups to create a pay classification for qualified electricians that will ensure a pay rate sufficient to secure interest for both hiring and retention. (3) Through the City's representatives to the Cities Association of Santa Clara County and the Association of Bay Area Governments: (a) Explore the creation of a regional pact requiring the licensing of recycling centers, junk dealers, weightmasters and other buyers of nonferrous metals ("metal dealers") such that metal dealers must: (1) Require that all metal sellers/customers provide the dealers with relevant information from the government-issued identification (CDL#, SSN#, DOB, etc.) and physical address. (2) Provide such information to law enforcement upon proper request. (3) Utilize check or payment other than cash for any metal purchase and that payment be mailed to the seller's physical address several days after the transaction. (b) Explore alternative methods of identifying publicly owned copper wire and preventing its theft and resale to recyclers, including color coding and conduit locking; and work with other jurisdictions and States to identify any other successful strategies that could be deployed here in San José and the region. (4) Staff was further directed, with regard to the combination poles and the wireless light LED poles: to coordinate with the Silicon Valley Wireless Group Joint Venture and the Silicon Valley Regional Interoperability Authority Wireless Group to ensure the City is not preempting any other possibilities in the future. (10-0-1. Absent: Chu.)

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>
9960	Southeast corner of Hostetter Road and Sierra Creek Way	4	Twin Creeks Berryessa LLC	6 Lots	SFD	Approval
10204	Southeast corner of East Brokaw Road and Old Oakland Road	3	The New Home Company	34 Lots / 239 Units	SFA	Approval

In accordance with Sec. 19.16.140d of the San José Municipal Code, this is notification that the City Engineer has received the following Final Map and is reviewing it for final approval:

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/Units</u>	<u>Type</u>
9985	East side of Boynton Avenue, approx. 350 feet N/o Williams Road	1	KMA Real Estate Properties	5 Lots	SFD/SFA
10204	Southeast corner of East Brokaw Road and Old Oakland Road	3	The New Home Company	34 Lots / 239 Units	SFA

OPEN FORUM

- (1) David Wall presented his own point of view about Applegate Johnson.
- (2) Michael McWalters expressed concern about the mitigation of traffic for Levi Stadium and asked whether the City of San José plans to address the impending traffic.

Assistant City Manager Edward K. Shikada thanked City Manager Debra Figone for her expertise and service on behalf of her Staff and remarked that it has been an extraordinary experience working with her.

ADJOURNMENT

The Council of the City of San José was adjourned at 5:56 p.m. in memory of Royce Lorraine Peterson, an original member of the Prospect High School staff. She was an educator within the Campbell Union High School District for 38 years, and an active member of the Campbell High School Teachers Association. Upon retirement, she continued her service to education, elected in 2006, as a member of the Campbell Union High School District School Board. (Rocha)

Minutes Recorded, Prepared and Respectfully Submitted by,

Toni J. Taber, CMC
City Clerk

/smd 12-17-13 MIN

Access the video, the agenda and related reports for this meeting by visiting the City's website at <http://www.sanjoseca.gov/clerk/agenda.asp> or <http://www.sanjoseca.gov/clerk/MeetingArchive.asp>. For information on any ordinance that is not hyperlinked to this document, please contact the Office of the City Clerk at (408) 535-1266.