

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, JANUARY 28, 2014

The Council of the City of San José convened in Regular Session at 9:03 a.m. in the Council Chambers at City Hall.

Present: Council Members - Campos, Chu, Herrera (9:08 a.m.), Kalra (9:08 p.m.), Constant, Khamis, Liccardo (9:07 a.m.), Nguyen, Oliverio (9:09 a.m.), Rocha (9:07 a.m.); Reed.

Absent: Council Members - All Present.

STRATEGIC SUPPORT SERVICES

3.2 Accept Labor Negotiations Update.

There was no report.

CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:04 a.m. to a Closed Session in Room W133 (A) to confer with Legal Counsel with respect to Public Employment/Public Employee Appointment pursuant to Government Code Section 54957: Title: City Clerk; Name: Toni J. Taber. (B) to confer with Legal Counsel pursuant to Government Code Section 54956.9(d)(1) with respect to existing litigation: In re: Claim of Schuller; Amount of Money or Other Relief Sought: Administrative Appeal. (C) to confer with Legal Counsel pursuant to subsection (b) of Section 54956.9 of the Government Code with respect to anticipated litigation of significant exposure: In re: Claim of Opray; City Department: Police. (D) to confer with Legal Counsel pursuant to Government Code Section 54956.9(d)(1) with respect to existing litigation: (1) Garden City, Inc. dba Casino M8trix, et al. v. City, et al. Names of Parties Involved: Garden City, Inc. dba Casino M8trix, a California Corporation, Airport Parkway Two, LLC, a California Limited Liability Company and Airport Opportunity Fund, LLC, a Delaware Limited Liability Company, City of San José, a California municipal corporation, San José Police Department, for the City of San José, Richard Teng, individually and as Administrator of the San José Police Department Division of Gaming Control and Does 1-100; Court:

CLOSED SESSION (Cont'd.)

Superior Court of California, County of Santa Clara; Case No: 1-13-CV-240941; Amount of Money or Other Relief Sought: Damages According to Proof. (2) Garden City, Inc. dba Casino M8trix, et al. v. City, et al. Names of Parties Involved: Garden City, Inc. dba Casino M8trix, a California Corporation, Airport Parkway Two, LLC, a California Limited Liability Company and Airport Opportunity Fund, LLC, a Delaware Limited Liability Company, City of San José, a California municipal corporation, San José Police Department, for the City of San José, Richard Teng, individually and as Administrator of the San José Police Department Division of Gaming Control and Does 1-100; Court: U.S. District Court; Case No: CV-13-0577 PSG; Amount of Money or Other Relief Sought: Damages According to Proof. (3) Garden City, Inc. dba Casino M8trix, et al. v. City, et al. Names of Parties Involved: Garden City, Inc. dba Casino M8trix, a California corporation, City of San José, a California municipal corporation, San José Police Department for the City of San José; Court: Superior Court of California, County of Santa Clara; Case No: 1-13-CV-244716; Amount of Money or Other Relief Sought: Petition for Writ of Administrative Mandamus. (4) Swallow, et al. v. City of San José; Names of Parties Involved: Eric Swallow, Jeanine Lunardi, City of San José; Court: Superior Court of California, County of Santa Clara; Case No: 1-13-CV-243151; Amount of Money or Other Relief Sought: Damages According to Proof. (5) Sutter's Place dba Bay 101 v. City of San José, et al. Names of Parties Involved: Sutter's Place dba Bay 101, City of San José, Division of Gaming Control and Does 1-100; Court: Superior Court of California, County of Santa Clara; Case No: 1-13-CV-258057; Amount of Money or Other Relief Sought: Damages According to Proof. (6) Great Oaks Water, Inc. v. City, et al. Names of Parties Involved: Great Oaks Water Company, Inc., John W.S. Roeder, Betty B. Roeder Trust A and William C. Miller, Jr. and Betty B. Roeder, Trustees of the Walter S. Roeder Trust B, The City of San José, The San José Redevelopment Agency, Southbay Water Recycling, Does 1 through 100; Court: Superior Court of California, County of Santa Clara; Case No: 1-04-CV012008; Amount of Money or Other Relief Sought: Damages According to Proof. (7) Plata, Raymond and Michelle v. City of San José. Names of Parties Involved: Raymond and Michelle Plata, individually and on behalf of other members of a class of similarly situated residents and taxpayers, City of San José; Court: Superior Court of California, County of Santa Clara; Case No: 1-14-CV-258879; Amount of Money or Other Relief Sought: Declaratory Relief, Injunctive Relief. (8) 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 Division; Case No: CV-13-02787-HRL; Amount of Money or Other Relief Sought: Damages According to Proof. (9) American Federation of State, County and Municipal Employees, et al. v. City; Names of Parties Involved: American Federation of State, County and Municipal Employees, City of San José; Court: State of California Public Employment Relations Board; Case No: SF-CE-924-M; Amount of Money or Other Relief Sought: Damages According to Proof. (10) OE#3 v. City of San José; Names of Parties Involved: Operating Engineers Local Union No. 3, City of San José; Court: State of California Public Employment Relations Board;

CLOSED SESSION (Cont'd.)

Case No: SF-CE-900-M; Amount of Money or Other Relief Sought: Damages According to Proof. (11) IAFF Local 230 v. City. Names of Parties Involved: International Association of Firefighters Local 230, City of San José; Court: State of California Public Employment Relations Board; Case No: SF-CE-941-M; Amount of Money or Other Relief Sought: Damages According to Proof. (12) IAFF Local 230 v. City. Names of Parties Involved: International Association of Firefighters Local 230, City of San José; Court: State of California Public Employment Relations Board; Case No: SF-CE-969-M; Amount of Money or Other Relief Sought: Damages According to Proof. (13) Cindy Huynh, City of San José. Names of Parties Involved: Cindy Huynh, City of San José; Court: State of California Public Employment Relations Board; Case No: SF-CE-955-M. (14) IEPTE Local 21 v. City of San José. Names of Parties Involved: International Federation of Professional and Technical Engineers Local 21, City of San José; Court: State of California Public Employment Relations Board; Case No: SF-CE-996-M; Amount of Money or Other Relief Sought: Damages According to Proof. (E) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) Association of Building, Mechanical and Electrical Inspectors (ABMEI); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and ABMEI. (2) Association of Engineers & Architects (AEA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AEA. (3) Association of Maintenance Supervisory Personnel (AMSP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AMSP. (4) City Association of Management Personnel Agreement (CAMP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CAMP. (5) Confidential Employees' Organization, AFSCME Local 101 (CEO); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CEO. (6) International Association of Firefighters, Local 230 (IAFF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Association of Firefighters. (7) International Brotherhood of Electrical Workers (IBEW); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and IBEW. (8) Municipal Employees' Federation, AFSCME Local 101, AFL-CIO (MEF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and MEF; (9) International Union of Operating Engineers, Local No. 3 (OE#3); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Union of Operating Engineers, Local No. 3. (10) San José Police Officers' Association (SJPOA); Nature of Negotiations: Salaries, Hours, Working Conditions, etc; Name of Existing Wages Contract or MOA: Memorandum of Agreement between City of

CLOSED SESSION (Cont'd.)

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 11:47 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 Chris Nallan, International Christian Center presented the Invocation. (District 1)

PLEDGE OF ALLEGIANCE

Mayor Reed accompanied by the Third Graders, Country Lane Elementary School 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. (11-0.)

CEREMONIAL ITEMS

1.1 Presentation of a proclamation celebrating Lunar New Year in the City of San José. (Chu/ Nguyen/Kalra)

Mayor Reed, Vice Mayor Nguyen and Council Members Chu and Kalra recognized the Chinese Lunar New Year in the City of San José.

1.2 Presentation of a proclamation recognizing January 27, 2014 as “International Holocaust Remembrance Day” in the City of San José. (Herrera)

Mayor Reed and Council Member Herrera recognized January 27, 2014 as “International Holocaust Remembrance Day” in the City of San José. Holocaust survivors shared their touching experiences.

1.3 Presentation of a commendation to the San José Earthquakes on the occasion of its 40th anniversary in the North American Soccer League, the Western Soccer Alliance, and as a charter member of Major League Soccer. (Mayor)

Mayor Reed and Council Member Liccardo recognized and commended the San José Earthquakes.

CONSENT CALENDAR

Upon motion by Vice Mayor Nguyen, seconded by Council Member Constant and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (8-0-3. Absent: Chu, Herrera, Oliverio.)

2.1 Approval of Minutes.

There were none.

2.2 Final adoption of ordinances.

- (a) **ORD. NO. 29363 – Making certain findings pursuant to government code Section 84615 relating to the implementation of Section 12.06.915 of Chapter 12.06 of Title 12 of the San José Municipal Code as it relates to campaign finance.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29363 executed on January 17, 2014, submitted by the City Clerk.

Action: Ordinance No. 29363 was adopted. (8-0-3. Absent: Chu, Herrera, Oliverio.)

- (b) **ORD. NO. 29364 - Amending title 20 of the San José Municipal Code (the Zoning Ordinance) to amend Section 20.10.060 of Chapter 20.10 (general provisions and zoning districts) to add the PQP public/quasi-public zoning district to Table 20-10; to amend Section 20.20.300 of Chapter 20.20 (Open Space & Agricultural Zoning Districts) to change the permit requirement from a conditional use permit to a special use permit for exceedence of decibel levels in table 20-45; to amend the Title of Chapter 20.40 to read “Commercial Zoning Districts and Public/Quasi-Public Zoning District”; to amend Part 1 (General and Part 2 (Uses Allowed) of Chapter 20.40 to add land uses applicable to urban villages to the description of purpose of the CP Commercial Pedestrian Zoning District, to establish the PQP Public/Quasi-Public Zoning District and enumerate uses allowed therein, and to add or change enumerated uses allowed in the commercial zoning districts more generally and in specific commercial zoning districts, including adding aquaculture/aquaponics as a special use, adding auction as a conditional use**

- 2.2 (b) in the cg and PQP Zoning Districts, adding stadiums (2,000 seats or fewer) as a conditional use and stadiums (more than 2,000 seats) as a conditional use requiring city council approval in the PQP and all commercial zoning districts except the CO Zoning District, adding neighborhood agriculture and fuel cells as permitted uses, adding plant nursery as a permitted use in the CO and PQP Zoning Districts, making animal grooming and indoor animal boarding a permitted use as incidental to neighborhood agriculture in the CO and PQP Zoning Districts, changing bail bond establishment from a permitted use to a special use in the CP Zoning District where located within an urban village, changing mixed use residential/commercial from a conditional use to a special use in the CP Zoning District where located within an urban village, changing ancillary installation, sale or lease of commercial vehicles, and tires, batteries, oil change and smog check servicing from prohibited uses to conditional uses in the CP Zoning District, changing sale of vehicle parts from a conditional use to a special use in the CP Zoning District, and adding utility facilities including corporation yards as a conditional use in the PQP Zoning District; to amend Section 20.40.120 to allow outdoor animal care as an incidental use to neighborhood agriculture; to amend Section 20.40.200 to establish development standards for the PQP Zoning District and to modify development standards in the CP Zoning District where located within an urban village; to amend Section 20.40.250 to exempt lots in the CP and PQP Zoning Districts from the front setback provisions of this Section; to amend Section 20.40.400 to clarify applicable allowances for minor projections into setback areas; to amend Section 20.40.600 to require a special use permit for exceedence of applicable decibel levels and to apply the performance standards to the PQP Zoning District; to amend Section 20.40.520 to exempt neighborhood agriculture from the limits on outdoor uses within 150 feet of residentially zoned property; to amend Sections 20.80.1700, 20.80.1750 and 20.80.1760 of Chapter 20.80, Part 18 (specific use regulations – temporary trailers) to change regulations and permit requirements for temporary antennae; to amend Section 20.100.220 of Chapter 20.100 (administration and permits) to designate the director of planning as the initial decision making body and the city council as the appeal decision making body for special use permits for school, church/religious assembly, and privately-operated museum, library, park, playground and community center uses, and incidental commercial uses in the PQP Zoning District; to amend Section 20.120.110 of Chapter 20.120 (zoning changes and amendments) to add the PQP general plan designation and the PQP Zoning District as the corresponding conforming zoning district to table 20-270; and to amend Chapter 20.200 (definitions) to add new sections defining “Fuel Cell” and “Signature Project” and to amend definitions of “business support”, “Co-Generation Facility”, “Downtown Core Area” and “Solar Photovoltaic Power System”; all to further and implement the urban agriculture, economic development, urban village, public-quasi-public, and zoning goals and policies set forth within the Envision San José 2040 General Plan, and to make other technical, non-substantive, or formatting changes within those sections of Title 20.

2.2 (b) Final adoption of ordinances. (Cont'd.)

Documents Filed: Proof of Publication of the Title of Ordinance No. 29364 executed on January 17, 2014, submitted by the City Clerk.

Action: Ordinance No. 29364 was adopted. (8-0-3. Absent: Chu, Herrera, Oliverio.) (First Reading: 9-2. Noes: Constant, Kalra.)

2.3 Approval of Council Committee Reports.

(a) Rules and Open Government Committee Report of December 11, 2013. (Mayor)

Documents Filed: The Rules and Open Government Committee Report dated December 11, 2013.

Action: The Rules and Open Government Committee Report was approved. (8-0-3. Absent: Chu, Herrera, Oliverio.)

(b) Rules and Open Government Committee Report of January 8, 2014. (Mayor)

Documents Filed: (1) Memorandum from Council Members Rocha and Kalra dated January 24, 2014, recommending agendizing the Parental Leave Report for a full Council discussion at a Council Meeting in February. (2) The Rules and Open Government Committee dated January 8, 2014.

Mayor Reed suggested referring this item to a Closed Session first.

Motion: Council Member Rocha moved approval to refer the Parental Leave Report to Closed Session. Vice Mayor Nguyen seconded the motion.

Council Member Kalra requested to amend the motion to agendize the item for Closed Session and for an Open Session to obtain public input. Council Member Rocha and Vice Mayor Nguyen accepted the amendment.

Council Member Rocha requested that Staff be prepared to discuss the labor aspects and how to proceed at the next Closed Session.

Council Member Rocha requested that Staff return to Council within thirty to forty five days for an open discussion.

Action: On a call for the question, the motion carried, Staff was directed to attend the next Closed Session to discuss the labor aspects and how to proceed concerning Item (g)(4), Paid Parent Leave. Staff was directed to report back to Council within thirty to forty five days for an open discussion. (8-3. Noes: Constant, Khamis, Oliverio.)

2.4 Mayor and Council Excused Absence Requests.

There were none.

2.5 City Council Travel Reports.

Mayor Reed attended the United States Conference of Mayors' Winter Meeting in Washington D.C. to discuss issues impacting cities and metropolitan areas nationwide and to speak on pension reform. Mayor Reed also attended the Build America Mutual Municipal Leadership Forum in Phoenix, Arizona.

Council Members Constant and Herrera presented highlights of their attendance at the League of California Cities.

2.6 Report from the Council Liaison to the Retirement Boards.

There were none.

**2.7 Approve appointments to the Housing and Community Development Commission. (City Clerk)
(Deferred from 1/14/14 – Item 2.7)**

Action: Deferred to February 4, 2014 per City Clerk.

**2.8 Approve the continuation of the Cost Share Agreement between the City of San José and San José State University for the operation of the joint Martin Luther King, Jr. Library. CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment. Council District 3. (Library)
(Deferred from 1/14/14 – Item 2.15)**

Documents Filed: Memorandum from Library Director Jill Bourne, dated January 15, 2014, recommending approval of the cost share agreement.

Action: The continuation of the Cost Share Agreement between the City of San José and San José State University for the operation of the joint Martin Luther King, Jr. Library was approved. (8-0-3. Absent: Chu, Herrera, Oliverio.)

2.9 Adopt a resolution calling for a Regular Municipal Election on June 3, 2014 and a Run-Off Municipal Election on November 4, 2014, if need be, for the purpose of electing a Mayor and Council Members for Districts 1, 3, 5, 7 and 9 and requesting consolidation with the County of Santa Clara. (City Clerk)

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated January 16, 2014, recommending adoption of a resolution.

2.9 (Cont'd.)

Action: Resolution No. 76907, entitled: "A Resolution of the Council of the City of San José Calling and Giving Notice of a Regular Primary Municipal Election To Be Held in the City of San José on June 3, 2014 and If Necessary, A Regular Run-Off Municipal Election on November 4, 2014 For the Purpose of Electing One Person to the Office of Mayor, One Person Each from Council Districts One, Three, Five, Seven and Nine to the Council of the City of San José for Full Four-Year Terms; Requesting the Consolidation of the Primary Election with the Statewide Direct Primary Election To Be Held in Santa Clara County on June 3, 2014 and the Run-Off Election with the General Election To Be Held in Santa Clara County on November 4, 2014; Requesting the Board of Supervisors of the County of Santa Clara to Canvass the Returns of Said Elections and To Permit the County Registrar of Voters to Render Certain Services To The City of San José Relating to the Conduct of Said Elections and Directing that Certain Other Actions Be Taken With Regard to the Election", was adopted. (8-0-3. Absent: Chu, Herrera, Oliverio.)

- 2.10 (a) Adopt a resolution authorizing the City Attorney to negotiate and execute a Continuation Agreement with Renne Sloan Holtzman & Sakai LLP ("Renne Sloan") for legal services in connection with labor relations matters, increasing compensation by \$425,000 for a total amount not to exceed \$975,000, subject to appropriation of funds as recommended below, and extending the term through December 31, 2014.**
- (b) Adopt the following Appropriation Ordinance amendments in the General Fund:**
- (1) Increase the city-wide appropriation to the City Attorney's Office for Fiscal Reform Plan Outside Legal Counsel by the amount of \$525,000.**
 - (2) Decrease the Fiscal Reform Plan Implementation Earmarked Reserve by the amount of \$525,000.**

CEQA: Not a Project; File No. PP10-066(e), Services that involve no physical changes to the environment. (City Attorney's Office/City Manager's Office)

Documents Filed: Memorandum from City Attorney Richard Doyle, dated January 16, 2014, recommending adoption of a resolution and appropriation ordinance amendments.

Council Member Kalra expressed opposition to an increase in the appropriation of \$525,000. Mayor Reed pointed out that the voters approved Measure B and the City must defend that.

City Attorney Richard Doyle responded to Council questions and concerns.

2.10 (Cont'd.)

Action: Upon motion by Council Member Herrera, seconded by Vice Mayor Nguyen and carried, Resolution No. 76908, entitled: “A Resolution of the Council of the City of San José Authorizing the City Attorney to Negotiate and Execute a Continuation Agreement with Renne Sloan Holtzman & Sakai, LLP for Legal Services in Connection With Labor Matters” and Ordinance No. 29366, entitled: “An Ordinance of the City of San José Amending Ordinance No. 29271 to Appropriate Monies in the General Fund for the Fiscal Reform Plan Outside Legal Counsel; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”, were adopted. (9-2. Noes: Constant, Kalra.)

2.11 Adopt a resolution authorizing the City Manager to:

- (a) **Negotiate and execute an agreement with Dan Corson for the fabrication and installation of a public artwork at San Fernando and Santa Clara Streets under Route 87 in an amount not to exceed \$410,000.**
- (b) **Accept maintenance responsibility of the public artwork, as required, subject to the appropriation of funds.**

CEQA: Exempt, File No. PP11-017. Council District 3. (Economic Development)

Documents Filed: (1) Memorandum from Director of Economic Development/Chief Strategist Kim Walesh, dated January 6, 2013, recommending adoption of a resolution. (2) Supplemental memorandum from Director of Economic Development/Chief Strategist Kim Walesh, dated January 27, 2014, transmitting the images of the artwork, entitled “Sensing You and Sending Water”.

Mayor Reed thanked the Staff and the San José Downtown Association for all of their hard work.

Council Member Liccardo expressed his enthusiasm for the great artwork in District 3.

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

Council Member Herrera pointed out that this kind of artwork lighting will be a wonderful iconic piece and everyone throughout the City will appreciate it.

Action: On a call for the question, the motion carried unanimously, Resolution No. 76909, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with Dan Corson for the Fabrication and Installation of Public Art Projects at Santa Clara and San Fernando Streets Beneath Route 87 In An Amount Not To Exceed \$410,000 and To Provide for Ongoing Maintenance of the Artwork”, was adopted. (10-0-1. Absent: Constant.)

2.12 Adopt a resolution authorizing the City Manager to negotiate and execute the Third Amendment with Ricoh Americas Corporation to:

- (a) Reduce the monthly rental rates to reflect negotiated cost savings of 44% or \$244,524 per year.**
- (b) Reduce the black & white and color cost per copy to reflect negotiated cost savings of 6%, or \$7,236 per year, based on current paper consumption.**
- (c) At no additional cost to the City, provide and install a Fax over Internet Protocol server for centralized fax functionality on all 244 Multi-Function Devices (MFD) in the City's inventory as well as desktop and mobile devices.**
- (d) At no additional cost to the City, add TRAC (Trends, Reporting, Accounting, and Communication) data analytics solution to better monitor the City's MFD print environments, and manage the City's MFD inventory.**
- (e) Extend the Agreement for five additional option years beginning July 1, 2014 through June 30, 2019, subject to the annual appropriation of funds.**

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

Documents Filed: Memorandum from Director of Finance Julia H. Cooper, dated December 23, 2013, recommending adoption of a resolution.

Action: Resolution No. 76910, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Third Amendment to the Agreement with Ricoh Americas Corporation to Provide and Maintain the City's Walk Up Copiers/Multi Function Devices", was adopted. (8-0-3. Absent: Chu, Herrera, Oliverio.)

2.13 As recommended by the Rules and Open Government Committee on January 15, 2014, approve the changes to Council Appointments:

- (a) Appoint Council Member Khamis to the Santa Clara Valley Transportation Authority Board of Directors, replacing Council Member Liccardo.**
- (b) Appoint Council Member Herrera to the Santa Clara Valley Habitat Agency Implementation Board as a regular member, replacing Council Member Khamis.**
- (c) Appoint Council Member Khamis to the Santa Clara Valley Habitat Agency Implementation Board as an alternate, replacing Council Member Herrera.**
- (d) Reappoint Kerrie Romanow as the alternate to the Santa Clara Valley Water District – Water Commission.**
- (e) Appoint Council Member Khamis to the Santa Clara County Local Agency Formation (LAFCO) as a regular member, replacing Council Member Constant.**
- (f) Appoint Council Member Constant to the Santa Clara County Local Agency Formation as an alternate, replacing Council Member Khamis.**

(Mayor)

[Rules Committee referral 1/15/14 – Item F(1)(a)]

2.13 (Cont'd.)

Documents Filed: (1) Memorandum from City Clerk Toni J. Taber, CMC, dated January 16, 2014, transmitting the recommendations of the Rules and Open Government Committee. (2) Supplemental memorandum from Mayor Reed, dated January 17, 2014, adding the appointments of Council Members Khamis and Constant to the Santa Clara County Local Agency Formation (LAFCO).

Action: The appointments as described under Item 2.13, Page 11, were approved. (8-0-3. Absent: Chu, Herrera, Oliverio.)

- 2.14 As recommended by Rules and Open Government Committee on January 15, 2014:**
- (a) Approve the African American History Month Flag Raising as a City Council sponsored Special Event.**
 - (b) Approve expending funds and accepting donations from various individuals, businesses and community groups to support this event.**

CEQA: Not a Project. (Kalra)

[Rules Committee referral 1/15/14 – Item G(2)]

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated January 16, 2014, transmitting the recommendations of the Rules and Open Government Committee.

Action: The African American History Month Flag Raising as a City Council sponsored Special Event was approved and the expenditure of funds and donations from various individuals, businesses and community groups to support this event were authorized. (8-0-3. Absent: Chu, Herrera, Oliverio.)

- 2.15**
- (a) Approve travel by Council Member Constant to Sacramento, CA on January 24, 2014, Ontario, CA on April 4, 2014, and Sacramento, CA on June 20, 2014 to attend Public Safety, Finance, and Strategic Support Committee meetings. Source of Funds: Mayor & Council Travel Fund. (Constant)**
 - (b) Approve travel by Council Member Constant to Los Angeles, CA on September 3, 2014 through September 5, 2014 to attend the League of California Cities Annual Conference. Source of Funds: Mayor & Council Travel Fund. (Constant)**

(Rules Committee referral 1/22/14)

Documents Filed: Memorandum from Council Member Constant, dated January 15, 2014, requesting approval to travel.

Action: The travel requests for Council Member Constant were approved. (8-0-3. Absent: Chu, Herrera, Oliverio.)

- 2.16 Approve travel by Council Member Herrera to Sacramento, CA on January 23 – 24, 2014, Ontario, CA on April 3 - 4, 2014, Sacramento, CA on June 19 – 20, 2014, and Los Angeles, CA on September 3 – 5, 2014 to attend the League of California Cities Transportation, Communication & Public Works Meeting and Conferences . Source of Funds: Mayor & Council Fund. (Herrera)
(Rules Committee referral 1/22/14)**

Documents Filed: Memorandum from Council Member Herrera, dated January 21, 2014, requesting approval to travel.

Action: The travel requests for Council Member Herrera were approved. (8-0-3. Absent: Chu, Herrera, Oliverio.)

- 2.17 (a) Approve travel by Mayor Reed to Washington, D.C. and Phoenix, AZ on January 21 – 23, 2014 to attend the Conference of Mayors’ Winter Meeting and the Build America Mutual Municipal Leadership Forum. Source of Funds: Mayor’s Office Fund. (Mayor)**
(b) Request for an excused absence for Mayor Reed from the Regular Meeting of the Rules and Open Government Committee on January 22, 2014 due to Authorized City Business: Conference of Mayors’ Winter Meeting and the Build America Mutual Municipal Leadership Forum. (Mayor)
(Rules Committee referral 1/22/14)

Documents Filed: Memorandum from Mayor Reed, dated January 17, 2014, requesting approval to travel and an excused absence.

Action: The request for travel for Mayor Reed was approved and the absence was excused. (8-0-3. Absent: Chu, Herrera, Oliverio.)

- 2.18 As recommended by the Rules and Open Government Committee on January 22, 2014:**
(a) Approve the documentary screening of “Flesh” as a City Council sponsored Special Event and approving expenditure of City funds.
(b) Approve and accept donations from various individuals, businesses or community groups to support the event.
CEQA: Not a Project. (Rocha)
(Rules Committee referral 1/22/14)

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated January 22, 2014, transmitting the recommendations of the Rules and Open Government Committee.

Action: The documentary screening of “Flesh” as a City Council sponsored Special Event and expenditure of City funds were approved and acceptance of donations from various individuals, businesses or community groups to support the event were authorized. (8-0-3. Absent: Chu, Herrera, Oliverio.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

3.5 Accept staff report and public input on the Annual Summary of Upcoming Labor Negotiations. CEQA: Not a Project, File No. PP10-069(a), Annual Reports that involve no approvals of any City actions. (City Manager's Office)

Note: Item 3.5 was heard following the Consent Calendar.

Documents Filed: Memorandum from City Manager Edward K. Shikada, dated January 13, 2014, recommending acceptance of the report.

City Manager Edward K. Shikada offered introductory remarks. Deputy City Manager Alex Gurza presented the Annual Summary of Upcoming Labor Negotiations and responded to Council questions.

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Herrera and carried unanimously, the Annual Summary of Upcoming Labor Negotiations was accepted. (11-0.)

3.3 Adopt a resolution approving a “clarification” to the City’s Living Wage Policy, Council Policy 3-3, to clarify that living wage requirements do not apply to leases with tenants who do not have service contracts with the City or receive direct financial assistance from the City. CEQA: Not a Project, File No. PP10-068(c), Municipal Code or Policy change that involves no changes in the physical environment. (Economic Development/Public Works) (Deferred from 12/17/13 – Item 3.3)

Documents Filed: (1) Memorandum from Council Member Liccardo, dated January 24, 2014, recommending approving the modified Staff recommendations in the January 17, 2014 memorandum and to suspend negotiations with Starbucks or any other potential occupants of the Convention Center Plaza site until the Council, Team San José and community stakeholders have publicly evaluated the aesthetic and economic impacts of any proposed construction on that plaza. Encourage consideration of alternatives, particularly locally owned, small businesses. (2) Memorandum from Council Member Kalra, dated January 24, 2014, recommending denying the Staff recommendations to modify the City’s Living Wage Ordinance. (3) Memorandum from Council Member Rocha, dated January 24, 2014, recommending that before Council makes a decision on clarifying the living wage policy, direct Staff to provide the information as requested in the memorandum dated December 16, 2013 pertaining to how much the city would need to discount lease rates for City owned retail spaces in exchange for tenants to agree to pay wage rates required by the City’s Living Wage Policy and further direction. (4) Replacement memorandum from Director of Public Works David Sykes and Director of Economic Development Kim Walesh, dated January 17, 2014, noting that the recommendation has been modified and new information has been provided about existing leases. Staff has incorporated their response to Council directive provided on December 17, 2013.

3.3 (Cont'd.)

Director of Public Works David Sykes and Director of Economic Development/Chief Strategist Kim Walesh offered the report on the City's Living Wage Policy. Director of Quality Assurance Nina Grayson and Deputy Director of Economic Development Nanci Klein were present.

Public Comments: Presenting comments pro and con to the modification of the living wage were Emilie Gatfield, Kevin R. Fish, Dennis Raj, South Bay Labor Council; Jim Reed, San José Silicon Valley Chamber of Commerce; Scott Knies, San José Downtown Association and Ross Signorino.

Motion: Council Member Herrera moved approval of the Staff recommendations in the replacement memorandum dated January 17, 2014, with one revision: change the word "modification" to "clarification". Vice Mayor Nguyen seconded the motion.

Extensive Council discussion ensued.

Substitute Motion: Council Member Chu moved approval of Alternative #1 from the Staff replacement memorandum dated January 17, 2014, Page 4, to require living wage for all leases. Council Member Kalra seconded the motion.

Council Member Liccardo expressed opposition to the substitute motion citing that the City should continue with the existing approach with no wage requirements.

On a call for the question, the substitute motion failed. (3-8. Noes: Constant, Herrera, Khamis, Liccardo, Nguyen, Oliverio, Rocha; Reed.)

Council discussion returned to the original motion.

Council Member Rocha requested to amend the motion to add to the Staff recommendations: "unless Council specifies otherwise". Council Member Herrera respectfully declined to accept the amendment.

Action: On a call for the question, the original motion carried, the replacement Staff memorandum dated January 17, 2014, was approved, amending "modification" to "clarification". Resolution No. 76911 was adopted, as amended. (7-4. Noes: Campos, Chu, Kalra, Rocha.)

3.4 **As recommended by the Public Safety, Finance, and Strategic Support Committee on December 19, 2013, accept the Audit of Employee Travel Expenditures. (City Auditor)**

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated January 16, 2014, transmitting the recommendations of the Public Safety, Finance and Strategic Support Committee.

3.4 (Cont'd.)

City Auditor Sharon W. Erickson presented the report on the Audit of Employee Travel Expenditures.

Motion: Council Member Khamis moved acceptance of the Report of the City Auditor. Vice Mayor Nguyen seconded the motion.

Deputy City Manager Alex Gurza and City Manager Edward K. Shikada responded to Council questions and concerns.

Council Member Oliverio requested to amend the motion to direct Staff to return to Council with options for a policy requirement that incorporates using the internet for learning knowledge/training through the web. Council Member Khamis and Vice Mayor Nguyen accepted the amendment.

Mayor Reed requested to amend the motion to direct Staff to revisit and clarify travel to Arizona and update City Policy if required. Council Member Khamis and Vice Mayor Nguyen accepted the amendment.

Council Member Campos suggested the National Association of Latino Elected Officials as a source of contact.

Action: On a call for the question, the motion carried unanimously, the Audit of Employee Travel Expenditures was accepted. Staff was directed to return to Council with: (1) Options for a policy requirement that incorporates using the internet for learning knowledge/training through the web. (2) Revisit and clarify travel to Arizona and update City Policy if required. (10-0-1. Absent: Kalra.)

3.6 **As recommended by the Public Safety, Finance, and Strategic Support Committee on December 19, 2013, accept the Comprehensive Annual Debt Report for Fiscal Year Ended June 30, 2013. CEQA: Not a Project, File No. PP10-069(a), Annual Reports that involve no approvals of any City actions. (Finance)**

Documents Filed: (1) Memorandum from Council Members Khamis and Constant, dated January 24, 2014, recommending acceptance of the report with direction to Staff. (2) Memorandum from City Clerk Toni J. Taber, CMC, dated January 16, 2014, transmitting the recommendations of the Public Safety, Finance and Strategic Support Committee. (3) Supplemental memorandum from Director of Finance Julia H. Cooper, dated January 22, 2014, transmitting and replacing the previously distributed FY 2012 – 2013 Comprehensive Annual Debt Report. (4) Five emails from members of the public all dated January 28, 2014 expressing support to the FY 2012 – 2013 Comprehensive Annual Debt Report.

Director of Finance Julia H. Cooper and Staff presented the FY 2012 – 2013 Comprehensive Annual Debt Report.

3.6 (Cont'd.)

Mayor Reed offered introductory remarks.

Motion: Council Member Khamis moved approval of the memorandum dated January 24, 2014, that he cosigned with Council Member Constant, recommending acceptance of the report with direction to Staff as described below in “Action”. Council Member Constant seconded the motion.

City Attorney Richard Doyle and Director of Finance Julia H. Cooper responded to Council questions and concerns.

Council Member Chu expressed opposition to the two-third voting requirement to amend or alter any provisions of the ordinance for the purposes of the approval of any Lease Revenue Bonds.

Mayor Reed and Council Members Liccardo, Herrera, Oliverio and Rocha expressed support to the motion on the floor.

Action: On a call for the question, the motion carried, the memorandum from Council Members Khamis and Constant, dated January 24, 2014, was approved: (1) The Comprehensive Annual Debt Report was accepted. (2) Staff was directed to draft and return to Council with a Lease Revenue Bond Financing Policy consistent with the adopted Council Policy 1-15 “Debt Management Policy”¹. Staff was further directed to revise the Council Policy 1-18 “Operating Budget and Capital Improvement Program Policy” to include reference to the Lease Revenue Bond Financing Policy. The Lease Revenue Bond Financing Policy should include the following: (a) Any lease revenue financing must have an identified revenue source for repayment, which may include the general fund, special funds or project revenues. (b) Prior to embarking on a lease revenue bond financing in which project revenues are identified as the repayment source, a feasibility study will be performed to determine the volatility of the revenue and provide sensitivity analysis on project revenue projections including worst/best case scenarios. (c) Results of the feasibility study will be presented to the Council for review and two-third majority approval of a plan of finance prior to commencement of the preparation of the financing documents necessary for a bond sale and Council’s approval of the issuance of bonds. (3) The City Attorney was directed to return to Council by June 2014 with the language for a City ordinance to require, for the purpose of the approval of any Lease Revenue Bonds, a two-third vote of the Council, instead of a simple majority vote and a two-third vote of the Council to alter such a decision, once adopted. (10-1. Noes: Chu.)

¹ (To date: the only supplemental policy adopted by the Council is the “Policy for the Issuance of Multifamily Housing Revenue Bonds”, Council Policy 1-16. Both of these policies are included as Appendices A and B to the Comprehensive Annual Debt Report.).

- 3.7 (a) **Adopt a resolution authorizing the City Manager to:**
- (1) **Execute amendments to the following Master Agreements for temporary staffing to perform building inspection, plan review and related services to adjust the compensation amount for each agreement as required, for an aggregate amount not to exceed \$3,000,000 for all agreements, subject to appropriation of funds:**
 - (a) **West Coast Code Consultants Inc.**
 - (b) **Bureau Veritas North America Inc.**
 - (c) **California Code Check Inc.**
 - (d) **CSG Consultants Inc.**
 - (e) **Interwest Consulting Group Inc.**
 - (f) **TRB and Associates Inc.**
 - (g) **Metropolitan Planning Group**
 - (h) **Pacific Municipal Consultants**
 - (2) **Exercise all remaining option years on the agreements, with the last option year ending June 30, 2017, subject to appropriation of funds.**
 - (3) **Negotiate and execute subsequent amendments to the Master Agreements to adjust the compensation amount for each agreement, subject to appropriation of funds.**
- (b) **Adopt the following Appropriation Ordinance amendments in the General Fund:**
- (1) **Increase the Planning Development Fee Program – Non-Personal/Equipment appropriation to the Planning, Building and Code Enforcement Department by \$100,000.**
 - (2) **Decrease the Planning Development Fee Program Earmarked Reserve by \$100,000.**

CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment. (Finance/Planning, Building and Code Enforcement/City Manager’s Office)

Documents Filed: Memorandum from Director of Finance Julia H. Cooper, Director of Planning, Building and Code Enforcement Joseph Horwedel and Budget Director Manager Jennifer A. Maguire, dated January 15, 2014, recommending adoption of a resolution and appropriation ordinance amendments.

Assistant Director of Planning, Building and Code Enforcement Laurel Prevetti and City Manager Edward K. Shikada responded to Council questions and concerns.

Action: Upon motion by Council Member Khamis, seconded by Council Member Oliverio and carried unanimously, Resolution No. 76912, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Execute Amendments to Eight Master Agreements with Various Vendors for Temporary Staffing Services for Building Inspectors, Plan Review and Fire Inspection Services” and Ordinance No. 29367, entitled: “An Ordinance of the Council of the City of San José Amending Ordinance No. 29271 to Appropriate Monies in the General Fund for the Planning Development Fee Program – Non-Personal/Equipment; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”, were adopted. (11-0.)

3.8 As recommended by the Public Safety, Finance, and Strategic Support Committee on December 19, 2013, accept the Follow-Up Report on Outstanding Issues related to Gaming Control (Title 16). (Police)

Documents Filed: (1) Memorandum from Council Members Constant, Rocha, Khamis and Kalra, dated January 24, 2014, recommending direction to the City Manager as described in “Action” on Page 20. (2) Memorandum from Council Member Liccardo, dated January 28, 2014, recommending acceptance of Paragraphs 4 and 5 to the City Manager and Paragraph 1 to the City Attorney in the joint memorandum dated January 24, 2014, but declines to follow the remaining recommendations. (3) Memorandum from City Clerk Toni J. Taber, CMC, dated January 16, 2014, transmitting the recommendations of the Public Safety, Finance and Strategic Support Committee. (4) Supplemental memorandum from City Manager Edward K. Shikada and City Attorney Richard Doyle, dated January 28, 2014, recommending that the Council defer action on the recommendations presented by Council Members Constant, Rocha, Khamis and Kalra, dated January 24, 2014, to a date to be determined by the Council appropriate for the consideration of the information that has been provided.

Assistant to the City Manager Angelique Gaeta provided introductory comments. City Attorney Richard Doyle presented the report.

Council Member Constant explained the joint memorandum dated January 24, 2014 and the White Sands Gaming Regulatory Practices Report dated February 2011.

Motion: Council Member Constant moved approval of the memorandum he cosigned with Council Members Rocha, Khamis and Kalra, dated January 24, 2014, as described in “Action” on Page 20. Council Member Herrera seconded the motion.

Council Member Constant provided meeting disclosures.

Public Comments: Antoinette McGill, Casino M8trix expressed support to the Staff recommendations.

City Attorney Richard Doyle presented background on the Title 16 Proposals and responded to Council questions and concerns.

Council Member Constant moved approval to modify the joint memorandum three separate times, all of which are noted in “*italics*” in “Action” on Page 20. Council Member Herrera accepted all the amendments.

Extensive Council discussion ensued.

Council Member Liccardo expressed opposition to the motion on the floor. Council Member Liccardo pointed out that he would accept the recommendations in Paragraphs 4 and 5 to the City Manager and Paragraph 1 to the City Attorney, as articulated in his colleagues’ January 24, 2014 memorandum, but respectfully declined to accept the remaining recommendations.

3.8 (Cont'd.)

Action: The memorandum from Council Members Constant, Rocha, Khamis and Kalra, dated January 24, 2014, was approved, as amended, the Follow-Up Report on Outstanding Issues related to Gaming Control was accepted, with the following direction to the City Manager: (1) Transfer the permitting process for key and non-key employees to the State as previously recommended by the City Auditor and in the same manner that the State performs this function in all other municipalities (*providing for an option in City Code for non-key employees, including when and if the State can handle the capacity, there will be an option for key employees*). Involve the cardrooms in any meetings and discussions with the State until an agreement is reached. (2) Incorporate due process protection in Title 16 by utilizing a neutral third party, such as Judicial Arbitration and Mediation Services (JAMS) to handle all disputes including regulatory interpretation and determination of minor violations. Issue citations and violation notices to cardrooms within fifteen (15) business days from the date of the *discovery* so that all evidence is preserved, unless there are investigatory reasons that can be articulated as to why a citation or notice could not be issued in a timely manner. Include the name of the individual responsible for the alleged regulatory matter and minor violation in the citation/notice and direct Staff to determine if it should be “loser-pays” scenario. (3) The City Manager was directed to work with the Chief of Police *to create a process that would* allow for alternate level cardroom gaming in accordance with the Council’s previous changes to Title 16. (4) The City Manager was directed to work with the Chief of Police to allow reasonable occupancy for non gaming events at cardrooms. This allowance should be considered, given the City’s existing security measures, such as video surveillance and existing security measures. (5) Amend Title 16 to allow charitable and tournament events at the cardrooms. For these types of events where the cardrooms do not receive fees per hand played, the additional tables should not be counted against the forty nine (49) tables currently allowed. Such events should be limited to no more than six (6) per cardroom per calendar year. (6) Continue the efforts to completely civilianize the Division of Gaming Control as suggested by the City Auditor’s Report (April 2010) and the White Sands Gaming Regulatory Practices Report (February 2011). (7) The City Attorney was directed to provide advisory opinions to cardrooms on the City’s interpretation of Title 16 within thirty (30) days of a formal inquiry by a cardroom. The City Manager and City Attorney were directed to implement the above referenced recommendations by May 1, 2014, approximately ninety (90) days. (10-1. Noes: Liccardo.)

3.9 Adopt a resolution to:

- (a) Amend the City of San José Pay Plan effective February 2, 2014, to roll the Peace Officer Standards and Training (POST) and Holiday-in-Lieu premium pays into the base pay for the classification of Chief of Police (2227), which increases the salary range from \$129,965.356 - \$203,137.072 to \$147,568.805 - \$230,651.431.
- (b) Amend the City of San José Pay Plan effective February 2, 2014, to roll the Holiday-in-Lieu premium pay into the base pay and increase by approximately two percent (2%) the top of the salary range for the classification of Assistant Police Chief (2225), which increases the salary range from \$120,039.648 - \$187,117.929 to \$129,325.267 - \$201,592.360.

**CEQA: Not a Project, File No. PP10-068(b), Municipal Code or Policy change, Title 3 (Personnel). (City Manager's Office)
(Rules Committee referral 1/22/14)**

Documents Filed: Memorandum from City Manager Edward K. Shikada, dated January 22, 2014, recommending adoption of a resolution.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Herrera and carried unanimously, Resolution No. 76913, entitled: "A Resolution of the Council of the City of San José Amending the City of San José Pay Plan for the Classifications of Police Chief and Assistant Police Chief", was adopted. (11-0.)

COMMUNITY & ECONOMIC DEVELOPMENT

4.1 Adopt a resolution:

- (a) Approving a funding commitment to King Road Associates, a California Limited Partnership, for a conditional grant of up to \$920,984 for the rehabilitation of Creekview Inn Apartments, located at 965 Lundy Avenue, to provide ten studio apartments for extremely low-income (ELI) homeless individuals.
- (b) Approving a funding commitment of up to \$105,000 to King Road Associates for Project-Based Rental Assistance (PBRA) and an Operating Subsidy for the ten studio apartments for the homeless.
- (c) Authorizing the Director of Housing, or designee, to set the specific business terms and negotiate and execute all documents necessary to implement the rehabilitation, PBRA and Operating Subsidy, including, but not limited to, applications, agreements, amendments, and payment requests, which may be necessary in connection with the rehabilitation grant, rental assistance, and operating subsidy.

CEQA: Exempt, File No. PP13-108. Council District 4. (Housing)

Action: Item 4.1 was dropped.

- 4.2 (a) **Report on bids and award of contract for the Allen at Steinbeck School Soccer Field Project to the low bidder, McGuire and Hester, for the base bid and one Add Alternate in the total amount of \$4,090,590 and approval of a seven percent contingency in the amount of \$286,341.**
- (b) **Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the Construction Tax and Property Conveyance Tax Fund: Council District 10:**
- (1) **Establish an estimate for Earned Revenue in the amount of \$1,847,000; and**
 - (2) **Increase the Allen at Steinbeck School Soccer Field appropriation to the Parks, Recreation and Neighborhood Services Department in the amount of \$1,847,000.**

CEQA: Exempt, File No. PP11-009. Council District 10. (Public Works/Parks, Recreation and Neighborhood Services/City Manager's Office)

Documents Filed: (1) Memorandum from Director of Public Works David Sykes, Director of Parks, Recreation and Neighborhood Services Julie Edmonds-Mares and Budget Director Manager Jennifer A. Maguire, dated January 13, 2014, recommending award of the contract to the low bidder and adoption of appropriation ordinance and funding sources resolution amendments.

Action: Upon motion by Council Member Khamis, seconded by Council Member Herrera and carried unanimously, award of contract for the Allen at Steinbeck School Soccer Field Project to the low bidder, McGuire and Hester, for the base bid and one Add Alternate in the total amount of \$4,090,590, with related contingency was approved, Ordinance No. 29368, entitled: "An Ordinance of the Council 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 10 for the Allen at Steinbeck School Soccer Field Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption" and Resolution No. 76914, 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 10", were adopted. (11-0.)

REDEVELOPMENT – SUCCESSOR AGENCY

- 9.1 **Review and discuss the Long-Range Property Management Plan. (Successor Agency)**

Action: Deferred to February 11, 2014 per Administration.

OPEN FORUM

Documents Filed: Summary of Benefits and Coverage from Kaiser Permanente, submitted by Mitchell Loebel, dated January 28, 2014.

Mitchell Loebel submitted information for the record about Kaiser Permanente's billing procedures.

ADJOURNMENT

The Council of the City of San José adjourned the afternoon session at 6:45 p.m.

RECESS/RECONVENE

The City Council recessed at 6:45 p.m. from the afternoon Council Session and reconvened at 7:16 p.m. in the Council Chambers, City Hall.

Present: Council Members - Campos, Chu, Constant, Herrera, Kalra, Khamis, Liccardo, Nguyen, Oliverio (7:37 p.m.), Rocha; Reed.

Absent: Council Members - All Present.

City Clerk Toni J. Taber, CMC read the requests for continuance of the applications. Upon motion by Council Member Liccardo, seconded by Vice Mayor Nguyen and carried unanimously, the below noted continuances and actions were taken as indicated. (10-0-1. Absent: Oliverio.)

CEREMONIAL ITEMS

- 1.4 Presentation of a proclamation for “San José Firefighter’s Day” on the Department’s 160th anniversary in the City of San José. (Kalra)
(Rules Committee referral 1/22/14)**

Mayor Reed and Council Member Kalra recognized the San José Fire Department on their 160th anniversary in the City of San José.

- 1.5 Presentation of a commendation to Taylor Palmaffy for his heroic actions in saving two lives while vacationing with his family in Hawaii. (Khamis)
(Rules Committee referral 1/22/14)**

Mayor Reed and Council Member Khamis recognized and commended Taylor Palmaffy for his heroic actions.

PUBLIC HEARINGS

- 11.2 Consideration of an ordinance conforming rezoning of the real property located on the south side of West Hedding Street, approximately 330 feet easterly of Spring Street (360 W. Hedding Street) from the CO Commercial Office Zoning District to the LI Light Industrial Zoning District on a 0.24 gross acre site (Orlando Nunes, Owner). CEQA: Envision San José 2040 General Plan Final Program EIR, Resolution No. 76041. (Planning, Building and Code Enforcement)**
C13-040 – District 3
[Deferred from 11/19/13 – Item 11.1(c) and 1/14/14 Item 4.1]

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C13-040, dated October 28, 2013. (2) Supplemental memorandum from Interim Director of Planning, Building and Code Enforcement David Sykes, dated January 24, 2014, providing Council with input from the Airport Land Use Commission. (3) Proof of Publication of Notice of Public Hearing, executed on November 1, 2013, submitted by the City Clerk.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Constant and carried unanimously, the recommendation of the Planning Director was approved, Ordinance No. 29369, entitled: “An Ordinance of the Council of the City of San José Rezoning Certain Real Property of Approximately 0.24 Acres Situated on the South Side of West Hedding Street, Approximately 330 Feet Easterly of Spring Street, From CO Commercial Office Zoning District to LI Light Industrial Zoning District”, was passed for publication. (10-0-1. Absent: Oliverio.)

- 11.3 (a) Certify the Final Environmental Impact Report for the Valley Christian Schools Planned Development Rezoning and adopt a resolution making certain findings concerning significant environmental impacts, mitigation measures and alternatives, and adopting a mitigation monitoring and reporting program, all in accordance with the California Environmental Quality Act (CEQA).**
- (b) Consideration of an ordinance rezoning the real property located at/on the easterly terminus of Skyway Drive, east of Monterey Road, near the southeast corner of the football field (100 Skyway Drive) from A(PD) Zoning District to the A(PD) Zoning District to allow: (1) increase student population from 1,300 to 2,300 students; (2) remove prohibition on inbound school bus access on Diamond Heights Drive; (3) remove a requirement for a transportation mitigation measure at Skyway Drive and Monterey Road; and 4) modify Santa Clara Valley dudleya plant mitigation measures on a 56.2 gross acres site (Valley Christian Schools, Owner). CEQA: Valley Christian Schools EIR to be considered for adoption. Planning Commission recommends approval (7-0-0). (Planning, Building and Code Enforcement)**
PDC12-012 – District 2
(Deferred from 12/10/13 – Item 11.4)

11.3 (Cont'd.)

Documents Filed: (1) Memorandum from Mayor Reed and Council Member Kalra, dated January 24, 2014, recommending approving the Staff recommendations with a modifications as described below in "Action". (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC12-012, dated December 20, 2013. (3) Memorandum from the Planning Commission Secretary David Sykes, dated January 24, 2014, transmitting the recommendation of the Planning Commission. (4) Supplemental memorandum from Interim Director of Planning, Building and Code Enforcement David Sykes, dated January 27, 2014, describing the implications of the protests on the City Council's consideration of the proposed rezoning. (5) Proof of Publication of Notice of Public Hearing, executed on November 15, 2013, submitted by the City Clerk. (6) Letter from Mindie S. Romanowsky, Jorgenson, Siegel, McClure and Flegel, LLP, Attorneys at Law, dated January 28, 2014, regarding with the application of PDC12-012. (7) Letter from James C. Jeffery III, Traffic and Engineering Consulting Services, dated January 28, 2014, regarding a peer review of the Transportation Impact Analysis for the Valley Christian Schools Project. (8) Petition dated January 25, 2014, signed by thirty-five residents expressing opposition to the increase in students to the Valley Christian School due to increased traffic fumes and safety for the children and the residents.

Interim Director of Planning, Building and Code Enforcement David Sykes presented introductory comments. Assistant Director of Planning, Building and Code Enforcement Laurel Prevetti offered a brief report.

Council Member Oliverio arrived to the meeting at approximately 7:37 p.m.

Mayor Reed opened the Public Hearing.

Steve McMinn, Applicant/Chief Operating Officer, Valley Christian Schools, described the merits of the project and responded to concerns raised by the residents.

Public Comments: The following speakers expressed concern about the traffic, student behavior, parents dropping off students in the neighborhood and the length of time that it has taken to address Valley Christian School's over enrollment: Maria Garcia, Liz Ambra, Marie Ambra, Mindie Romanowsky, Jorgenson, Siegel, McClure and Flegel, LLP, Attorneys at Law; Ken Watanabe and Imelda Marquez.

Steve McMinn, Applicant/Chief Operating Officer, Valley Christian Schools, presented rebuttal comments.

Mayor Reed closed the Public Hearing.

Assistant Director of Planning, Building and Code Enforcement Laurel Prevetti and Gerry de Young, Ruth and Going, Inc. responded to Council questions and concerns.

11.3 (Cont'd.)

Motion on 11.3(a): Council Member Kalra moved approval of the memorandum he cosigned with Mayor Reed. Council Member Campos seconded the motion.

Council Member Liccardo requested to amend the motion to include direction to Staff to work with Valley Christian Schools in order to facilitate annual Community Meetings and to report back to Council. The amendment was accepted by Council Members Kalra and Campos.

Motion on 11.3(b): Council Member Kalra moved approval of the Staff recommendations. Council Member Campos seconded the motion.

Action: On a call for the question, the motions carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, (1) The memorandum from Mayor Reed and Council Member Kalra, dated January 24, 2014, was approved, the Staff recommendations were approved with a modification to require a Santa Clara Valley dudleya plant mitigation measure at 2:1 ratio. This should be reflected in the Resolution that certifies the final EIR and adopts the Mitigation Monitoring and Reporting Program and as a condition of the rezoning. (2) Staff directed to work with Valley Christian Schools in order to facilitate annual Community Meetings and report back to Council. CEQA Resolution No. 76915, entitled: "A Resolution of the Council of the City of San José Making Certain Findings Regarding Environmental Impacts and Mitigation Measures, Approving Certain Mitigation Measures, Adopting a Mitigation and Monitoring and Reporting Program, and Making Findings Concerning Alternatives, All in Accordance With The California Environmental Quality Act for the Planned Development Rezoning for the Valley Christian Schools Project For Which An Environmental Impact Report Has Been Prepared", was adopted, as amended and Ordinance No. 29370, entitled: "An Ordinance of the Council of the City of San José Rezoning Certain Real Property Situated on the Easterly Terminus of Skyway Drive, East of Monterey Road (Valley Christian School) From the A(PD) Planned Development Zoning District to the A(PD) Planned Development Zoning District", was passed for publication. (11-0.)

11.4 **Consideration of an ordinance conventionally rezoning the real property located on the south side of Park Avenue, between Sonoma Street and Delmas Avenue (Park Delmas Investors LLC, Owner) from LI Light Industrial Zoning District to DC Downtown Core Zoning District on an approximately 1.72 gross acre site. CEQA: Envision 2040 General Plan Final Program EIR, Resolution No. 76041. Planning Commission recommends approval (6-0-1). (Planning, Building and Code Enforcement)**

C13-047 – District 3

Assistant Director of Planning, Building and Code Enforcement Laurel Prevetti requested a mandatory continuance of this item.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, Item 11.4 was continued to March 04, 2014. (11-0.)

- 11.5 Consideration of an ordinance conforming conventional rezoning of the real property located at/on the northeast corner of Williams Road and San Tomas Expressway (3591 Williams Road), from the A(PD) Planned Development Zoning District to the R-18 Single-family Residence Zoning to allow demolition and reconstruction of a single-family residence on a 0.294 gross acre site (Farzana Chowdhary, Qamrul Hasan, Owner). CEQA: Envision San José 2040 General Plan Final Program EIR, Resolution No. 76041. (Planning, Building and Code Enforcement)**
C13-048 – District 1

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C13-048, dated January 6, 2014. (2) Proof of Publication of Notice of Public Hearing executed on January 10, 2014, submitted by the City Clerk.

Action: Upon motion by Council Member Constant, seconded by Council Member Chu and carried unanimously, the recommendation of the Planning Director was approved, Ordinance No. 29371, entitled: “An Ordinance of the Council of the City of San José Rezoning Certain Real Property Situated on the Northeast Corner of Williams Road and San Tomas Expressway on a 0.294 Gross Acre Site (3691 Williams Road) To The R-1-8 Single Family Zoning District”, was passed for publication. (11-0.)

- 11.6 Consideration of an ordinance rezoning the real property located on the southwest corner of Silver Creek Valley Place and Silver Creek Valley Road, approximately 450 feet easterly of U.S. Highway 101 (5855 Silver Creek Valley Place), from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District to allow the addition of CIC Combined Industrial/Commercial Zoning District uses to the existing Planned Development Zoning on an approximately 3.00 gross acre site (San Gabriel Interests LP, Owner). CEQA: Supplemental EIR for the Edenvale Area Development Policy Modification, Resolution No. 70021, and addenda thereto. (Planning, Building and Code Enforcement)**
PDC13-023 – District 2

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC13-023, dated January 6, 2014. (2) Proof of Publication of Notice of Public Hearing executed on January 10, 2014, submitted by the City Clerk.

Motion: Council Member Kalra moved approval of the Staff recommendations. Council Member Constant seconded the motion.

Assistant Director of Planning, Building and Code Enforcement Laurel Prevetti pointed out that Staff has been working on revising the development standards with respect to one of the traffic conditions to allow the Applicant to pay the traffic impact fee for the Edenvale area.

11.6 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, the recommendations of the Planning Director was approved, Ordinance No. 29372, entitled: “An Ordinance of the Council of the City of San José Rezoning Certain Real Property Situated on the Southwest Corner of Silver Creek Valley Place and Silver Creek Valley Road, Approximately 450 Feet Easterly of the Highway 101 Exit Ramp, From the A(PD) Planned Development Zoning District to the A(PD) Planned Development Zoning District”, was passed for publication. (11-0.)

- 11.7 (a) **Adopt a resolution approving the Boynton Avenue Residential Project Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program.**
- (b) **Consideration of an ordinance rezoning the real property located on the east side of Boynton Avenue, approximately 90 feet north of Williams Road (970 Boynton Avenue), from the R-M Multiple Residence Zoning District to the R-M(PD) Planned Development Zoning District to allow up to 10 single-family detached residences (townhomes) on a 0.72 gross acre site (Kanemoto Gary M Trustee & Et Al, Owner).**

CEQA: Mitigated Negative Declaration to be considered for adoption. Planning Commission recommends approval (7-0-0). (Planning, Building and Code Enforcement)

PDC13-033 – District 1

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC13-033, dated January 14, 2014. (2) Memorandum from Planning Commission Secretary David Sykes, dated January 24, 2014, transmitting the Planning Commission recommendation. (3) Proof of Publication of Notice of Public Hearing executed on January 10, 2014, submitted by the City Clerk.

Action: Upon motion by Council Member Constant, seconded by Council Member Herrera and carried unanimously, the recommendation of the Planning Commission was approved, CEQA Resolution No. 76916, entitled: “A Resolution of the Council of the City of San José Adopting the Boynton Avenue Residential Project Planned Development Rezoning Mitigated Negative Declaration For Which An Initial Study Was Prepared, All In Accordance With the California Environmental Quality Act and Adopting a Related Mitigation Monitoring and Reporting Program”, was adopted and Ordinance No. 29373, entitled: “An Ordinance of the Council of the City of San José Rezoning Certain Real Property Situated on the East Side of Boynton Avenue, Approximately 90 Feet North of Williams Road (970 and 978 Boynton Avenue) To R-M(PD) Planned Development Zoning District”, was passed for publication. (11-0.)

ADJOURNMENT

The Council of the City of San José was adjourned at 8:26 p.m. in memory of Ina M. Arrañaga, who passed on January 4, 2014. A San José resident for 47 years, with a caring spirit and a warm, genuine smile, she will be deeply missed by her family and friends. (Rocha)

Minutes Recorded, Prepared and Respectfully Submitted by,

Toni J. Taber, CMC
City Clerk

smd/01-28-14 MIN

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