



MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, JANUARY 29, 2013

The Council of the City of San José convened in Regular Session at 9:04 a.m. in the Council Chambers at City Hall.

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

Absent Council Members All Present.

STRATEGIC SUPPORT SERVICES

3.2 Accept Labor Negotiations Update.

None provided.

CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:05 a.m. to a Closed Session in Room W133 (A) to confer with Legal Counsel pursuant to Government Code subsection (a) of Section 54956.9 with respect to existing litigation: Portillo, et al. v. City, et al.; Names of Partie(s) Involved: Luis Portillo (A.K.A. Luis P. Orellana), Rosa Elba Diaz Lopez, Anibal Portillo (A.K.A. Anibal Diaz) and Norma Espitia; City of San José, Frank Perez and Does 1 through 20; Court: Superior Court of California, County of Santa Clara; Case No: 1-11-CV-210649; Case No.: 1-11-CV-199698; (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 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

ORDERS OF THE DAY

Upon motion by Vice Mayor Nguyen, seconded by Council Member Khamis and carried unanimously, the Orders of the Day and the Amended Agenda were approved. (11-0.)

CEREMONIAL ITEMS

- 1.1 Presentation of commendations to Principal Jason Sorich of San Antonio Elementary and Principal Rene Sanchez of Cesar Chavez Elementary for being named “Principal of the Year” by the San Jose Silicon Valley Chamber of Commerce and The Association of California School Administrators respectively. (Campos)**

Mayor Reed and Council Member Campos recognized Principal Jason Sorich of San Antonio Elementary and Principal Rene Sanchez of Cesar Chavez Elementary for each being named “Principal of the Year”.

- 1.2 Presentation of a proclamation declaring January 27, 2013 as “International Holocaust Remembrance Day” in the City of San José. (Herrera)**

Mayor Reed and Council Member Herrera recognized January 27, 2013 as “International Holocaust Remembrance Day” in the City of San José.

- 1.3 Presentation of a commendation to the Delta Sigma Theta sorority in honor of the organization’s 100th anniversary. (Kalra)**

Mayor Reed and Council Member Kalra commended the Delta Sigma Theta sorority in honor of the organization’s 100th anniversary.

- 1.4 Presentation of a commendation to the Pacific Coast Farmer’s Market Association for their 25 years of establishing and operating community-supported certified farmers’ markets and other direct marketing outlets that provide: viable economic opportunities for California farmers and food producers, local access to farm fresh products, support for local businesses and community organizations, and education concerning food, nutrition, and the sustainability of California agriculture. (Herrera)**

Action: Item 1.4 was dropped.

CONSENT CALENDAR

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

2.1 Approval of Minutes.

None provided.

2.2 Final adoption of ordinances.

- (a) **ORD. NO. 29196 – Amending various sections of Part 1 of Chapter 13.36 of Title 13 and Part 12 of Chapter 20.100 of Title 20 of the San José Municipal Code relating to the permitting of curb cafes.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29196 executed on January 11, 2013, submitted by the City Clerk.

Action: Ordinance No. 29196 was adopted. (11-0.)

- (b) **ORD. NO. 29198 – Amending various sections of Chapters 3.32 and 3.36 of Title 3 of the San José Municipal Code to clarify the City Charter supersedes the City of San José Police and Fire Retirement Plan in event of conflict, discontinue the Supplemental Retiree Benefit Reserve, and clarify actuarial soundness is determined consistent with the California Constitution, to be effective March 1, 2013.**

Documents Filed: (1) Letter from Jim Spence, President, Association of Retired San José Police Officers & Firefighters, dated January 28, 2013, expressing objection to the elimination of the Supplemental Retirement Benefit Reserve benefit. (2) Proof of Publication of the Title of Ordinance No. 29198 executed on January 18, 2013, submitted by the City Clerk.

Council Member Chu pulled Item 2.2(b) to register his opposition.

Public Comments: David Spence offered objections to the proposed ordinance.

Action: Upon motion by Council Member Constant, seconded by Vice Mayor Nguyen, the action carried, and Ordinance No. 29198 was adopted. (8-3. Noes: Campos, Chu, Kalra.)

- (c) **ORD. NO. 29200 – Rezoning certain real property situated northerly of the intersection of Springbrook Avenue and Canyon Ridge Drive to the A(PD) Planned Development Zoning District. PDC07-077**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29200 executed on January 18, 2013, submitted by the City Clerk.

Action: Ordinance No. 29200 was adopted. (11-0.)

2.3 Approval of Council Committee Reports.

- (a) Rules and Open Government Committee Report of April 4, 2012. (Mayor)**
- (b) Rules and Open Government Committee Report of April 11, 2012. (Mayor)**
- (c) Rules and Open Government Committee Report of April 18, 2012. (Mayor)**
- (d) Rules and Open Government Committee Report of April 25, 2012. (Mayor)**
- (e) Community and Economic Development Committee Report of November 26, 2012. (Herrera)**
- (f) Transportation and Environment Committee Report of December 3, 2012. (Liccardo)**
- (g) Ad Hoc Committee on Economic Competitiveness Committee Report of December 12, 2012. (Mayor)**
- (h) Neighborhood Services and Education Committee Report of December 13, 2012. (Pyle)**
- (i) Public Safety, Finance and Strategic Support Committee Report of December 20, 2012. (Constant)**

Documents Filed: Rules and Open Government Committee Reports dated April 4, April 11, April 18 and April 25, 2012; Community and Economic Development Committee Report dated November 26, 2012; Transportation and Environment Committee Report dated December 3, 2012; Ad Hoc Committee on Economic Competitiveness Committee Report dated December 12, 2012; Neighborhood Services and Education Committee Report dated December 13, 2012; and Public Safety, Finance and Strategic Support Committee Report of December 20, 2012.

Action: The Council Committee reports were approved.

- ### **2.4**
- (a) Request for an excused absence for Council Member Constant from the Regular Meeting of the Rules and Open Government Committee on September 18, 2013 and the Regular Meeting of the Public Safety, Finance and Strategic Support Committee on September 19, 2013 due to Authorized City Business: Presiding as Vice Chair of the League of California Cities (LOCC) Public Safety Committee at the LOCC Public Safety Committee Meeting & Annual Conference in Sacramento, CA. (Constant)**

Documents Filed: Memorandum from Council Member Constant, dated December 21, 2012, requesting excused absences due to Authorized City Business.

Action: The absences were excused. (11-0.)

2.5 City Council Travel Reports

Mayor Reed reported on his attendance at the U.S. Conference of Mayors in Washington D.C., as well as the Presidential Inauguration. Council Member Khamis reported on his participation in the new Mayor/Councilmember training academy.

2.6 Report from the Council Liaison to the Retirement Boards.

None provided.

2.7 Adopt a resolution authorizing the City Manager to negotiate and execute the First Amendment to the Agreement with Central Parking Systems, Inc. (Central Parking) to:

- (a) Revise the compensation rate to reflect negotiated savings due to the consolidation of parking facility operations, centralized administrative services, and a reduced management fee;**
- (b) Install the “Focus Point” application at the Third Street Garage at no cost to the City, to provide remote management functionality of parking transactions and operations; and**
- (c) Extend the term of the Agreement by four months ending June 30, 2013, and add four additional one-year options to renew the agreement through June 30, 2017, subject to the appropriation of funds.**

CEQA: Not a Project, File No.PP10-066(a), Agreements and Contracts for Professional Services. (Finance/Transportation)

Documents Filed: Joint memorandum from Director of Finance Julia H. Cooper and Director of Transportation Hans Larsen, dated January 10, 2013, recommending adoption of a resolution.

Council Member Liccardo pulled Item 2.7 to question Staff on aspects of this proposed resolution.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, Resolution No. 76538, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a First Amendment to the Agreement with Central Parking Systems, Inc., was adopted. (11-0.)

2.8 Adopt a resolution summarily vacating a portion of a Public Utility Easement lying within Lot 114, Tract 1145 (1545 Edgewood Way). CEQA: Exempt, File No. PP12-107. Council District 6. (Public Works)

Documents Filed: Memorandum from Director of Public Works David Sykes, dated January 7, 2013, recommending adoption of a resolution.

Action: Resolution No. 76539, entitled: “A Resolution of the Council of the City of San José Summarily Vacating a Portion of a Public Utility Easement Lying Within Lot 114, Tract No. 1145 at 1545 Edgewood Way”, was adopted. (11-0.)

- 2.9 (a) **Approve travel by Mayor Reed to Washington, D.C. on January 16-21, 2013 to attend the United States Conference of Mayors' 81st Winter Meeting. Source of Funds: Mayor's Office Fund. (Mayor)**
- (b) **Approve an excused absence for Mayor Reed from the Regular Meeting of the Rules and Open Government Committee on January 16, 2013 due to Authorized City Business: United States Conference of Mayors' 81st Winter Meeting. (Mayor)**

Documents Filed: Memorandum from Mayor Reed, dated January 16, 2013, requesting authorization to travel on official City business and for an excused absence.

Action: The request for authorized travel and for an excused absence was approved. (11-0.)

- 2.10 (a) **Approve travel by Council Member Constant to Pasadena, CA on April 4, 2013 to preside as Vice Chair of the League of California Cities (LOCC) Public Safety Committee at the LOCC Public Safety Committee Meeting. Source of Funds: Mayor & Council Travel Fund. (Constant)**
- (b) **Approve travel by Council Member Constant to Sacramento, CA on June 13, 2013 to preside as Vice Chair of the League of California Cities (LOCC) Public Safety Committee at the LOCC Public Safety Committee Meeting. Source of Funds: Mayor & Council Travel Fund. (Constant)**
- (c) **Approve travel by Council Member Constant to Sacramento, CA on September 18 - 20, 2013 to preside as Vice Chair of the League of California Cities (LOCC) Public Safety Committee at the LOCC Public Safety Committee Annual Conference. Source of Funds: Mayor & Council Travel Fund. (Constant)**

Documents Filed: Memorandum from Council Member Constant, dated December 20, 2012, requesting authorization to travel on official City business.

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

- 2.11 **Approve travel by Council Member Herrera to Washington, D.C. on March 19-21, 2013 to attend the Silicon Valley Leadership Group Annual Advocacy Trip. Source of Funds: Mayor & Council Travel Fund. (Herrera)**

Documents Filed: Memorandum from Council Member Herrera, dated January 28, 2013, requesting authorization to travel on official City business.

Council Member Herrera pulled item 2.11 to indicate the source of travel funds is District 8, not the Mayor & Council travel fund.

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Liccardo and carried unanimously, the request for authorized travel was approved. (11-0.)

- 2.12 (a) **Adopt a resolution to authorize the City Manager or designee to:**
- (1) **Submit a grant application to the Metropolitan Transportation Commission (MTC) for an amount up to \$800,000 as part of the One Bay Area Grant (OBAG) grant program with a local match of \$91,760;**
 - (2) **Make the required assurances to comply with the project application, deadlines to complete the project, grant program requirements, and other assurances required by the MTC as explained in this memorandum; and**
 - (3) **Accept any grant award and negotiate and execute any documents to effectuate the grant, including the authority to negotiate and execute any documents that increase the amount of the grant awarded or require an increase in the local match of funds from the City for the project, subject to the appropriation of funds.**
- (b) **Adopt a resolution to authorize the City Manager or designee to:**
- (1) **Submit a request that Caltrans reallocate up to \$2,200,000 of existing SAFETEA-Lu funds intended for Coyote Creek Trail development between Montague Expressway and Story Road to trail development more specifically between Selma Olinder Park and Story Road with a local match of \$252,340;**
 - (2) **Make the required assurances to comply with the project application, deadlines to complete the project, grant program requirements, and other assurances required by the Caltrans as explained in this memorandum; and**
 - (3) **Accept any grant award and negotiate and execute any documents to effectuate the grant, including the authority to negotiate and execute any documents that increase the amount of the grant awarded or require an increase in the local match of funds from the City for the project, subject to the appropriation of funds.**
- (c) **Adopt a resolution to authorize the City Manager or designee to:**
- (1) **Submit a grant application to the State of California to reprogram up to \$200,000 in grant funds previously allocated to the Milestone Mileage Marker project with no local match requirement;**
 - (2) **Make the required assurances to comply with the project application, deadlines to complete the project, grant program requirements, and other assurances required by the State of California as explained in this memorandum; and**
 - (3) **Accept any grant award and negotiate and execute any documents to effectuate the grant, including the authority to negotiate and execute any documents that increase the amount of the grant awarded or require an increase in the local match of funds from the City for the project, subject to the appropriation of funds.**

2.12 (Cont'd.)

- (d) **Adopt a resolution to authorize the City Manager or designee to:**
- (1) **Submit a grant application to the Santa Clara County Open Space Authority for an amount up to \$100,000 with no local match requirement; and**
 - (2) **Make the required assurances to comply with the project application, deadlines to complete the project, grant program requirements, and other assurances required by the MTC as explained in this memorandum; and**
 - (3) **Accept any grant award and negotiate and execute any documents to effectuate the grant, including the authority to negotiate and execute any documents that increase the amount of the grant awarded or require an increase in the local match of funds from the City for the project, subject to the appropriation of funds and**
 - (4) **Negotiate, execute, and record a Conservation Easement upon the project alignment on City property to ensure perpetual operation of City property as a recreational trail open to the public.**

CEQA: Mitigated Negative Declaration, File No. PP08-014. Council District 7. (Parks, Recreation and Neighborhood Services)

Note: Renumbered from Item 5.1

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Julie Edmonds-Mares, dated January 9, 2013, recommending adoption of resolutions.

Action: Resolution No. 76540, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager or Designee to Submit a Grant Application to the Metropolitan Transportation Commission (MTC) for an Amount up to \$800,000 as part of the One Bay Area Grant (OBAG) Program with a Local Match of up to \$91,760; Make the Required Assurances to Comply with the Project Application, Deadlines to Complete the Project, Grant Program Requirements, and other Assurances Required by the MTC; to Accept the Grant if Awarded, and to Negotiate and Execute any Documents to Effectuate the Grant, Including the Authority to Negotiate and Execute any Documents that Increase the Amount of the Grant Awarded or Require an Increase in the Local Match of Funds from the City for the Project, Subject to the Appropriation of Funds; Resolution No. 76541, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager or Designee to Submit a Request that Caltrans Reallocate up to \$2,200,000 of Existing Safetea-Lu Funds Intended for Coyote Creek Trail Development Between Montague Expressway and Story Road to Trail Development More Specifically Between Selma Olinder Park and Story Road with a Local Match of \$252,340; Make the Required Assurances to Comply with the Project Application Deadlines to Complete the Project, Grant Program Requirements, and other Assurances Required by CalTrans; and Accept Any Grant Award and Negotiate and Execute any Documents that Increase the Amount

2.12 (Action Cont.d)

of the Grant Awarded or Require an Increase in the Local Match of Funds from the City for the Project, Subject to the Appropriation of Funds”; Resolution No. 76542, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager or Designee to Submit a Grant Application to the State of California to Reprogram up to \$200,000 in Grant Funds Previously Allocated to the Milestone Mileage Marker Project with No Local Match Requirement; Make the Required Assurances to Comply with the Project Application Deadlines to Complete the Project, Grant Program Requirements, and other Assurances Required by the State of California; and Accept Any Grant Awarded and Negotiate and Execute any Documents that Increase the Amount of the Grant Awarded or Require an Increase in the Local Match of Funds from the City for the Project, Subject to the Appropriation of Funds”; and Resolution No. 76543, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager or Designee to Submit a Grant Application to the Santa Clara County Open Space Authority (“OSA”) for an Amount up to \$100,000 with No Local Match Requirement; Make the Required Assurances to Comply with the Project Application, Deadlines to Complete the Project, Grant Program Requirements, and other Assurances Required by the Open Space Authority, Accept any Grant Award, and to Negotiate and Execute all Documents to Effectuate the Grant, Including the Authority to Negotiate and Execute any Documents that Increase the Amount of the Grant Awarded or Require an Increase in the Local Match of Funds from the City for the Project, Subject to the Appropriation of Funds; and Negotiate, Execute and Record a Conservation Easement Upon the Project Alignment on City Property to Ensure Perpetual Operation of City Property as a Recreational Trail Open to the Public”, were adopted. (11-0.)

2.13 Report on bids and award of contract for the 6743-Citywide Storm Sewer Inlet and Lateral Replacement Project to the low bidder, Ranger Pipelines Inc., in the amount of \$1,007,712 and approval of a contingency amount of \$100,771. CEQA: Exempt, File No. PP12-017, dated February 2, 2012. (Public Works)

Note: Renumbered from Item 7.1

Documents Filed: Memorandum from Director of Public Works David Sykes, dated January 7, 2013, recommending approval of a report and award of contract.

Action: The report on bids and award of contract for the 6743-Citywide Storm Sewer Inlet and Lateral Replacement Project to the low bidder, Ranger Pipelines Inc., in the amount of \$1,007,712, with related contingencies was approved. (11-0.)

2.14 As recommended by the Rules and Open Government Committee on January 29, 2013, appoint Roma Dawson and Ron Muriera to the Arts Commission. (Liccardo)

Documents Filed: Memorandum from Acting City Clerk Toni Taber, dated January 24, 2012, transmitting the recommendations of the Rules and Open Government Committee.

Action: Recommendations of appointments to the Arts Commission for Roma Dawson for a term ending June 30, 2013, and Ron Muriera for a term ending June 30, 2014, were approved. (11-0.)

2.15 As recommended by the Rules and Open Government Committee on January 29, 2013, adopt a resolution designating Council Member Kansen Chu as the City's representative for the National *Let's Move!* Campaign. (Chu)

Documents Filed: Memorandum from Acting City Clerk Toni Taber, dated January 24, 2012, transmitting the recommendations of the Rules and Open Government Committee.

Action: Resolution No. 76544, entitled: "A Resolution of the Council of the City of San José Designating the City's Representative for the National *Let's Move!* Campaign", was approved. (11-0.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

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

City Manager Debra Figone reported that the Norman Y. Mineta San José International Airport passed its recent Federal Aviation Administration inspection with full compliance and zero discrepancies and congratulated the Airport staff for its commitment to safety.

3.3 Approve the Board and Commission Program workplan. (City Clerk)

Documents Filed: (1) Joint memorandum from Council Member Campos and Council Member Constant, dated January 25, 2013, recommending approval of the proposed workplan with amendments. (2) Memorandum from Council Member Rocha, dated January 28, 2013, recommending approval of the proposed workplan with amendments. (3) Memorandum from Council Member Herrera, dated January 29, 2013, recommending approval of the proposed workplan with amendments. (4) Memorandum from Acting City Clerk Toni Taber, dated January 18, 2013, providing the Boards and Commission Structural Improvement Workplan. (5) Memorandum from Disability Advisory Commission Chair, Karl J. Vidt, dated January 28, 2013, offering comments regarding the proposed workplan.

Acting City Clerk Toni Taber provided a presentation outlining revisions to the Board and Commission Program Workplan.

3.3 (Cont'd.)

Public Comments: Tony Nguyen offered support to the consolidation of the Library Commission and Early Care and Education Commission. Richard McCoy, Senior Commission, recommended a generic set of by-laws be incorporated into the workplan.

Motion: Council Member Rocha moved approval of Council Member Herrera's memorandum dated January 29, 2013. The motion was seconded by Council Member Liccardo.

Council Member Herrera requested that Council Member Rocha's memorandum be included in the motion. Council Members Rocha and Liccardo accepted the amendment.

Director of Economic Development/Chief Strategist Kim Walesh offered insight into the staffing of the Small Business Commission. Council discussion followed.

Council Member Kalra and Council Member Liccardo voiced concerns regarding the potential for disproportionate representation.

Council Member Chu expressed concerns that there will be limitations of qualified candidates for the Small Business Development Commission.

Substitute Motion: Council Member Constant moved approval of the memorandum he co-signed with Council Member Campos, dated January 25, 2013, in addition to Council Member Herrera's memorandum of January 29, 2013, and with amendments as included below in "Action". The motion was seconded by Council Member Campos.

Action: On a call for the question, the substitute motion carried, and the workplan was approved, with amendments as included in Council Member Campos' and Constant's memorandum of January 25, 2013 and Council Member Herrera's memorandum of January 29, 2013, with clarification that each Council Member shall nominate a member for the Boards & Commissions included in the Campos/Constant memorandum, that those nominees do not need to reside in the Council Member's District, that the nominees will go to Rules and Open Government Committee for referral to Council, and that the nominees will then return to the City Council for final approval. (10-1. Noes: Chu.)

- 3.4 (a) **Adopt the following Appropriation Ordinance amendments in the Airport Maintenance and Operation Fund:**
- (1) **Decrease Personal Services appropriation to the Airport Department in the amount of \$77,000; and**
 - (2) **Establish Personal Services appropriation to the Office of Economic Development in the amount of \$77,000.**
- (b) **Approve the following position changes effective February 3, 2013:**

Airport Department		
<u>Job Code</u>	<u>Job Classification</u>	<u>FTE</u>
1130	Office Specialist II	(2.00)
1640	Deputy Director	1.00
3514	Senior Airport Operations Specialist	2.00
3524	Airport Operations Supervisor	2.00
3549	Air Service Development Manager	1.00
8074	Division Manager	(1.00)
<i>Total Airport Department</i>		3.00
Office of Economic Development		
<u>Job Code</u>	<u>Job Classification</u>	
1650	Senior Executive Analyst	1.00
<i>Total Office of Economic Development</i>		1.00
TOTAL		4.00

CEQA: Not a Project, File No. PP10-069, City Organizational and Administrative Activities. (Airport/City Manager’s Office)

Documents Filed: Joint memorandum from Director of Aviation William F. Sherry, Director of Economic Development/Chief Strategist Kim Walesh and Budget Director Jennifer Maguire, dated January 7, 2013, recommending adoption of an appropriation ordinance amendment and approval of position changes.

Airport Chief Operating Officer Kimberly Aguirre, provided a presentation on the airport’s staffing needs.

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Herrera and carried unanimously, Ordinance No. 29205, entitled: “An Ordinance of the City of San José Amending Ordinance No. 29102 to Appropriate Monies in the Airport Maintenance and Operating Fund for the Office of Economic Development Personal Services; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”, was adopted, and position changes effective February 3, 2013, were approved. (11-0.)

3.5 (a) Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund:

- (1) Increase the revenue estimate for Licenses and Permits by \$1,091,914;**
- (2) Increase the revenue estimate for Departmental Revenues by \$338,433;**
- (3) Increase the Building Development Fee Program – Personal Services appropriation by \$445,071;**
- (4) Increase the Building Development Fee Program – Non-Personal/Equipment appropriation by \$470,000;**
- (5) Increase the Personal Services appropriation to the Fire Department by \$106,843;**
- (6) Increase the Non-Personal/Equipment appropriation to the Fire Department by \$70,000; and**
- (7) Increase the Public Works Development Fee Program – Personal Services appropriation by \$338,433.**

Ordinance No. 29201 adopted.

Resolution No. 76545 adopted.

(b) Approve the following position changes effective February 3, 2013:

Planning, Building and Code Enforcement Department

Building Fee Program:

<u>Job Code</u>	<u>Job Classification</u>	<u>FTE</u>
3915	Building Inspector/Combo Cert FT	6.00
3919	Building Inspector Supervisor	2.00
3954	Permit Specialist	2.00
<i>Subtotal Building Fee Program</i>		<i>10.00</i>

Fire Department

Fire Fee Program:

<u>Job Code</u>	<u>Job Classification</u>	<u>FTE</u>
2323	Senior Hazardous Material Inspector	1.00
<i>Subtotal Fire Fee Program</i>		<i>1.00</i>

Public Works Department

Public Works Fee Program:

<u>Job Code</u>	<u>Job Classification</u>	<u>FTE</u>
3712	Engineering Technician	2.00
3713	Associate Engineering Technician	1.00
3714	Senior Engineering Technician	1.00
3814	Associate Engineer	1.00
3815	Senior Engineer	1.00
<i>Subtotal Public Works Fee Program</i>		<i>6.00</i>

TOTAL **17.00**

CEQA: Not a Project, File No. PP10-069, City Organizational and Administrative Activities. (Planning, Building and Code Enforcement/Public Works/Fire/City Manager’s Office)

3.5 (Cont'd.)

Documents Filed: Joint memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, Budget Director Jennifer Maguire, Director of Public Works David Sykes and Fire Chief William McDonald, dated January 10, 2013, recommending adoption of an appropriation ordinance and funding sources resolution amendments and position changes.

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

Motion: Council Member Liccardo moved approval of the Staff recommendations with an amendment as outlined below in “Action”. Council Member Herrera seconded the motion.

Public Comments: Gavin Leonard suggested a grace period for previously grandfathered properties when issuing towing permits.

Action: On a call for the question, the motion carried unanimously, Ordinance No. 29201, entitled: “An Ordinance of the City of San José Amending Ordinance No. 29102 to Appropriate Monies in the General Fund for the Fire Department Personal Services, for the Fire Department Non-Personal/Equipment, for the Planning, Building and Code Enforcement Department Personal Services, for the Planning, Building and Code Enforcement Department Non-Personal/Equipment, and for the Public Works Department Personal Services; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”; and Resolution No. 76545, entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 76302 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2012-2013 to Adjust Revenues in the General Fund”, were adopted, with position changes effective February 3, 2013 approved, including the recommendation to return during the budget process to permit additional authorization for flexibility for hiring in the subsequent fiscal year without explicit Council authorization was approved. (9-0-2. Absent: Constant, Khamis.)

3.6 **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. (City Manager’s Office)**

Documents Filed: (1) Memorandum from City Manager Debra Figone, dated January 14, 2013, recommending acceptance of the staff report. (2) Memorandum from Association of Legal Professionals (ALP) President, Vera Todorov, dated January 23, 2013, requesting clarification of the report to be considered by the City Council.

City Manager Debra Figone provided an introduction, and Deputy City Manager Alex Gurza and Office of Employee Relations Senior Executive Analyst, Jennifer Schembri further summarized the report.

3.6 (Cont.'d.)

Public Comments: (1) Association of Legal Professionals (ALP) President, Vera Todorov criticized the report for poorly representing calculated costs. (2) LaVerne Washington, (AFSCME) questioned why management staff are receiving salary increases, yet many employees are still working without a contract.

City Manager Debra Figone responded to questions posed by members of the public, and Deputy City Manager Alex Gurza offered additional comments.

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

3.7 **Accept City Attorney report on the status of the litigation and administrative complaint matters related to Measure B (The Sustainable Retirement Benefits and Compensation Act). CEQA: Not a Project; File No. PP10-069(a), Staff Reports/Assessments/Annual Reports. (City Attorney's Office)**

Action: Deferred to February 5, 2013 per Rules and Open Government Committee.

COMMUNITY & ECONOMIC DEVELOPMENT

4.1 **Consideration of an ordinance rezoning the real property located on the southwest corner of West San Carlos Street and Royal Avenue (720 West San Carlos Street and 655 Auzerais Avenue) from LI Light Industrial Zoning District to the CIC Combined Industrial Commercial Zoning District on a 5.66 gross acre site (National Retail Properties LP, Owner). CEQA: Envision San José 2040 General Plan Final EIR, EIR Resolution No. 76041. (Planning, Building and Code Enforcement) C12-027 – District 6**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C12-027, dated January 3, 2013, recommending approval. (2) Proof of Publication of Notice of Public Hearing, executed on January 11, 2013 submitted by the City Clerk.

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

Action: Upon motion by Council Member Oliverio, seconded by Council Member Herrera, and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, and Ordinance No. 29202, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the Southwest Corner Of West San Carlos Street And Royal Avenue On A 5.66 Gross-Acre Site (720 West San Carlos Street And 655 Auzerais Avenue) To The Combined Industrial/ Commercial Zoning District”, was passed for publication. (11-0.)

- 4.2 (a) Adopt a resolution:**
- (1) Making certain findings concerning mitigation measures, adopting a mitigation monitoring and reporting program, and making findings concerning alternatives, in accordance with the California Environmental Quality Act of 1970, as amended (“CEQA”), for the Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan (“Habitat Plan” or “HCP/NCCP”) and related actions for which an Environmental Impact Report (EIR) has been prepared in accordance with CEQA (File No. PP12-075);**
 - (2) Adopting the HCP/NCCP;**
 - (3) Approving the Implementing Agreement among the City of San José, City of Morgan Hill, City of Gilroy, Santa Clara County, Santa Clara Valley Water District and the Valley Transportation Authority (“Local Partners”) and the US Fish and Wildlife Service, California Department of Fish and Wildlife, and National Marine Fisheries Service (“Wildlife Agencies”);**
 - (4) Approving the Joint Exercise of Powers Agreement among the City of San José and the cities of Gilroy and Morgan Hill and the County of Santa Clara which establishes the Santa Clara Valley Habitat Agency (“Habitat Agency” or “Implementing Entity”); and**
 - (5) Approving the Memorandum of Understanding among all six Local Partners, the Habitat Agency and the Santa Clara County Open Space Authority concerning working relationships for Habitat Plan implementation.**
- (b) Approve the Implementing Ordinance adopting and incorporating by reference the Habitat Plan, implementing Habitat Plan requirements upon applications for land use permits in San José within the area covered by the Habitat Plan, and authorizing the collection of mitigation fees on behalf of the Santa Clara Valley Habitat Agency. The Implementation Ordinance adds Chapter 18.40 to Title 18 of the San José Municipal Code, entitled “Habitat Conservation Plan” and authorizes the collection of Habitat Plan mitigation fees on behalf of the Implementing Entity (the Santa Clara Valley Habitat Agency), and also amends Sections 17.04.310 and 17.04.340 of the Municipal Code to require compliance with the Habitat Plan for applications for grading permits.**
- (c) Adopt a resolution appointing representatives to the Santa Clara Valley Habitat Agency Governing Board and Implementation Board as follows:**
- (1) Appoint two Council Members, to serve on the Governing Board and two Council Members to serve as their alternates; and**
 - (2) Appoint one Council Member to serve on the Implementation Board and one Council Member to serve as his or her alternate; and**
 - (3) Appoint one City staff member to serve on the Implementation Board and an additional staff member to serve as his or her alternate.**
- Item 4.2(c) to be Renoticed.**

4.2 (Cont'd.)

- (d) **Direct staff to advise Council on potential alternative funding strategies or sources to the proposed Nitrogen Deposition fee for the Habitat Plan nitrogen deposition mitigation program that do not add costs for private development projects within the Downtown, Urban Village or Employment Land areas as identified on the General Plan Land Use / Transportation Diagram.**
- (e) **Direct staff to attempt to develop a City Council “No Surprises” Policy that complies with all legal requirements, including CEQA, in order not to duplicate requirements to address environmental issues that are already specifically addressed in the Habitat Plan, and to work with the other agencies towards that goal.**
- (f) **Adopt a resolution confirming that development projects at the Norman Y. Mineta San José International Airport are not covered activities included in the HCP/NCCP.**

CEQA: Environmental Impact Report, Resolution No. 76502. (Planning, Building and Code Enforcement)

Documents Filed: (1) Memorandum from Mayor Reed, dated January 25, 2013, approving the Habitat Conservation Plan (HCP) with revisions. (2) Joint memorandum from Council Member Chu and Kalra, dated January 24, 2013, offering support to the HCP. (3) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated January 15, 2013, offering Staff recommendations regarding the Santa Clara Valley Habitat Plan. (4) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated January 28, 2013, providing additional information regarding the HCP. (5) Two emails from Myron Crawford, Berg & Berg Developers, Inc., dated January 26 and 29, 2013, providing objections to the riparian corridor and wetlands policies. (6) Letter from Matthew Mahood, President & CEO, San José – Silicon Valley Chamber of Commerce, dated January 24, 2013, offering criticism of the HCP. (7) Letter from Building Industry Association Vice President & General Counsel and the Executive Director, dated January 28, 2013, offering comments regarding the HCP. (8) Letter from W. Conklin, South County Business Council, dated January 29, 2013, offering recommendations regarding the HCP. (9) Twenty (20) emails from members of the public, all dated January 29, 2013, offering support to the adoption of the Santa Clara Valley Habitat Conservation Plan.

Mayor Reed provided opening comments and followed up with a series of his recommendations regarding the Santa Clara Valley Habitat Conservation Plan.

Director of Planning, Building and Code Enforcement Joseph Horwedel, provided a verbal report of the Plan and responded to questions from Council.

Ken Schreiber, Program Manager, Santa Clara Valley Habitat Plan, fielded questions from Council.

Extensive Council discussion continued.

4.2 (Cont'd.)

Director of Planning, Building and Code Enforcement Joseph Horwedel, answered questions from Council, and City Attorney Richard Doyle provided clarification to the Memorandum of Understanding.

Motion: Vice Mayor Nguyen moved approval of recommendations from the January 15, 2013 Staff report, and recommendations from the January 28, 2013 supplemental report, including Mayor Reed's January 25, 2013 memorandum approving the HCP with modifications listed as items 1 through 7. Council Member Herrera seconded the motion.

California Department of Fish & Wildlife Acting Regional Manager, Scott Wilson, and Services Representative, Kathryn Gaffney provided feedback on the report.

Public Comments: Offering support to the Santa Clara Valley Habitat Conservation Plan, were Crisand Giles, Dennis Martin (NAIOP Silicon Valley), Jim Ghielmetti (California Transportation Commission), Melissa Hippard (Greenbelt Alliance), Stephen Hicks (Signature Homes), Greg Kerekes, Emma Hollows (Sierra Club), Donald Mayall (CNPS), Joshua McCluskey, Pat Pizzo, Stuart Weiss, Gloria Chun Hoo (League of Women Voters), Shani Kleinhaus (Santa Clara Valley Audubon Society), Linda Ruthruff (California Native Plant Society), Eileen McLaughlin, Virginia Holtz (Open Space Authority), Julie Hutcheson (Committee for Green Foothills), and Debra Calden (Santa Clara Valley Water District).

Action: On a call for the question, the motion carried, and Resolution No. 76546, entitled: "A Resolution of the Council of the City of San José Making Certain Findings Concerning Mitigation Measures, Adopting the Mitigation Monitoring and Reporting Program, and Making Findings Concerning Alternatives in Accordance with the California Environmental Quality Act of 1970, as Amended, for the Santa Clara Valley Habitat Conservation Plan/Natural Communities Conservation Plan ("HCP/NCCP") and Related Actions, Conditionally Approving the Adoption of the HCP/NCCP, and Authorizing the City Manager to Execute the Implementing Agreement, the Joint Exercise of Powers Agreement Creating the Santa Clara Valley Habitat Agency, and the Memorandum of Understanding with Other Public Agencies Under Specified Conditions"; and Resolution No. 76547, entitled: "A Resolution of the Council of the City of San José Confirming that Development Projects at the Norman Y. Mineta San José International Airport are Not Covered Activities Included in the Santa Clara Valley Habitat Conservation Plan/Natural Communities Conservation Plan", were adopted, and Ordinance No. 29203, entitled: "An Ordinance of the City of San José, Amending Title 18 of the San José Municipal Code to Add a New Chapter 18.40 to Adopt by Reference and Implement the Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP) Including Authority to Collect the Local Development Mitigation Fees Adopted by the Santa Clara Valley Habitat Agency from Project Applicants and Remit the Fees to the Agency for Funding the Preservation of Natural Ecosystems in Accordance with the Plan, and Amending Sections 17.04.310 and 17.04.340 of Chapter 17.04 of Title 17 of the San José Municipal Code to Incorporate HCP/NCCP Compliance Requirements for Grading Permit Issuance", was passed for publication. (10-1. Noes: Constant.)

TRANSPORTATION & AVIATION SERVICES

- 6.1 (a) Approve an ordinance amending Chapter 6.64 of Title 6 of the San José Municipal Code to amend Section 6.64.130 and add a new Section 6.64.465 to create exceptions for out of town taxi businesses and taxi drivers whose principal place of business is outside of the City and who only do business in the City at the airport from obtaining an additional license under Title 6 if properly permitted under Title 25. CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment. (Airport/Police)
- (b) Approve an ordinance amending Sections 6.64.440 and 6.64.620 of Chapter 6.44 of Title 6 of the San José Municipal Code regarding Police taxicab permits to remove outdated language and to clarify hearing requirements to ensure consistency with other permit provisions in the Code. CEQA: Not a Project, File No. PP10-068(c), Municipal Code or Policy. (City Attorney's Office)

(Deferred from 12/18/12 – Item 6.2)

Action: Dropped.

REDEVELOPMENT – SUCCESSOR AGENCY

- 9.1 Adopt the following Appropriation Ordinance amendments in the Low and Moderate Income Housing Asset Fund:
- (a) Decrease the Housing Department's Housing Loans and Grants appropriation by \$10,155,043; and
- (b) Establish the Successor Agency to the Redevelopment Agency appropriation in the amount of \$10,155,043.

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

Documents Filed: Joint memorandum from Director of Housing Leslye Corsiglia and Budget Director Jennifer Maguire, dated January 15, 2013, recommending adoption of appropriation ordinance amendments.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Herrera and carried unanimously, Ordinance No. 29204, entitled: "An Ordinance of the City of San José Amending Ordinance No. 29102 to Appropriate Monies in the Low and Moderate Income Housing Asset Fund for the Successor Agency to the Redevelopment Agency; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", was adopted. (11-0.)

OPEN FORUM

- (1) Chuck Johnson spoke against litter and graffiti and proposed a ban on disposable cigarette lighters.
- (2) Mark Trout expressed religious and political viewpoints.

ADJOURNMENT

The Council of the City of San José was adjourned at 5:45 p.m. in memory of Miriam B. Ajluni. Miriam was a mainstay of the local Arab-American community for most of the past 40 years. Named “Woman of the Year” by the League of Arab- American Women of San José, she was dedicated to lifelong learning and to connecting new immigrants to their new San José community. She was born in Pittsburgh, PA, but was a long-time San José resident. Miriam passed away peacefully on January 10, 2013 at the age of 90. (Khamis)

Minutes Recorded, Prepared and Respectfully Submitted by,

Toni J. Taber, CMC
Acting City Clerk

rmk/1-29-13MIN