



## MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, FEBRUARY 2, 2016

The Council of the City of San José convened in Regular Session at 9:31 a.m. in the Council Chambers at City Hall.

Present: Councilmembers - Carrasco, Jones, Kalra, Khamis, M. Nguyen, T. Nguyen, Oliverio, Peralez, Rocha; Liccardo.

Absent: Councilmembers - Herrera. (Excused)

### STRATEGIC SUPPORT SERVICES

#### 3.2 Accept Labor Negotiations Update.

There was no report.

### CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:36 a.m. to a Closed Session in Room W133(A) to confer with Legal Counsel pursuant to Government Code Section 54957(a): with Respect to Potential Threat to Public Services or Facilities; Consultation with: Chief of Police; (B) to confer with Legal Counsel pursuant to Government Code Section 54956.9(d)(1) with respect to anticipated litigation in three (3) matters: (a) In re: Claim of Du; City Department: DOT; (b) In re: Claim of CSAA; City Department: DOT; (c) In re: Claim of Allstate; City Department: PBCE; (C) to confer with Legal Counsel pursuant to Government Code Section 54956.9 with respect to anticipated litigation in one (1) matter (claim not filed); (D) to confer with Legal Counsel pursuant to Government Code Section 54956.9(d)(1) with respect to existing litigation; (1) Gonzales v. City of San José, et al; Names of Partie(s) Involved: Mary Lou Gonzales, City of San José as a municipal corporation; SJPD Detective Yvonne Delacruz in her official and individual capacity; SJPD Sgt. Archer, in his official and individual capacity; SJPD Homicide Detective Jamie (last name unknown) in his individual and official capacity; SJPD Officers Doe 1 to Doe 7 in their individual and official capacities; SJPD Officers and Detectives and Employees Doe 8-50 in their individual and official capacities; United

## CLOSED SESSION (Cont'd.)

States District Court, Northern District of California; (2) IAFF Local 230 v. City of San José; Names of Partie(s) Involved: International Association of Firefighters Local 230, City of San José; Court: State of California Public Employees Relations Board; Case No.: SF-CE-969-M; Amount of Money or Other Relief Sought: Damages According to Proof; (3) IFPTE Local 21 v. City of San José; Names of Partie(s) Involved: International Federation of Professional and Technical Engineers Local 21, City of San José; Court: State of California Public Employees Relations Board; Case No.: SF-CE-996-M; Amount of Money or Other Relief Sought: Damages According to Proof; (4) American Federation of State, County & Municipal Employees, et al. v. City; Names of Partie(s) Involved: American Federation of State, County & Municipal Employees, City of San José; Court: State of California Public Employees Relations Board; Case No.: SF-CE-924-M; Amount of Money or Other Relief Sought: Damages According to Proof; (5) OE#3 v. City of San José; Names Of Partie(s) Involved: Operating Engineers Local Union No. 3, City of San José; Court: State of California Public Employees Relations Board; Case No.: SF-CE-900-M; (6) San José Police Officers' Association v. City, et al; Names of Parties Involved: San José Police Officers' Association, City of San José, Board of Administration for Police and Fire Department Retirement Plan of City of San José and Does 1-100; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-225926; Amount of Money or Other Relief Sought: Declaratory and injunctive relief. (7) San José Retired Employees Association, et al. v. City, et al; Names of Parties Involved: San José Retired Employees Association, Howard E. Fleming, Donald S. Macrae, Frances J. Olson, Gary J. Richert and Rosalinda Navarro, City of San José Does 1 - 50, Board of Administration for the Federated City Employees Retirement System; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-233660; Amount of Money or Other Relief Sought: Declaratory Relief and Verified Petition for Writ of Mandate. (8) Sapien, et al. v. City of San José, et al; Names of Parties Involved: Robert Sapien, Marty Kathleen McCarthy, Thanh Ho, Randy Sekany, Ken Heredia, City of San José, Debra Figone in her official capacity as City Manager of the City of San José, Does 1-15, The Board of Administration for the 1961 San José Police and Fire Department Retirement Plan; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-225928; Amount of Money or Other Relief Sought: Challenge to Measure B. (9) Harris, et al. v. City of San José, et al; Names of Parties Involved: Teresa Harris, Jon Reger, Moses Serrano, Suzann Stauffer, City of San José, Debra Figone in her official capacity as City Manager of the City of San José, The Board of Administration for the 1975 Federated City Employees' Retirement Plan, Does 1-15; Court: Superior Court of California, County of Santa Clara; Case: 1-12-CV-226570; Amount of Money or Other Relief Sought: Challenge to Measure B. (10) Mukhar, et al. v. City of San José, et al; Names of Parties Involved: City of San José, John Mukhar, Dale Dapp, James Atkins, William Buffington, Kirk Pennington, Debra Figone in her official capacity as City Manager of the City of San José, The Board of Administration for the 1975 Federated City Employees' Retirement Plan, Does 1-15; Court: Superior Court of California, County of Santa Clara; Case: 1-12-CV-226574; H040979; H042074; Amount of Money or Other Relief Sought: Challenge to Measure B. (11) AFSCME, et al. v. City of San José, et al; Names of Parties Involved: American Federation of State, County and

## CLOSED SESSION (Cont'd.)

Municipal Employees, Local 101 on behalf of its members, City of San José, The Board of Administration for the Federated City Employees' Retirement Plan; Court: Superior Court of California, County of Santa Clara; Case: 1-12-CV-225928; H040979; H042074; Amount of Money or Other Relief Sought: Challenge to Measure B; (12) People of the State of California, et al. v. City of San José, et al.; Names of Partie(s) Involved: The People of the State of California ex rel. San José Police Officers Association, City of San José, City Council of San José; Court: Superior Court of California, County of Santa Clara; Case No: 1-13-CV-245503; Amount of Money or Other Relief Sought: Verified Complaint In Quo Warranto; (13) San José Retired Employees Association, et al. v. City of San José, et al; Names of Partie(s) Involved: San José Retired Employees Association, Kirk Pennington, David Armstrong, Donna Jewett, Dorothy McGinley, City of San José, the Board of Administration for the Federated City Employees Retirement Plan; Court: Superior Court of California, County of Santa Clara; Case No: 1-14-CV-268085; Amount of Money or Other Relief Sought: Change to City medical plan; (E) to Confer with Labor Negotiator Pursuant to Government Code Section 54957.6: City Negotiator: Jennifer Schembri, Director of Employee Relations; 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.;

## **CLOSED SESSION (Cont'd.)**

Name of Existing Wages Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association. (11) Association of Legal Professionals of San José (ALP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Web: <http://www.sanjoseca.gov/?nid=186>; Telephone for Employee Relations: 408-535-8150.

By unanimous consent, Council recessed from the Closed Session at 11:30 p.m. and reconvened to Regular Session at 1:31 p.m. in the Council Chambers.

Present: Councilmembers - Carrasco, Herrera, Jones, Kalra, Khamis, M. Nguyen, T. Nguyen, Oliverio, Peralez, Rocha; Liccardo.

Absent: Councilmembers - All Present.

## **INVOCATION**

Members of the Chua Bao Phuoc, Pagoda and Buddhist Church in San José provided the Invocation.

## **PLEDGE OF ALLEGIANCE**

Mayor Sam Liccardo led the Pledge of Allegiance accompanied by students from De Vargas Elementary School.

## **ORDERS OF THE DAY**

Upon motion by Councilmember Raul Peralez, seconded by Councilmember Johnny Khamis and carried unanimously, the Orders of the Day and the Amended Agenda were approved unanimously, with Item 4.1 deferred. (10-0-1. Absent: Herrera.)

## **CEREMONIAL ITEMS**

### **1.1 Presentation of a proclamation to the American Heart Association of Silicon Valley Chapter in honor of National Wear Red Day. (Herrera)**

Mayor Sam Liccardo and Vice Mayor Rose Herrera recognized the American Heart Association of Silicon Valley Chapter in honor of National Wear Red Day.

**1.2 Presentation of commendations to the East Side Union High School District winners of the 17<sup>th</sup> Annual Sciencepalooza. (Herrera)**

Mayor Sam Liccardo and Vice Mayor Rose Herrera presented a commendation to the East Side Union High School District winners of the 17<sup>th</sup> Annual Sciencepalooza.

**CONSENT CALENDAR**

Upon motion by Vice Mayor Rose Herrera, seconded by Councilmember Tam Nguyen 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. 29684** – An ordinance of the City of San José rezoning certain real property of approximately 43.0 gross acres situated on the west side of North First Street on both sides of Component Drive, from the IP(PD) Planned Development Zoning District to the IP(PD) Planned Development Zoning District. CEQA: Addendum to the North San José Development Policies EIR (Resolution No. 72768), Envision San José 2040 General Plan EIR (Resolution No. 76041), and BEA Development Project EIR (Resolution No. 72169), File Nos. PDC15-056/PD15-052.

Documents Filed: Proof of Publication of the Title of Ordinance No. 29684 executed on January 29, 2016, submitted by the City Clerk.

Action: Ordinance No. 29684 was adopted. (11-0.)

- (b) **ORD. NO. 29685** – An ordinance of the City of San José approving an amended and restated development agreement with Apple, Inc. relative to the development of certain real property in North San José and authorizing the City Clerk to execute the development agreement and cause the same to be recorded with the Santa Clara County Recorder's Office. CEQA: Addendum to the North San José Development Policies EIR (Resolution No. 72768), Envision San José 2040 General Plan EIR (Resolution No. 76041), and BEA Development Project EIR (Resolution No. 72169), File Nos. DA15-002/HA12-008-02/PT15-066.

Documents Filed: Proof of Publication of the Title of Ordinance No. 29685 executed on January 29, 2016, submitted by the City Clerk.

Action: Ordinance No. 29685 was adopted. (11-0.)

**2.3 Approval of Council Committee Minutes.**

None provided.

**2.4 Mayor and Council Excused Absence Requests.**

None provided.

**2.5 City Council Travel Reports.**

None provided.

**2.6 Report from the Council Liaison to the Retirement Boards.**

None provided.

- 2.7 (a) Approve an ordinance amending Sections 2.08.2820 and 2.08.2850 of Title 2 of the San José Municipal Code to revise the composition of the Housing and Community Development Commission to include a representative owner or manager and a representative tenant of a residential rent stabilized rental building.**

**(b) Designate Commissioner Michael Fitzgerald as the owner representative. CEQA: Not a Project, File No. PP10-068(b), Municipal Code of Policy (new or revised) limited to Title 2, Title 12, and Title 16 that involves no changes in the physical environment. (City Attorney)**

Documents Filed: Memorandum from City Attorney Richard Doyle, dated January 22, 2016, recommending approval of an ordinance and designation of Commissioner Michael Fitzgerald as the owner representative.

Councilmember Johnny Khamis pulled Item 2.7 to ask procedural questions.

Action: Upon motion by Councilmember Johnny Khamis, seconded by Councilmember Tam Nguyen and carried unanimously Ordinance No. 29687, entitled: "An Ordinance of the City of San José Amending Sections 2.08.2820 And 2.08.2850 of Chapter 2.08 of Title 2 of the San Jose Municipal Code to Revise the Composition of the Housing and Community Development Commission to Include an Owner or Manager and a Tenant of Residential Rent Stabilized Rental Property", was passed for publication; and Commissioner Michael Fitzgerald was designated as the Housing and Community Development Commission owner representative. (10-0-1. Absent: Herrera.)

- 2.8 (a) Accept the City Clerk's Certification of election results conducted among the Police Department employee members of the Police and Fire Department Retirement Plan for the Police Department employee representative to the Police and Fire Retirement Board.**
- (b) Appoint Franco Vado to the Board of Administration for the Police and Fire Department Retirement Plan as the Police Department employee representative to a term ending November 30, 2017.**

**2.8 (Cont'd.)**

Documents Filed: (1) Memorandum from City Clerk Toni J. Taber, CMC, dated January 22, 2016, recommending appointments to the Board of Administration for the Police and Fire Department Retirement Plan. (2) Supplemental memorandum from City Clerk Toni J. Taber, CMC, dated January 25, 2016, providing results of the employee vote for the Board of Administration. (3) City of San José Application for San José Retirement Boards.

Action: Franco Vado was appointed to the Board of Administration for the Police and Fire Department Retirement Plan as the Police Department employee representative to a term ending November 30, 2017. (10-0-1. Absent: Herrera.)

**2.9 Ratify and approve the City Manager's execution of an Agreement with the Knight Foundation for receipt of grant funds to provide San José as a location for growing companies and talent through development of a branding and marketing campaign for the period of December 1, 2015, to December 1, 2016, in an amount of \$125,000. CEQA: Not a Project, File No. PP10-066(a), Agreements and Contacts that involve no physical changes to the environment. (Economic Development)**

Documents Filed: City Council Action Request from Deputy City Manager/Director of Economic Development Kim Walesh, dated February 2, 2016, recommending ratification and approval of an Agreement with the Knight Foundation.

Action: Ratification and approval of the City Manager's execution of an Agreement with the Knight Foundation for receipt of grant funds to provide San José as a location for growing companies and talent through development of a branding and marketing campaign for the period of December 1, 2015, to December 1, 2016, in an amount of \$125,000, was adopted. (10-0-1. Absent: Herrera.)

**2.10 As recommended by the Rules and Open Government Committee on January 20, 2016:**

- (a) Approve the Assyrian Flag Raising scheduled on March 18, 2016 as a City Council sponsored Special Event and approve the expenditure of funds; and**
- (b) Approve and accept donations from various individuals, businesses or community groups to support the event.**

**CEQA: Not a Project, File No. PP15-077, Temporary Special Events. (Khamis)**

Documents Filed: Memorandum from City Clerk Toni J. Taber, dated January 21, 2016, transmitting the recommendations of the Rules and Open Government Committee.

Action: The Assyrian Flag Raising as a City Council Sponsored Special Event was approved, and expenditure of funds and authorization to accept donations from various individuals, businesses or community groups to support the event, was approved. (10-0-1. Absent: Herrera.)

**2.11 As recommended by the Rules and Open Government Committee on January 20, 2016:**

- (a) Approve the Greek Flag Raising scheduled on March 25, 2016 as a City Council sponsored Special Event and approve the expenditure of funds; and**
- (b) Approve and accept donations from various individuals, businesses or community groups to support the event.**

**CEQA: Not a Project, File No. PP15-077, Temporary Special Events. (Khamis)**

Documents Filed: Memorandum from City Clerk Toni J. Taber, dated January 21, 2016, transmitting the recommendations of the Rules and Open Government Committee.

Action: The Greek Flag Raising as a City Council Sponsored Special Event was approved, and expenditure of funds and authorization to accept donations from various individuals, businesses or community groups to support the event, was approved. (10-0-1. Absent: Herrera.)

**2.12 As recommended by the Rules and Open Government Committee on January 20, 2016:**

- (a) Approve the Scottish (Tartan Day) Flag Raising scheduled on April 5, 2016 as a City Council sponsored Special Event and approve the expenditure of funds; and**
- (b) Approve and accept donations from various individuals, businesses or community groups to support the event.**

**CEQA: Not a Project, File No. PP15-077, Temporary Special Events. (Khamis)**

Documents Filed: Memorandum from City Clerk Toni J. Taber, dated January 21, 2016, transmitting the recommendations of the Rules and Open Government Committee.

Action: The Scottish (Tartan Day) Flag Raising as a City Council Sponsored Special Event was approved, and expenditure of funds and authorization to accept donations from various individuals, businesses or community groups to support the event, was approved. (10-0-1. Absent: Herrera.)

**2.13 As recommended by the Rules and Open Government Committee on January 20, 2016:**

- (a) Retroactively approve the Valley Palms Community Holiday Party on December 16, 2015 at Project Access Resource Center as a City Council sponsored Special Event and retroactively approve the expenditure of funds. CEQA: Not a Project, File No. PP15-077, Temporary Special Events.**
- (b) Retroactively approve the West Evergreen Community Holiday Party on December 16, 2015 at OB Whaley Elementary School as a City Council sponsored Special Event and retroactively approve the expenditure of funds. CEQA: Not a Project, File No. PP15-077, Temporary Special Events.**
- (c) Approve the Santee Community Meeting on January 21, 2016 at Educare Center; Latinos United for a New America (LUNA) Community Clean Up Day at Midfield and Havana Avenue on January 30, 2016; Vietnamese Townhall Meeting on January 31, 2016 at Berryessa Community Center;**

2.13 (Cont'd.)

- (d) **Approve and accept donations from various individuals, businesses or community groups to support the event. CEQA: Not a Project, File No. PP15-077, Temporary Special Events. (T. Nguyen)**

Documents Filed: Memorandum from City Clerk Toni J. Taber, dated January 21, 2016, transmitting the recommendations of the Rules and Open Government Committee.

Action: The Valley Palms Community Holiday Party and the West Evergreen Community Holiday Party, were *retroactively* approved, and the Santee Community Meeting was approved as City Council Sponsored Special Events, and expenditure of funds and authorization to accept donations from various individuals, businesses or community groups to support the events, were approved. (10-0-1. Absent: Herrera.)

- 2.14 (a) **Consideration of a resolution for a Master Planned Development Permit to effectuate the Planned Development Zoning (File No. PDC15-056) for up to 2.8 million square feet of industrial uses for the property located on both sides of Component Drive between North First Street and Orchard Parkway. PD15-052.**

[Continued from 1/26/16 – Item 11.3(c)]

- (a) **Consideration of a resolution for a Site Development Permit Amendment to allow a permit extension for up to 15 years for Site Development Permit File No. H12-008, consistent with the term of Development Agreement File No. DA15-002, on an approximately 12.9 gross acre site located at the southwest terminus at Atmel Way, approximately 930 feet east of Orchard Parkway (Apple, Inc., Owner). HA12-008-02.**

[Continued from 1/26/16 – Item 11.4(c)]

- (c) **Consideration of a resolution for a Tentative Map to allow an extension for up to 15 years for Tentative Map File No. PT13-061, consistent with the term of Development Agreement File No. DA15-002, on an approximately 43 gross acre site located on the west side of North First Street on both sides of Component Drive. PT15-066.**

[Continued from 1/26/16 – Item 11.4(d)]

**CEQA: Addendum to the North San José Development Policies EIR (Resolution No. 72768), Envision San José 2040 General Plan EIR (Resolution No. 76041), and BEA Development Project EIR (Resolution No. 72169). (Planning, Building, and Code Enforcement). Council District 4.**

Documents Filed: (1) Joint memorandum from Mayor Sam Liccardo, Councilmember Manh Nguyen, Vice Mayor Rose Herrera, Councilmember Raul Peralez and Councilmember Johnny Khamis, dated January 22, 2016, recommending approval of Staffs' recommendations. (2) Supplemental memorandum from Director of Planning, Building and Code Enforcement, Harry Freitas, dated January 22, 2016, addressing minor text changes to one section of the Addendum prepared for the Orchard Parkway Properties Project. (3) Proof of Publication of Notice of Public Hearing executed on December 18, 2015, submitted by the City Clerk.

## 2.14 (Cont'd.)

Action: Resolution No. 77653, entitled: "A Resolution of the Council of the City of San José approving a Master Planned Development Permit, Subject to Conditions, to Effectuate the Planned Development Zoning (File No. PDC15-056) to Allow up to 2.8 Million Square Feet of Industrial Uses on a 43.0-Gross Acre Site, Located on the West Side of North First Street on Both Sides of Component Drive (APN 101-02-011)"; Resolution No. 77654, entitled: "A Resolution of the Council of the City of San José Approving a Site Development Permit Amendment to Extend the Term of Site Development Permit File No. H12-008, for a Term of up to Fifteen Years Consistent with the Term of that Certain Amended and Restated Development Agreement By and Between the City of San José and Apple Inc. Approved by Ordinance No. 29685 (File No. DA15-002) and to Update a Mitigation Measure Addressing Potential Impacts to Burrowing Owls, All Related to that Certain Real Property on an Approximately 12.9 Gross Acre Site, Located on the West Side of Orchard Parkway at the Terminus of Atmel Way"; and Resolution No. 77655, entitled: "A Resolution of the Council of the City of San José Approving a Vesting Tentative Map to Allow an Extension for up to 15 Years for Tentative Subdivision Map (File No. PT13-061) Consistent with the Term of Development Agreement File No. DA15-002, on an Approximately 43 Gross Acre Site Located on the East Side of Orchard Parkway, on Both Sides of Component Drive", were adopted. (10-0-1. Absent: Herrera.)

### END OF CONSENT CALENDAR

## STRATEGIC SUPPORT SERVICES

### 3.3 Accept the following annual reports:

- (a) **Police and Fire Department Retirement Plan Comprehensive Annual Financial Report for the Fiscal Years ended June 30, 2015 and June 30, 2014;**
- (b) **Federated City Employees' Retirement System Comprehensive Annual Financial Report for the Fiscal Years ended June 30, 2015 and June 30, 2014.**

**CEQA: Not a Project, File No. PP10-069(a), Annual Reports that involve no approvals of any City Actions. (Retirement Services)**

Documents Filed: (1) Memorandum from Chief Executive Officer, Office of Retirement Services, Roberto L. Peña, dated January 19, 2016, recommending acceptance of annual reports. (2) Police and Fire Department Retirement Plan Comprehensive Annual Financial Report; (3) Federated City Employees' Retirement System Comprehensive Annual Financial Report.

Chief Executive Officer, Office of Retirement Services, Roberto L. Peña responded to questions from Council.

Mayor Sam Liccardo asked that Staff provide a breakdown of the unfunded liability portion in future Comprehensive Annual Financial Reports.

**3.3 (Cont'd.)**

Action: Upon motion by Councilmember Johnny Khamis, seconded by Vice Mayor Rose Herrera and carried unanimously, the Police and Fire Department Retirement Plan Comprehensive Annual Financial Report for the Fiscal Years ended June 30, 2015 and June 30, 2014, and the Federated City Employees' Retirement System Comprehensive Annual Financial Report for the Fiscal Years ended June 30, 2015 and June 30, 2014, were accepted, with Staff directed to provide a breakdown of the unfunded liability portion in future Comprehensive Annual Financial Reports. (11-0.)

**3.4 As recommended by the Rules and Open Government Committee on January 20, 2016:**

- (a) **Direct the City Manager to perform an analysis, either with in-house staff or through a consultant, of the gross receipts tax proposal that was recently filed with the City Clerk. The analysis should be completed as expeditiously as possible and should include the following elements:**
- (1) **A comparison between San José's current business license tax, the proposed gross receipts tax, and business taxes of other comparable California jurisdictions, for the purpose of providing a broader policy context for San José's current and proposed business taxes. This analysis should include a comparison of what each tax is assessed on (i.e. gross receipts, payroll, number of employees), the tax rate, and how much the taxes generate.**
  - (2) **An in-depth comparison between the current business license tax and the proposed gross receipts tax, for the purpose of understanding how the new tax would affect various types and sizes of businesses differently than the current tax. This analysis should include real case studies, to the extent possible, that attempt to illustrate what different types and sizes of business would pay under each tax. If possible, staff should also attempt to estimate how revenue to the City would change under the proposed tax.**
  - (3) **An analysis of the exemptions included in the proposed gross receipts tax ordinance, for the purpose of clarifying who would and would not pay the tax.**
  - (4) **A technical analysis of the proposed ordinance for the purpose of determining whether it is clear enough for effective implementation.**
- (b) **Direct the City Attorney to perform an analysis of the ordinance for the purpose of determining whether it gives rise to any legal concerns.**

**CEQA: Not a Project, File No. PP10-068(d), Preliminary direction to staff when eventual action requires Council approval. (Rocha/Peralez)**

Documents Filed: (1) Joint memorandum from Councilmember Donald Rocha and Councilmember Raul Peralez, dated January 29, 2016, offering approval of the recommendations with additional direction to Staff. (2) Memorandum from City Clerk Toni J. Taber, dated January 21, 2016, transmitting the recommendations of the Rules and Open Government Committee.

### 3.4 (Cont'd.)

Motion: Vice Mayor Rose Herrera moved approval of the Staff recommendations with direction as outlined in the January 29, 2016 memorandum from Councilmembers Rocha and Peralez. Councilmember Chappie Jones seconded the motion.

Councilmember Raul Peralez requested an amendment to the motion to direct Staff to conduct a limited, preliminary review of the City's options for updating the current Business License tax. Vice Mayor Rose Herrera and Councilmember Chappie Jones accepted the amendment.

Councilmember Johnny Khamis indicated that he could not support the motion on the floor, questioning its relevancy to the City of San José. Councilmember Tam Nguyen offered reluctant support to the motion, expressing his opinion that it is not entirely cost effective.

Deputy City Manager/Director of Economic Development Kim Welsh responded to questions from Council, and discussion continued.

Public Comment: Offering support to the memorandum from Councilmembers Rocha and Peralez, citing a need to modernize the business tax, were: Scott Myers-Lipton, Aurelia Sanchez, Shaun Cartwright, Jerry Wilburn, Emilie Gatfield and Ray Perez.

Action: On a call for the question, the motion carried, and the Staff's recommendations of an analysis, either with in-house staff or through a consultant, of the gross receipts tax proposal that has been filed with the City Clerk, was approved, with direction as outlined in the joint memorandum from Councilmembers Donald Rocha and Raul Peralez, dated January 29, 2016, to conduct a limited, preliminary review of the City's options for updating the current Business License tax, and study the proposed gross receipts tax ballot measure as recommended in the memo from Councilmembers Rocha and Peralez dated January 14, 2016. (9-2. Noes: Khamis, Oliverio.)

## COMMUNITY & ECONOMIC DEVELOPMENT

### 4.1 **Adopt a resolution approving a City Council Policy for disposing of surplus property that includes provisions relating to affordable housing. CEQA: Not a Project, File No. PP10-068(c), Code or policy change that involve no changes in the physical environment. (Economic Development/Housing)**

Documents Filed: (1) Memorandum from Councilmember Donald Rocha, dated February 2, 2016, requesting a deferral on the decision to adopt the proposed City Council Policy for disposing of surplus property, with additional direction to Staff. (2) Joint memorandum from Deputy City Manager/Director of Economic Development Kim Welsh and Director of Housing Jacky Morales-Ferrand, dated January 22, 2016, recommending adoption of a resolution. (3) Letter from SV@Home, dated February 1, 2016, regarding the Sale of Surplus Property.

Action: Deferred per Orders of the Day.

4.2 **Adopt a resolution:**

- (a) **Declaring approximately 9,972 square feet of City-owned vacant land along the corridor between Curtner Avenue, Custer Drive and Comstock Lane surplus to the needs of the City, which will be divided into seven separate unequal portions;**
- (b) **Approving the sale of seven portions of the Surplus Property to seven adjacent property owners for the amount of \$100 per portion; and**
- (c) **Authorizing the City Manager or his designee to execute the seven purchase and sale agreements, the deeds, and all other documents necessary to complete the seven transactions.**

**CEQA: Exempt, Guideline Section 15303, New Construction or Conversion of Small Structures, File No. PP15-019. Council District 9. (Economic Development)**

Documents Filed: Memorandum from Deputy City Manager/Director of Economic Development Kim Welsh, dated January 20, 2016, recommending adoption of a resolution.

Assistant Director of Economic Development, Nanci J. Klein offered clarification in response to questions from Council.

Action: Upon motion by Vice Mayor Rose Herrera, seconded by Councilmember Johnny Khamis and carried unanimously, Resolution No. 77657, entitled: "A Resolution of the Council of the City of San José (1) Declaring Approximately 9,972 Square Feet Of City-Owned Vacant Land Along The Corridor Between Curtner Avenue, Custer Drive And Comstock Lane is Surplus to the Needs of the City, Which will be Divided into Seven Separate Unequal Portions; (2) Approving the Sale of Seven Portions of the Surplus Property to Seven Adjacent Property Owners for the Amount of \$100 Per Portion, and (3) Authorizing the City Manager to Execute the Seven Purchase and Sale Agreements, the Deeds, and Other Documents Necessary to Complete the Seven Transactions", was adopted. (11-0.)

- 4.3 **As recommended by the Community and Economic Development Committee on January 25, 2016, accept the report and approve Staff pursuing a Compensation Agreement with the Successor Agency to the Redevelopment Agency (SARA) Board to preserve two-thirds of the South Hall site for future Convention Center expansion and the remaining one-third for a high quality hotel development, and finalize the required agreement with the SARA taxing agencies. CEQA: Not a Project, File No. PP10-069(a), Reports that involve no approvals of any City Actions. (Economic Development)**

**[Community and Economic Development Committee referral 1/25/16 – Item (d)(5)]  
[Rules Committee referral from 1/27/16]**

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated January 29, 2016, providing recommendations from the Community and Economic Development Committee.

#### 4.3 (Cont'd.)

Deputy City Manager/Director of Economic Development Kim Walesh and Downtown Manager, Office of Economic Development, Teri Killgore offered a presentation on the Conventions Center Expansion Site at South Hall.

Public Comment: Offering support to the expansion were Karolyn Kirchgester and Michael Mulcahy, Team San José; and Sarah McDermott, Unite Here Local 119.

Action: Upon motion by Councilmember Raul Peralez, seconded by Vice Mayor Rose Herrera and carried unanimously, the report to approve Staff pursuing a Compensation Agreement with the Successor Agency to the Redevelopment Agency (SARA) Board to preserve two-thirds of the South Hall site for future Convention Center expansion and the remaining one-third for a high quality hotel development, and finalize the required agreement with the SARA taxing agencies, were approved. (11-0.)

### NEIGHBORHOOD SERVICES

#### 5.1 As recommended by the Rules and Open Government Committee on January 20, 2016:

- (a) Direct the Directors of Parks, Recreation and Neighborhood Services and Public Works to prioritize the feasibility study for a Vietnamese Community Center within the Kelley Park Master Plan for Spring of 2016 and conduct the first community outreach meeting on February 25, 2016; and
- (b) If the community feedback is supportive, designate a site within Kelley Park for the Vietnamese Community Center.

**CEQA: Statutorily Exempt, File No. PP10-066(d), Guidelines Section 15265, Feasibility and Planning Studies that involve no physical changes to the environment. (T. Nguyen)**

**[Rules Committee referral from 1/20/16 – Item G(1)(4)]**

Documents Filed: (1) Memorandum from City Clerk Toni J. Taber, dated January 21, 2016, transmitting the recommendations of the Rules and Open Government Committee. (2) Supplemental memorandum from Director of Parks, Recreation and Neighborhood Services, Angel Rios, dated January 29, 2016, providing additional information regarding the work plan.

Public Comment: Offering support and indicating that this project is in keeping with the Kelley Park Master Plan, were Chien Dang, Aurelia Sanchez and Mike Mai. Do Trinh Ngoe concurred and suggested that a Vietnamese and American soldier monument be erected.

Director of Parks, Recreation and Neighborhood Services, Angel Rios responded to questions regarding the community outreach process.

Councilmember Pierluigi Oliverio said he cannot support the staff recommendations, as he feels the City should not create community centers that are based on ethnicity to the exclusion of others.

**5.1 (Cont'd.)**

Action: Upon motion by Councilmember Tam Nguyen, seconded by Councilmember Manh Nguyen and carried, the Directors of Parks, Recreation and Neighborhood Services and Public Works was directed to prioritize the feasibility study for a Vietnamese Community Center within the Kelley Park Master Plan for Spring of 2016 and conduct the first community outreach meeting on February 25, 2016; and if the community feedback is supportive, designate a site within Kelley Park for the Vietnamese Community Center. (10-1. Noes: Oliverio.)

**OPEN FORUM**

- (1) Blair Beekman offered observations on national security in light of Super Bowl activities.
- (2) Steve Marzolf asserted that he and many retirees from the private sector receive a fixed pension.
- (3) Nancy Chung offered criticism of the non-profit Law Foundation of Silicon Valley and expressed a desire to speak with members of the City Council regarding her concerns.

**ADJOURNMENT**

The Council of the City of San José was adjourned at 4:15 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,



Toni J. Taber, CMC  
City Clerk

rmk/2-2-16MIN