



MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, APRIL 26, 2016

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

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

Absent: Councilmembers - Carrasco, Herrera, Peralez. (Excused)

STRATEGIC SUPPORT SERVICES

3.2 Accept Labor Negotiations Update.

There was no report.

CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:40 p.m. to a Closed Session in Room W133; (A) to confer with Legal Counsel pursuant to subsection (c) of Section 54956.9 of the Government Code with respect to anticipated litigation in one (1) matter; (B) to confer with Legal Counsel pursuant to Government Code Section 54956.9(d)(1) with respect to existing litigation; (1) San Francisco Baykeeper v. City, et al.; Names of Partie(s) Involved: San Francisco Baykeeper; City of San José, San José Department of Transportation; San José Public Works Department; San José Environmental Services Department; United States District Court, Northern District of California; Case No.: 15-CV-00642-BLF; Amount of Money or Other Relief Sought: Declaratory Relief, Injunctive Relief; (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

CLOSED SESSION (Cont'd.)

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) ABMEI v. City, et al.; Names of Partie(s) Involved: Association of Building, Mechanical and Electrical Inspectors, City of San José; Court: State of CA Public Employment Relations Board; Case No.: UPC SF CE 1358 M; Amount of Money or Other Relief Sought: Damages According to Proof; (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; H040979; H042074; 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 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

CLOSED SESSION (Cont'd.)

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; (C) 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.; 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 10:45 p.m. and reconvened to Regular Session at 1:30 p.m. in the Council Chambers.

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

Absent: Councilmembers - Carrasco, Herrera, Peralez. (Excused)

INVOCATION

Sierramont Middle School Advanced Orchestra performed Mozart's Lucile Overture for the Invocation.

PLEDGE OF ALLEGIANCE

Mayor Sam Liccardo led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Councilmember Johnny Khamis, seconded by Councilmember Tam Nguyen and carried unanimously, the Orders of the Day and the Amended Agenda were approved, with Item 6.1 deferred for one week. (8-0-3. Absent: Carrasco, Herrera, Peralez.)

CEREMONIAL ITEMS

- 1.1 Presentation of a proclamation recognizing the second annual San José Green Commute Challenge, a City staff competition taking place on the second week of May and the third week of June and July that promotes transit, cycling, walking, and carpooling as environmentally-friendly transportation options and also helps set an example for the community to follow. (Transportation/Kalra)**

Mayor Liccardo and Councilmember Ash Kalra presented a proclamation to staff members from the Department of Transportation, recognizing their exemplary efforts in organizing the Green Commute Challenge.

- 1.2 Presentation of a proclamation for "Arbor Day" to demonstrate support for environmental protection and sustainability through the planting of trees in the City of San José. (Transportation/Jones)**

Mayor Liccardo and Councilmember Chappie Jones presented a proclamation to Our City Forest and the Department of Transportation in support of their efforts in environmental protection and sustainability.

CONSENT CALENDAR

Upon motion by Councilmember Ash Kalra, seconded by Councilmember Chappie Jones and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (8-0-3. Absent: Carrasco, Herrera, Peralez.)

2.1 Approval of minutes:

None provided.

2.2 Final adoption of ordinances.

- (a) **ORD. NO. 29719** – An ordinance of the City of San José amending Section 1.08.040 of Chapter 1.08 of Title 1 related to enforcement of the San José Municipal Code or other city ordinance, adding a new Chapter 10.17 to Title 10, and repealing Section 17.12.940 of Chapter 17.12 of Title 17 of the San José Municipal Code to prohibit the sale, use, discharge and storage of fireworks, to establish liability for persons who allow or permit the sale, use or discharge of any fireworks on certain properties and to provide for liability for response costs related to fireworks. CEQA: Not a Project, File No. PP10-068(c), Municipal Code or Policy Change that involves no changes to the physical environment.

Documents Filed: Proof of Publication of the Title of Ordinance No. 29719 executed on April 25, 2016, submitted by the City Clerk.

Action: Ordinance No. 29719 was adopted. (8-0-3. Absent: Carrasco, Herrera, Peralez.)

2.3 Approval of Council Committee Minutes.

- (a) **Rules and Open Government Committee Minutes of March 30, 2016.**
(Mayor)
- (b) **Transportation & Environment Committee Minutes of April 4, 2016.**
(Kalra)

CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities.

Documents Filed: (1) Rules and Open Government Committee Minutes dated March 30, 2016. (2) Transportation & Environment Committee Minutes dated April 4, 2016. (8-0-3. Absent: Carrasco, Herrera, Peralez.)

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 Adopt the following 2015-2016 Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund:

- (1) Establish a City-wide Expense appropriation to the Office of Economic Development for Diridon Station Area Plan in the amount of \$388,500; and**
 - (2) Increase the estimate for Revenue from State of California by \$388,500.**
- CEQA: Not a Project, File No. PP10-066(a), Agreements and Contracts. (Economic Development/City Manager)**

Documents Filed: Joint memorandum from Deputy City Manager/Director of Economic Development Kim Walesh and Senior Deputy City Manager/Budget Director Jennifer Maguire, dated April 12, 2016, recommending adoption of an appropriation ordinance and funding sources resolution amendments.

Action: Ordinance No. 29724, entitled: "An Ordinance of the City of San José Amending Ordinance No. 29589 to Appropriate Monies in the General Fund for the Diridon Station Area Plan; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption"; and Resolution No. 77718, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 77423 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2015-2016 to Adjust Revenues in the General Fund", were adopted. (8-0-3. Absent: Carrasco, Herrera, Peralez.)

- 2.8 (a) Review of the emergency action for the replacement of the Pond A18 northern gate structure at the San José-Santa Clara Regional Wastewater Facility;**
- (b) Adopt a resolution terminating the emergency declaration for the replacement of the Pond A18's northern gate structure.**

CEQA: Exempt, Section 15302 Replacement or Reconstruction, File No. PP15-015. (Environmental Services/Public Works)

Documents Filed: (1) Memorandum from the Chair to the Treatment Plant Advisory Committee, Sam Liccardo, dated April 15, 2016, providing recommendations regarding the Water Pollution Control Plant. (2) City Council Action Request from Assistant City Manager Dave Sykes, dated April 26, 2016, recommending review of the emergency action plan and adoption of a resolution.

Action: Review of the emergency action for the replacement of the Pond A18 northern gate structure at the San José-Santa Clara Regional Wastewater Facility was accepted, and Resolution No. 77719, entitled: "A Resolution of the Council of the City of San José Terminating the Emergency Declaration for the Replacement of the Pond A18's Northern Gate Structure", was adopted. (8-0-3. Absent: Carrasco, Herrera, Peralez.)

- 2.9 Adopt a resolution setting a Public Hearing on Tuesday, June 14, 2016 at 7:00 p.m. for the approval of the report from the Director of Finance for the cost of sidewalk repairs. CEQA: Not a Project, File No. PP10-068, General Procedure & Policy Making that involve no physical changes to the environment. (Finance)**

Documents Filed: Memorandum from Director of Finance Julia H. Cooper, dated April 4, 2016, recommending adoption of a resolution.

Action: Resolution No. 77720, entitled: "A Resolution of the Council of the City of San José Setting a Public Hearing for the Approval of a Report of the Director of Finance on the Cost of Unpaid Sidewalk Repairs for June 14, 2016", was adopted. (8-0-3. Absent: Carrasco, Herrera, Peralez.)

- 2.10 Accept payments and authorize travel for Mayor's staff, Khanh Russo, Director of Strategic Partnerships, to Aspen, Colorado from June 29, 2016 to July 2, 2016 to attend the Aspen Ideas Festival event. Source of Funds: Mayor/Council Travel Fund and The Aspen Institute. CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities. (Mayor)**

Documents Filed: Memorandum from Mayor Sam Liccardo, dated March 28, 2016, requesting authorization to travel and excused absences due to authorized City business.

Action: The travel and excused absences were approved. (8-0-3. Absent: Carrasco, Herrera, Peralez.)

- 2.11 Adopt a resolution adopting the Mitigated Negative Declaration prepared for the Alviso Storm Pump Station project (File No. PP15-062) as having been completed in compliance with CEQA reflecting the City's independent judgment and analysis, and the adoption of a Mitigation Monitoring and Reporting Program. CEQA: Alviso Storm Pump Station Mitigated Negative Declaration, File No. PP15-062. Council District 4. (Planning, Building and Code Enforcement)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement, Harry Freitas, dated April 4, 2016, recommending adoption of a resolution.

Action: Resolution No. 77721, entitled: "A Resolution of the Council of the City of San José Adopting the Alviso Storm Pump Project Mitigated Negative Declaration, for Which an Initial Study was Prepared, All in Accordance with the California Environmental Quality Act, as Amended, and Adopting a Related Mitigation Monitoring and Reporting Program", was adopted. (8-0-3. Absent: Carrasco, Herrera, Peralez.)

2.12 Adopt a resolution:

- (a) **Approving the report of the Director of Public Works setting forth the facts justifying the summary vacation of two Emergency Access Easements (“EAE’s”) within Lots 35, 36, 77, and 78 of Tract 10160 adjacent to Shore Drive and Mercado Way;**
- (b) **Summarily vacating the two EAE’s which have been relocated; and**
- (c) **Directing the City Clerk to record a certified copy of the resolution of vacation with the Office of the Recorder, County of Santa Clara.**

CEQA: San José Flea Market General Plan Amendment & Planned Development Rezoning EIR (Resolution No. 73956), File No. GP06-04-01 and PDC03-108. Council District 4. (Public Works)

Documents Filed: Memorandum from Director of Public Works Barry Ng, dated April 4, 2016, recommending approval of a report, vacation of EAE’s and direction to the City Clerk to record certified copies with the County.

Action: Resolution No. 77722, entitled: “A Resolution of the Council of the City of San José Summarily Vacating Two Emergency Access Easements Adjacent to Shore Drive and Mercado Way at East Boundary of Tract 10160”, was adopted. (8-0-3. Absent: Carrasco, Herrera, Peralez.)

2.13 Accept the Willow Glen Community Benefit and Improvement District Financial Report for FY 2014-2015, which provides information to the public and the property owners in the District regarding the use of the assessments and the management and operations of the District. CEQA: Not a Project, PP10-069(a), Reports that involve no approval of any City Actions. Council District 6. (Public Works)

Documents Filed: City Council Action Request from Director of Public Works Barry Ng, dated April 5, 2016, recommending acceptance of the Willow Glen Community Benefit and Improvement District Financial Report for FY 2014-2015.

Action: The Willow Glen Community Benefit and Improvement District Financial Report for FY 2014-2015, which provides information to the public and the property owners in the District regarding the use of the assessments and the management and operations of the District, was accepted. (8-0-3. Absent: Carrasco, Herrera, Peralez.)

2.14 Adopt a resolution authorizing the City Manager or designee to negotiate and execute an Agreement with Circlepoint for an amount not to exceed \$733,000, to design, manage, and execute a community-based program to change travel behavior. CEQA: Exempt, Section 15322(a)(b) Educational or Training Program Involving No Physical Changes and Section 15306 Information Collection, File No. PP15-124. Council District 3. (Transportation)

Documents Filed: Memorandum from Director of Transportation Jim Ortbal, dated April 14, 2016, recommending adoption of a resolution.

Councilmember Johnny Khamis pulled Item 2.14 to present questions to staff.

2.14 (Cont'd.)

Director of Transportation Jim Ortbal responded to questions regarding the use of grant funds.

Action: Upon motion by Councilmember Johnny Khamis, seconded by Councilmember Pierluigi Oliverio and carried unanimously, Resolution No. 77723, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager or Designee to Negotiate and Execute an Agreement with Circlepoint to Design, Manage and Execute a Community-Based Program to Change Travel Behavior in an Amount not to Exceed \$733,000", was adopted. (8-0-3. Absent: Carrasco, Herrera, Peralez.)

2.15 Approve three Contract Change Orders (CCOs) for the 2015 Arterial Resurfacing Pavement Project that individually exceed the Director of Public Works' authority and have an approximate total cost of \$443,899.72 and authorize payment for the CCOs as follows:

- (a) Authorize payment of \$129,981.32 for the cost of supplying and use of recycled water in lieu of using potable water from fire hydrants.
- (b) Authorize payment of \$184,498.40 for the use of an alternative Green Pavement Enhancement material placed at all locations identified for bike lane conflict zones as referenced in the project striping plan.
- (c) Authorize payment of \$129,420.00 for asphalt concrete paving performed at adjacent side street areas where newly constructed ADA ramps were placed.

CEQA: Exempt, Section 15301(c) Existing Facilities, File No. PP11-035. (Transportation)

Documents Filed: Memorandum from Director of Transportation Jim Ortbal, dated April 14, 2016, recommending approval of three Contract Change Orders.

Action: The three Contract Change Orders (CCOs) for the 2015 Arterial Resurfacing Pavement Project that individually exceed the Director of Public Works' authority and have an approximate total cost of \$443,899.72 and authorize payment for the CCOs as follows: (a) Authorize payment of \$129,981.32 for the cost of supplying and use of recycled water in lieu of using potable water from fire hydrants; (b) Authorize payment of \$184,498.40 for the use of an alternative Green Pavement Enhancement material placed at all locations identified for bike lane conflict zones as referenced in the project striping plan; and (c) Authorize payment of \$129,420.00 for asphalt concrete paving performed at adjacent side street areas where newly constructed ADA ramps were placed, were approved. (8-0-3. Absent: Carrasco, Herrera, Peralez.)

- 2.16 **Accept the report on the Request for Proposal (“RFP”) for the purchase and implementation of a Design and Construction Management System for the Capital Improvement Program at the San José-Santa Clara Regional Wastewater Facility, and adopt a resolution authorizing the City Manager to:**
- (a) **Negotiate and execute an Agreement with Bentley Systems, Inc. (Exton, PA) for the purchase and implementation of a Design and Construction Management System, including software subscription, implementation, configuration, testing, training, and related professional services, taxes, maintenance and support for an initial five-year term commencing on or about May 1, 2016 and ending on or about July 31, 2021, with a maximum compensation not-to-exceed \$342,700 for the initial five-year term, subject to the appropriation of funds;**
 - (b) **Execute change orders to cover any additional requirements for a not-to-exceed contingency amount of \$100,000, subject to the appropriation of funds; and**
 - (c) **Execute one-year options to extend the term of the Agreement to provide ongoing software subscription, hosting, and technical support services after the initial five-year term, subject to the appropriation of funds.**

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

Note: Renumbered from Item 3.3

Documents Filed: Joint memorandum from Director of Finance Julia H. Cooper and Environmental Services Director Kerrie Romanow, dated April 7, 2016, recommending acceptance of a report, execution of change orders and one-year options to extend the terms of an agreement.

Action: Resolution No. 77724, entitled: “A Resolution of the Council of the City of San José Authorizing the City manager to (1) Negotiate and Execute an Agreement with Bentley Systems, Inc. for the Purchase and Implementation of a Design and Construction Management System for an Initial Five-Year Term Commencing on or About May 1, 2016 and Ending on or About July 31, 2021, with a Maximum Compensation Not-To-Exceed \$342,700 for the Initial Five-Year Term, Subject to the Appropriation of Funds; (2) Execute Change Orders to Cover Any Additional Requirements for a Not-To-Exceed Contingency Amount of \$100,000, Subject to the Appropriation of Funds; and (3) Execute One-Year Options to Extend the Term of the Agreement to Provide Ongoing Software Subscription, Hosting and Technical Support Services After the Initial Five-Year Term, Subject to the Appropriation of Funds”, was adopted. (8-0-3. Absent: Carrasco, Herrera, Peralez.)

- 2.17 **Approve travel by Shane Patrick Connolly, District 10 Chief of Staff, to Dublin, Ireland from April 19 to April 30, 2016 as part of the City of San José Dublin Sister City Delegation, and attendance at all meetings, events and ceremonial functions. Source of Funds: Shane Patrick Connolly’s personal funds. CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities. (Khamis)**

2.17 (Cont'd.)

Documents Filed: Memorandum from Councilmember Johnny Khamis, dated April 14, 2016, recommending authorization to travel by Shane Patrick Connolly.

Action: Travel by Shane Patrick Connolly, District 10 Chief of Staff, to Dublin, Ireland from April 19 to April 30, 2016 as part of the City of San José Dublin Sister City Delegation, and attendance at all meetings, events and ceremonial functions, was approved. (8-0-3. Absent: Carrasco, Herrera, Peralez.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

3.1 Report of the City Manager, Norberto Dueñas (Verbal Report).

City Manager Norberto Dueñas promoted tours of the San José Wastewater Plant, applauding the vital role the Plant plays in protecting the City's water supply, and he announced an open house hosted by the Planning, Building and Code Enforcement Department on May 25, 2016 to familiarize residents with the permit and inspection process.

3.3 Accept the report on the Request for Proposal ("RFP") for the purchase and implementation of a Design and Construction Management System for the Capital Improvement Program at the San José-Santa Clara Regional Wastewater Facility, and adopt a resolution authorizing the City Manager to:

- (a) Negotiate and execute an Agreement with Bentley Systems, Inc. (Exton, PA) for the purchase and implementation of a Design and Construction Management System, including software subscription, implementation, configuration, testing, training, and related professional services, taxes, maintenance and support for an initial five-year term commencing on or about May 1, 2016 and ending on or about July 31, 2021, with a maximum compensation not-to-exceed \$342,700 for the initial five-year term, subject to the appropriation of funds;**
- (b) Execute change orders to cover any additional requirements for a not-to-exceed contingency amount of \$100,000, subject to the appropriation of funds; and**
- (c) Execute one-year options to extend the term of the Agreement to provide ongoing software subscription, hosting, and technical support services after the initial five-year term, subject to the appropriation of funds.**

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

Note: Renumbered to Item 2.16, see Item 2.16 for Action.

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.1 Adopt a resolution updating the current procedure for the disposition of surplus City owned property to reflect the general terms of Assembly Bill 2135 which was passed by the Legislature and became effective January 1, 2015. 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: Joint memorandum from Deputy City Manager/Director of Economic Development Kim Welsh and Director of Housing Jacky Morales-Ferrand, dated April 15, 2016, recommending adoption of a resolution.

Public Comments: Stressing the importance of affordable housing were Julie Quinn, Housing Trust Silicon Valley; Charisse Lebron, Robert Aguirre and Grace Hilliard. Pilar Lorenzana-Campo, SV@Home, and Mathew Reed urged taking another look at the policy, explaining that the number of exemptions weakens its viability.

Assistant City Attorney Ed Moran and staff responded to questions.

Councilmember Chappie Jones opined there must be a more proactive process in identifying properties available for affordable housing.

Action: Upon motion by Councilmember Chappie Jones, seconded by Councilmember Manh Nguyen and carried, Resolution No. 77725, entitled: "A Resolution of the Council of the City of San José Updating the Current Procedure for the Disposition of Surplus City-Owned Property to Reflect the General Terms of Assembly Bill 2135", was adopted. (7-1-3. Noes: Oliverio. Absent: Carrasco, Herrera, Peralez.)

- 4.2 Adopt a resolution:**

- (a) **Declaring approximately 21,000 square feet of City-owned land surplus to the needs of the City;**
- (b) **Approving the use of a purchase and sale agreement between the City and SKW San José LLC for the sale of the property in the amount of \$150,000; and**
- (c) **Authorizing the City Manager or his designee to negotiate and execute the purchase and sale agreement based upon the terms outlined in this memorandum, the deed and all other documents necessary to complete the transaction.**

CEQA: Exempt, Section 15061(b)(3), No potential for causing a significant effect on the environment and Section 15301(c), Existing Facilities, File No. PP16-032. Council District 6. (Economic Development)

Documents Filed: Memorandum from Deputy City Manager/Director of Economic Development Kim Welsh, dated April 15, 2016, recommending adoption of a resolution.

Staff provided an overview and responded to questions.

4.2 (Cont'd.)

Public Comment: Offering support to the sale of the property and addressing the need for affordable housing, were: Grace Hilliard, Sid Wiener, Joseph Martinez, Jim Angelopoulos, Derek Dal Ponte, Robert Aguirre and Kathleen Hodgson.

Action: Upon motion by Councilmember Manh Nguyen, seconded by Councilmember Johnny Khamis and carried unanimously, Resolution No. 77726, entitled: "A Resolution of the Council of the City of San José Declaring Approximately 21,000 Square Feet of City-Owned Land Near the Corner of Stevens Creek Boulevard and South Bascom Avenue (Business Circle Lot 2) Surplus to the Needs of the City; Approving the Use of a Purchase and Sale Agreement with SKW San José LLC in the Amount of \$150,000 for the Sale of the Property; and Authorizing the City Manager or His Designee to Negotiate and Execute the Purchase and Sale Agreement, the Deed and All Other Documents Necessary to Complete the Transaction", was adopted. (8-0-3. Absent: Carrasco, Herrera, Peralez.)

NEIGHBORHOOD SERVICES

- 5.1 As recommended by the Public Safety, Finance and Strategic Support Committee on March 17, 2016, accept the 2014-2015 Annual Report on the Anti-Graffiti and Anti-Litter Programs. CEQA: Not a Project, File No. PP10-069(a), Annual Reports that involve no approvals of any City Actions. (Parks, Recreation and Neighborhood Services)
(Deferred from 4/5/16 – Item 5.2)
[Public Safety, Finance and Strategic Support referral 3/17/16 – Item (d)(7)]**

Action: Deferred To May 3, 2016 per Rules Committee.

- 5.2 As recommended by the Neighborhood Services and Education Committee on April 14, 2016, accept the staff's report on the five-year modified Special Use Permit for San José Family Camp at Yosemite, set to expire on December 31, 2016, and adopt a resolution authorizing the City Manager to negotiate and execute a 20-year Special Use Permit/Land Lease Agreement with the United States Forest Service. CEQA: Not a Project, File No. PP10-069(a), Staff Reports that involve no approvals of any City Actions. (Parks, Recreation and Neighborhood Services)**

Documents Filed: Memorandum from City Clerk Toni Taber, dated April 14, 2016, transmitting the recommendations of the Neighborhood Services and Education Committee.

Director of Parks, Recreation and Neighborhood Services, Angel Rios, provided an introduction. Deputy Director of Parks, Recreation and Neighborhood Services Steve Hammack, and Camp Manager of the Family Camp at Yosemite, Jenna Sorrels, provided a presentation on Family Camp.

5.2 (Cont'd.)

Public Comment: Providing support to San José Family Camp were: Seth Connolly, Tuolumne River Trust; Briana and Tom Bonsack, Friends of San José Family Camp; and Dusty Vaughn, U.S. Forest Service.

Action: Upon motion by Councilmember Ash Kalra, seconded by Councilmember Johnny Khamis and carried unanimously, the staff's report on the five-year modified Special Use Permit for San José Family Camp at Yosemite, set to expire on December 31, 2016, was approved, and Resolution No. 77727, entitled: "A Resolution of the Council of the City of San José Authorizing the City manager to Negotiate and Execute a 20-Year Special Use Permit/Land Lease Agreement with the United States Forest Service for San José Family Camp at Yosemite", was adopted. (8-0-3. Absent: Carrasco, Herrera, Peralez.)

TRANSPORTATION AND AVIATION SERVICES

- 6.1 (a) **Report on bids and take appropriate action based on the evaluation of bids for the 8225 – San José Airport Federal Inspection Service Improvements (FIS) project, and approval of a 15 percent contingency.**
- (b) **Adopt a resolution authorizing the Director of Public Works to issue any single and/or multiple change orders up to the amount of the contingency.**

CEQA: Determination of Consistency with the City of San José International Airport Master Plan Final Environmental Impact Report, as Supplemented, and Addenda thereto (Resolution Nos. 67380 and 71451), File Nos. PP15-053, PP15-122, and PP16-005. (Public Works/Airport)

Action: Deferred to May 3, 2016 per Orders of the Day.

- 6.2 **Conduct a Public Hearing and adopt a resolution vacating a public easement for landscape purposes and a portion of a street easement restricting vehicular access on 1385 Prelude Drive. CEQA: BART Extension to Berryessa Final and Supplemental EIR (Resolution No. 76126). Council District 4. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Barry Ng, dated April 4, 2016, recommending conducting a public hearing and adoption of a resolution.

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

Action: Upon motion by Councilmember Pierluigi Oliverio, seconded by Councilmember Tam Nguyen and carried unanimously, Resolution No. 77728, entitled: "A Resolution of the Council of the City of San José Vacating a Landscape Easement and Portion of Street Easement Restricting Vehicular Access on Private Property Located on 1385 Prelude Drive", was adopted. (8-0-3. Absent: Carrasco, Herrera, Peralez.)

ENVIRONMENTAL & UTILITY SERVICES

- 7.1 **As recommended by the Transportation and Environment Committee on March 7, 2016, accept the status report on the City's Illegal Dumping Mitigation Effort. CEQA: Not a Project, File No. PP10-069(a), Staff Reports that involve no approvals of any City Actions. (Planning, Building and Code Enforcement / Environmental Services)**

Action: Deferred to May 3, 2016 per Rules Committee.

- 7.2 **As recommended by the Transportation and Environment Committee on April 4, 2016, accept the Audit Report on the efficiency and effectiveness of South Bay Water Recycling. CEQA: Not a Project, File No. PP10-069(a), Staff Reports that involve no approvals of any City Actions. (City Auditor)**

Documents Filed: (1) Memorandum from the Chair to the Treatment Plant Advisory Committee, Sam Liccardo, dated April 15, 2016, providing recommendations regarding the Water Pollution Control Plant. (2) Memorandum from City Clerk Toni Taber, dated April 14, 2016, transmitting the recommendations of the Transportation and Environment Committee.

City Auditor Sharon Erickson and Environmental Services Director Kerrie Romanow provided an informational report.

Action: Upon motion by Councilmember Johnny Khamis, seconded by Councilmember Manh Nguyen, and carried unanimously, the Audit Report on the efficiency and effectiveness of South Bay Water Recycling, was accepted. (8-0-3. Absent: Carrasco, Herrera, Peralez.)

- 7.3 (a) **Approve the design-build contract with CH2M HILL Engineers, Inc. (CH2M HILL) for the Cogeneration Facility at the San José-Santa Clara Regional Wastewater Facility in an amount not to exceed \$5,655,000 for the performance of preliminary design services under the contract.**
- (b) **Approve a design contingency in the amount of \$565,000 for City-approved changes to the scope of preliminary design services.**
- (c) **Adopt a resolution authorizing the City Manager or his designee to:**
- (1) **Negotiate and execute a definitive contract amendment with CH2M HILL to: (1) set a base guaranteed maximum price or lump sum amount in accordance with the contract, in an amount not-to-exceed \$82,884,000 for the design-build work to be performed following the preliminary design services; (2) set a schedule for completion and acceptance of the design-build work required by the contract; (3) define the technical specifications and guaranteed performance capabilities for the Cogeneration Facility; (4) establish any additional professional services required by the City for transitioning the Cogeneration Facility to City control after acceptance, and the fee to**

7.3 (Cont'd.)

- (c) (1) be charged therefore; (5) establish the insurance requirements for the design-build work; and (6) subject to review and approval by the City Attorney's Office, amend other terms and conditions of the contract that are necessary to accomplish the foregoing; and
- (2) Negotiate and execute separate agreements and/or amendments to the contract to allow CH2M HILL to proceed with discrete portions of the design-build work prior to the City's execution of the definitive contract amendment in an amount not to exceed \$30,000,000, which amounts will be subject to the base guaranteed maximum price.
- (d) Approve a construction contingency in the amount of \$8,288,000 to pay for adjustments to the base guaranteed maximum price or if applicable, the lump sum amount, in accordance with the contract and to pay for the transition services after acceptance of the Cogeneration Facility.
- (e) Adopt a resolution authorizing the City Manager or his designee to:
 - (1) Execute change orders in excess of \$100,000 up to the amount of the design contingency for changes to the scope of the preliminary design services, and up to the amount of the construction contingency for adjustments to the base guaranteed maximum price or lump sum amount during the performance of the design-build work; and
 - (2) Negotiate and execute the necessary regulatory permits and public utility agreements in excess of \$100,000 for the permitting, design, construction, and inspection of utility connections associated with the new Cogeneration Facility, in a total amount not to exceed \$600,000.

CEQA: ~~San José/Santa Clara Regional Water Treatment Facility Emergency Generators Project~~ *San José/Santa Clara Regional Wastewater Facility Cogenerator Project Mitigated Negative Declaration, File No. PP14-005 and Addendum Mitigated Negative Declaration, File No. PP16-009. (Environmental Services / Public Works)*

Note: Correction per Staff

Documents Filed: (1) Memorandum from the Chair to the Treatment Plant Advisory Committee, Sam Liccardo, dated April 15, 2016, providing recommendations regarding the Water Pollution Control Plant. (2) Joint memorandum from Director of Public Works Barry Ng, Director of Public Works Barry Ng and Environmental Services Director Kerrie Romanow, dated April 7, 2016, recommending approval of a contract. (3) Supplemental memorandum from Director of Public Works Barry Ng and Environmental Services Director Kerrie Romanow, dated April 25, 2016, providing additional information regarding the California Environmental Quality Act analysis.

Department of Public Works Principal Engineer, John Cannon, provided a presentation and noted a correction to the agenda language referencing the CEQA analysis as indicated above.

7.3 (Cont'd.)

City Manager Norberto Dueñas requested clarification on the authority that is being delegated on the change orders, and Director of Public Works Barry Ng responded.

Action: Upon motion by Councilmember Ash Kalra, seconded by Councilmember Tam Nguyen and carried unanimously, Resolution No. 77729, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager or His Designee to: (1) Execute Change Orders in Excess of \$100,000 for the Cogeneration Facility Project, Up to the Contingency Amount of \$565,000 for Changes to the Scope of the Preliminary Design Services and Up to \$8,288,000 for Adjustments to the Base Guaranteed Maximum Price or Lump Sum Amount for the Design-Build Work; Subject to the Appropriation of Funds; and (2) Negotiate and Execute the Necessary Regulatory Permits and Public Utility Agreements in Excess of \$100,000 for the Permitting, Design, Construction and Inspection of Utility Connections Associated with the New Cogeneration Facility, in an Aggregate Amount not to Exceed \$600,000 Subject to the Appropriation of Funds"; and Resolution No. 77730, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager or His Designee to (1) Negotiate and Execute a Definitive Contract Amendment to the Design-Build Contract with CH2M Hill Engineers, Inc. to Proceed with Discreet Portions of the Design-Build Work Prior to the City's Execution of the Definitive Contract Amendment, Subject to the Appropriation of Funds", were adopted. (8-0-3. Absent: Carrasco, Herrera, Peralez.)

- 7.4 (a) **Conduct a Public Hearing on the application of Bay Area Dumpsters for Commercial Solid Waste and Recyclables Collection Franchise for the non-exclusive collection and transport of residential clean-out material and construction and demolition debris;**
- (b) **Adopt an ordinance granting the franchise; and**
- (c) **Approve the Commercial Solid Waste and Recyclables Collection Franchise Agreement for the non-exclusive collection and transport of residential clean-out material and construction and demolition debris for a term from November 1, 2015 to June 30, 2017 with the option of three one-year extensions.**

CEQA: Exempt, Guidelines Section 15308. Actions by Regulatory Agencies for the Protection of the Environment. File No. PP08-228. (Environmental Services)

Note: Renoticed from October 6, 2015 – Item 7.1

Documents Filed: (1) Memorandum from Environmental Services Director Kerrie Romanow, dated September 14, 2015, recommending conducting a public hearing, adoption of an ordinance and approval of an agreement. (2) Proof of Publication of Notice of Public Hearing executed on April 15, 2016, submitted by the City Clerk.

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

7.4 (Cont'd.)

Action: Upon motion from Councilmember Johnny Khamis, seconded by Councilmember Manh Nguyen and carried unanimously, Ordinance No. 29633, entitled: "An Ordinance of the City of San José Granting a Commercial Solid Waste and Recyclables Collection Franchise to Bay Area Dumpsters", was passed for publication. (8-0-3. Absent: Carrasco, Herrera, Peralez.)

PUBLIC SAFETY SERVICES

- 8.1 As recommended by the Public Safety, Finance and Strategic Support Committee on March 17, 2016, accept the report on the Fire Department Organizational Review conducted by Citygate Associates, LLC, including an evaluation of Fire Department service delivery, response time performance, technological improvements, and operational efficiencies. CEQA: Not a Project, File No. PP10-069(a), Staff Reports that involve no approval of any City Actions. (Fire)

Action: Deferred to May 24, 2016 per Administration.

- 8.2 (a) Approve the proposed 2015-2017 Spending Plan for the Supplemental Law Enforcement Services (SLES) Grant for \$1,588,855, and authorize the Chief of Police to amend the Spending Plan in conformity to the budget priorities set out in the staff memorandum in the event State SLES Grant payments are less or more than expected.
- (b) Approve the revised 2014-2016 Spending Plan for the Supplemental Law Enforcement Services Grant reallocating funds from Project #1 to Project #2 to purchase Tasers.
- (c) Adopt the following Appropriation Ordinance and Funding Sources Resolution Amendments in the Supplemental Law Enforcement Services Fund:
- (1) Increase the Earned Revenue estimate by \$786,183; and
 - (2) Establish an appropriation to the Police Department for the SLES Grant 2015-2017 for \$786,183.

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

Action: Deferred to May 3, 2016 per Rules Committee.

REDEVELOPMENT – SUCCESSOR AGENCY

- 9.1 (a) **City Council adopt a resolution:**
- (1) **Authorizing the Director of Housing, on behalf of the City, to negotiate and execute: (i) a Purchase and Sale Agreement to acquire that certain real property located at 5647 Gallup and 1171 Mesa in San José from the Successor Agency to the Redevelopment Agency (SARA) of the City of San José for \$1,170,000 from the Community Development Block Grant (CDBG) Fund for a future affordable housing development; and (ii) such other documents as necessary to close escrow to acquire the properties;**
 - (2) **Authorizing the Director of Housing to issue a Request for Proposal (RFP) for development of a future affordable housing community located at 5647 Gallup and 1171 Mesa, if the City is successful in acquiring the properties.**
- (b) **Successor Agency adopt a resolution authorizing the Managing Director to negotiate and execute (i) a Purchase and Sale Agreement to sell that certain real property located at 5647 Gallup and 1171 Mesa in San José to the City of San José for a purchase price of \$1,170,000; and (ii) such other documents as necessary to close escrow to acquire the properties.**
Successor Agency Resolution No. 7048 adopted.
- (c) **City Council adopt the following Appropriation Ordinance amendments in the Community Development Block Grant Fund:**
- (1) **Increase the appropriation to the Housing Department for Property Acquisition in the amount of \$510,000; and**
 - (2) **Decrease the Land Acquisition Reserve appropriation in the amount of \$510,000.**

CEQA: Exempt, Section 15061(b)(3) No potential for causing a significant effect on the environment and Section 15332 In-fill Development Projects, File No. PP16-007. Council District 10. (City Manager)

Documents Filed: (1) Memorandum from Assistant City Manager Dave Sykes, dated March 25, 2016, recommending adoption of resolutions and appropriation ordinance amendments. (2) Letter from President and CEO, Silicon Valley Leadership Group, Carl Guardino, dated April 25, 2016, expressing support for actions related to the purchase and sale agreement.

Director of Housing Jacky Morales-Ferrand and Senior Executive Analyst, Housing Department, Patrick Heisinger, offered a presentation on the potential acquisition.

Action: Upon motion by Councilmember Johnny Khamis, seconded by Councilmember Manh Nguyen and carried unanimously, Resolution No. 77731, entitled: “A Resolution of the Council of the City of San José Authorizing the Potential Acquisition of 5647 Gallup and 1171 Mesa for a Future Affordable Housing Development”; and Ordinance No. 29726, entitled: “An Ordinance of the City of San José Amending Ordinance No. 29589 to Appropriate Monies in the Community Development Block Grant Fund for Property Acquisition; and Providing that this Ordinance Shall Become Effective Immediately

9.1 (Cont'd.)

Upon Adoption”; and Successor Agency to the Redevelopment Agency Resolution No. 7048, entitled “A Resolution of the Successor Agency to the Redevelopment Agency of the City of San José Authorizing the Managing Director to Negotiate and Execute (I) a Purchase and Sale Agreement to Sell that Certain Real Property Located at 5647 Gallup Drive and 1171 Mesa Drive in San José to the City of San José for a Purchase Price of \$1,170,000; and (II) Such Other Documents as Necessary to Close Escrow to Acquire the Properties”, were adopted. (8-0-3. Absent: Carrasco, Herrera, Peralez.)

OPEN FORUM

Mary Shao and Martin Hsn, residents of the Almaden area, urged suspension of further garbage delivery to the Guadalupe landfill, citing a detrimental impact to their community.

ADJOURNMENT

The Council of the City of San José was adjourned at 5:36 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,



Toni J. Taber, CMC
City Clerk

rmk/4-26-16MIN