



## MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, MARCH 22, 2016

The Council of the City of San José convened in Regular Session at 9:37 a.m. in the Council Chambers at City Hall.

Present: Councilmembers - Herrera, Kalra, Khamis, M. Nguyen, T. Nguyen, Oliverio, Peralez.

Absent: Councilmembers - Carrasco, Jones, Rocha; Liccardo. (Excused)

### STRATEGIC SUPPORT SERVICES

#### 3.2 Accept Labor Negotiations Update.

There was no report.

### CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:38 a.m. to a Closed Session in Room W133; (A) to confer with Legal Counsel pursuant to Government Code Section 54956.9(d)(1) with respect to 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) 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; (2) 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; (3) 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; (4) OE#3 v. City of San

## CLOSED SESSION (Cont'd.)

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; (5) 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; (6) 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. (7) 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. (8) 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. (9) 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. (10) 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; (11) 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; (12) 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; (C) to Confer with Labor

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

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 11:40 p.m. and reconvened to Regular Session at 1:31 p.m. in the Council Chambers.

Present: Councilmembers - Herrera, Kalra, Khamis, M. Nguyen, T. Nguyen, Oliverio, Peralez, Rocha.

Absent: Councilmembers - Carrasco, Jones; Liccardo. (Excused)

## INVOCATION

Grupo Folklórico Yolotli Guerrerense performed a traditional Mexican dance for the Invocation.

## PLEDGE OF ALLEGIANCE

Vice Mayor Rose Herrera led the Pledge of Allegiance.

## ORDERS OF THE DAY

Upon motion by Councilmember Tam Nguyen, seconded by Councilmember Donald Rocha and carried unanimously, the Orders of the Day and the Amended Agenda were approved. Vice Mayor Rose Herrera acknowledged the tragedy that occurred in Brussels yesterday due to a terrorist attack, offered a moment of silence and asked that the City's flag be flown at half-mast in honor of the victims of this senseless tragedy.

## CEREMONIAL ITEMS

**1.1 Presentation of a commendation to the founding members of Van Tho Lac Viet Pen Club for preserving the Vietnamese culture and heritage through their literary publications. (T. Nguyen)**

Vice Mayor Rose Herrera and Councilmember Tam Nguyen and Councilmember Manh Nguyen commended the founding members of Van Tho Lac Viet Pen Club for preserving the Vietnamese culture and heritage through their literary publications.

**1.2 Presentation of a commendation to Megan Colvard, Director of PATH San José for her dedication to helping and serving homeless and low income individuals throughout our communities. (Peralez)**

Vice Mayor Rose Herrera and Councilmember Raul Peralez commended Megan Colvard, Director of PATH San José for her dedication to helping and serving homeless and low income individuals throughout our communities.

## CONSENT CALENDAR

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

### 2.1 Approval of Minutes.

None provided.

### 2.2 Final adoption of ordinances.

- (a) **ORD. NO. 29707** – An ordinance of the City of San José amending parts 2,4,5, and 6 of Chapter 6.64 of Title 6 of the San José Municipal Code to revise certain City taxicab regulations, including vehicle inspection requirements, web or computer based app dispatching services, driver background check procedures and other operational requirements for taxicabs. 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. 29707 executed on March 18, 2016, submitted by the City Clerk.

Action: Ordinance No. 29707 was adopted. (8-0-3. Absent: Carrasco, Jones, Liccardo.)

- (b) **ORD. NO. 29708** – An ordinance of the City of San José amending part 7 of Chapter 25.08 of Title 25 of the San José Municipal Code to restore provisions for a maximum of three hundred (300) airport access permits to be issued to ground transportation providers of taxicab services authorizing pick up of on demand passengers at the Norman Y. Mineta San José International Airport. 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. 29708 executed on March 18, 2016, submitted by the City Clerk.

Action: Ordinance No. 29708 was adopted. (8-0-3. Absent: Carrasco, Jones, Liccardo.)

**2.3 Approval of Council Committee Minutes.**

**(a) Rules and Open Government Committee Minutes of February 24, 2016.  
(Mayor)**

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

Documents Filed: Rules and Open Government Committee Minutes dated February 24, 2016.

Action: The Council Committee Minutes were approved. (8-0-3. Absent: Carrasco, Jones, Liccardo.)

**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 a resolution authorizing the City Attorney to negotiate and execute a First Amendment to Agreement for Services between the City of San José and Hanson Bridgett LLP to provide legal and investigative services as the Evaluator to the San José Ethics Commission, increasing compensation by \$50,000 for a total amount of compensation not to exceed a total amount for FY 2015-2016 to \$110,000 without increasing the total compensation under the agreement. CEQA: Not a Project; File No. PP10-066(e), Services that involve no physical changes to the environment. (City Attorney)**

Action: Deferred to March 29, 2016 per the Rules and Open Government Committee.

**2.8 Approve travel by the City Auditor to Austin, Texas on May 23-24, 2016, as part of the Association of Local Government Auditors 2016 Annual Conference. Source of Funds: City Auditor non-personal appropriation and professional development funds. CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities. (City Auditor) Approved.**

Documents Filed: Memorandum from City Auditor Sharon Erickson, dated March 4, 2016, requesting authorization to travel.

Action: The travel request was approved. (8-0-3. Absent: Carrasco, Jones, Liccardo.)

- 2.9 (a) **Adopt the following 2015-2016 Appropriation Ordinance and Funding Sources Resolution Amendments in the San José-Santa Clara Treatment Plant Capital Fund:**
- (1) **Decrease the estimate for Earned Revenue by \$4,219,000;**
  - (2) **Decrease the estimate for Transfers by \$980,000;**
  - (3) **Decrease the Transfer to the Clean Water Financing Authority Debt Service 2015-2016 by \$1,556,000; and**
  - (4) **Decrease the Unrestricted Ending Fund Balance by \$3,643,000.**
- (b) **Adopt the following 2015-2016 Appropriation Ordinance Amendments in the Sewer Service and Use Charge Fund:**
- (1) **Decrease the Transfer to the San José/Santa Clara Treatment Plant Capital Fund on or before June 30 by \$980,000; and**
  - (2) **Increase the Unrestricted Ending Fund Balance by \$980,000.**

**CEQA: Not a Project, File No. PP10-069(a), City Organizational and Administrative Activities. (Environmental Services/City Manager)**

Documents Filed: (1) Memorandum from Environmental Services Director Kerrie Romanow and Senior Deputy City Manager/Budget Director Jennifer Maguire, dated March 3, 2016, recommending adoption of appropriation ordinance and funding sources resolution amendments. (2) Letter from Sam Liccardo, Vice-Chair to the Treatment Plant Advisory Committee (TPAC), dated March 15, 2016, providing results of the TPAC review.

Public Comment: David Wall offered reflections on the Treatment Plant.

Action: Upon motion by Councilmember Ash Kalra, seconded by Councilmember Manh Nguyen and carried unanimously, Ordinance No. 29709, entitled: "An Ordinance of the City of San José Amending Ordinance No. 29589 to Appropriate Monies in the San José – Santa Clara Treatment Plant Capital Fund; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption"; Resolution No. 77688, 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 San José – Santa Clara Treatment Plant Capital Fund; and Ordinance No. 29710, entitled: "An Ordinance of the City of San José Amending Ordinance No. 29589 to Appropriate Monies in the Sewer Service and Use Charge Fund; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", were adopted. (8-0-3. Absent: Carrasco, Jones, Liccardo.)

- 2.10 (a) **Approve travel by Councilmember Peralez to Dublin, Ireland on April 20 to April 28, 2016 as part of the Sister City Delegation. Source of Funds: Council District 3 Funds.**
- (b) **Request for an excused absence for Councilmember Peralez from the Public Safety, Finance, & Strategic Support Committee Meeting on April 21, 2016 and the Regular City Council Meeting on April 26, 2016, due to Authorized City Business: City of San José's Dublin Sister City Delegation biennial visit to Dublin, Ireland. CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities. (Peralez)**

2.10 (Cont'd.)

Documents Filed: Memorandum from Councilmember Raul Peralez, dated March 7, 2016, requesting authorization to travel.

Action: The travel request was approved. (8-0-3. Absent: Carrasco, Jones, Liccardo.)

- 2.11 (a) **Approve the Colombian Flag Raising and Reception scheduled on Friday, August 12, 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. (Carrasco)**

Documents Filed: Memorandum from City Clerk Toni J. Taber, dated March 10, 2016, transmitting the recommendations of the Rules and Open Government Committee.

Action: The Colombian Flag Raising and Reception 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. (8-0-3. Absent: Carrasco, Jones, Liccardo.)

- 2.12 (a) **Approve the Great American Litter Pick-up scheduled on April 23, 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: Exempt, File No. PP13-056, Activities associated with citywide litter clean-up activities. (City Clerk)**

Documents Filed: Memorandum from City Clerk Toni J. Taber, dated March 10, 2016, transmitting the recommendations of the Rules and Open Government Committee.

Action: The Great American Litter Pick-Up 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. (8-0-3. Absent: Carrasco, Jones, Liccardo.)

- 2.13 (a) **Retroactively approve the Majestic Way Community Dumpster Day scheduled on February 27, 2016 and the Laneview Community Dumpster Day scheduled on March 19, 2016 as City Council Sponsored Special Events and approve the expenditure of funds;**
- (b) **Approve the Berryessa Art and Wine Festival scheduled on May 7, 2016, and the Alviso Car Show scheduled on September 3, 2016 as City Council Sponsored Special Events and approve the expenditure of funds; and**
- (c) **Approve and accept donations from various individuals, businesses or community groups to support the events.**

**2.13 (Cont'd.)**

**CEQA: Not a Project, File No. PP15-077, Temporary Special Events, File No. PP13-056, Activities associated with citywide litter clean-up activities. (M. Nguyen)**

Documents Filed: Memorandum from City Clerk Toni J. Taber, dated March 10, 2016, transmitting the recommendations of the Rules and Open Government Committee.

Action: The Majestic Way Community Dumpster Day as a City Council Sponsored Special Event was retroactively approved; and the Berryessa Art and Wine Festival and Alviso Car Show were approved, and expenditure of funds and authorization to accept donations from various individuals, businesses or community groups to support these events, were approved. (8-0-3. Absent: Carrasco, Jones, Liccardo.)

- 2.14 (a) Approve travel by Vice Mayor Herrera to Dublin, Ireland on April 20 to April 30, 2016 as part of the Sister City Delegation. Source of Funds: Mayor/Council Travel Fund (April 29 and April 30 Vice Mayor Herrera will be on personal travel time and using personal funds.)**
- (b) Request for an excused absence for Vice Mayor Herrera from the Rules and Open Government Committee on April 20 and April 27, 2016; and the Regular City Council Meeting on April 26, 2016, due to Authorized City Business: City of San José Dublin Sister City Delegation biennial visit to Dublin, Ireland.**

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

Documents Filed: Memorandum from Vice Mayor Rose Herrera, dated March 9, 2016, requesting authorization to travel and excused absence from Council and Rules sessions.

Action: The travel request and authorized absences were approved. (8-0-3. Absent: Carrasco, Jones, Liccardo.)

- 2.15 (a) Approve the Irish Flag Raising scheduled on Tuesday, March 22, 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. (Mayor)**

Documents Filed: Memorandum from City Clerk Toni J. Taber, dated March 18, 2016, transmitting the recommendations of the Rules and Open Government Committee.

Action: The Irish Flag Raising and Reception 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. (8-0-3. Absent: Carrasco, Jones, Liccardo.)

- 2.16 (a) **Retroactively approve the Second Annual Paws on the Avenue scheduled on Sunday, March 20, 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. (Oliverio)**

Documents Filed: Memorandum from City Clerk Toni J. Taber, dated March 18, 2016, transmitting the recommendations of the Rules and Open Government Committee.

Action: The Second Annual Paws on the Avenue as a City Council Sponsored Special Event was retroactively approved, and expenditure of funds and authorization to accept donations from various individuals, businesses or community groups to support this event was approved. (8-0-3. Absent: Carrasco, Jones, Liccardo.)

- 2.17 **As recommended by the Rules and Open Government Committee on March 16, 2016, pursuant to the City's streamlined bill process for responding quickly to legislative proposals, support AB 2502 (Mullin & Chau) – Land Use: Zoning Regulations. CEQA: Not a Project, File No. PP10-069(d), Legislative Positions. (Housing)**

Documents Filed: Memorandum from City Clerk Toni J. Taber, dated March 18, 2016, transmitting the recommendations of the Rules and Open Government Committee.

Action: A position of support for AB 2502 (Mullin & Chau) – Land Use: Zoning Regulations, was adopted. (8-0-3. Absent: Carrasco, Jones, Liccardo.)

- 2.18 **As recommended by the Rules and Open Government Committee on March 16, 2016, pursuant to the City's streamlined bill process for responding quickly to legislative proposals, support AB 2817 (Chiu) – Low Income Housing Tax Credit. CEQA: Not a Project, File No. PP10-069(d), Legislative Positions. (Housing)**

Documents Filed: (1) Memorandum from City Clerk Toni J. Taber, dated March 18, 2016, transmitting the recommendations of the Rules and Open Government Committee. (2) Supplemental memorandum from Director of Housing Jacky Morales-Ferrand, dated March 21, 2016, providing changes made to the Bill and continued support.

Action: A position of support AB 2817 (Chiu) – Low Income Housing Tax Credit, was adopted. (8-0-3. Absent: Carrasco, Jones, Liccardo.)

- 2.19 As recommended by the Rules and Open Government Committee on March 16, 2016, pursuant to the City's streamlined bill process for responding quickly to legislative proposals, support SB 873 (Beall) – Sale of State Low Income Housing Tax Credits. CEQA: Not a Project, File No. PP10-069(d), Legislative Positions. (Housing)**

Documents Filed: Memorandum from City Clerk Toni J. Taber, dated March 18, 2016, transmitting the recommendations of the Rules and Open Government Committee.

Action: A position of support for SB 873 (Beall) – Sale of State Low Income Housing Tax Credits, was adopted. (8-0-3. Absent: Carrasco, Jones, Liccardo.)

### **END OF CONSENT CALENDAR**

### **STRATEGIC SUPPORT SERVICES**

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

No report provided by the City Manager.

Councilmember Pierluigi Oliverio requested an update on the issue of waiving the Conditional Use Permit for use of St. Francis Church in Willow Glen as a women's shelter, noting that it will expire in April. Staff was directed to place this item on the Rules and Open Government Committee agenda for April 5, 2016.

- 3.3 Accept the Status of Open Audit recommendations as of December 2015. CEQA: Not a Project, File No. PP10-069(a), Staff Reports, Assessments, and Annual Reports that involve no approvals of any City Actions. (City Auditor)**

Documents Filed: Open Audit recommendations as of December 2015, dated March 11, 2016, provided by City Auditor Sharon Erickson.

Public Comment: David Wall commented on outstanding audits.

City Auditor Sharon Erickson provided the Auditors' recommendations.

Action: Upon motion by Councilmember Pierluigi Oliverio, seconded by Councilmember Raul Peralez and carried unanimously, the Status of Open Audit recommendations were accepted. (8-0-3. Absent: Carrasco, Jones, Liccardo.)

## REDEVELOPMENT – SUCCESSOR AGENCY

### 9.1 Adopt a resolution by the Board of the Successor Agency to the Redevelopment Agency:

- (a) Approving, in substantially final form and subject to review by the State Department of Finance (“DOF”), a Second Supplement to Fiscal Agent Agreement between the Successor Agency and Wells Fargo Bank, National Association, as Fiscal Agent (the “Fiscal Agent”) relating to the Redevelopment Agency of the City of San José Merged Area Redevelopment Project Taxable Subordinate Housing Set-Aside Tax Allocation Variable Rate Bonds, Series 2010C (the “2010C Bonds”);
- (b) Approving, in substantially final form and subject to review by DOF, a Second Amended and Restated Continuing Covenant Agreement with Wells Fargo Bank, National Association (“Wells Fargo” or “Bank Bond Holder”), as initial bond holder of the 2010C Bonds;
- (c) Authorizing the Executive Officer and Chief Financial Officer of the Successor Agency, or their designee, to take any actions and execute any and all documents necessary to complete this transaction.

**CEQA: Not Project, File No. PP16-066, Agreements and Contracts.**

Documents Filed: Memorandum from Director of Finance Julia H. Cooper, dated March 10, 2016, recommending adoption of a resolution.

Action: Upon motion by Councilmember Tam Nguyen, seconded by Councilmember Raul Peralez and carried unanimously, Successor Agency Resolution No. 7047, entitled A Resolution of the Successor Agency to the Redevelopment Agency of the City of San José Approving in Substantially Final Form Subject to Review by the State Department of Finance a Second Amended and Restated Continuing Covenant Agreement and Second Supplement to Fiscal Agent Agreement, and Approving and Authorizing Other Related Actions in Order to Allow for the Bank Bond Holder to Continue to Hold the Redevelopment Agency of the City of San José Merged Area Redevelopment Project Revenue Bonds, Series 2010C”, was adopted. (8-0-3. Absent: Carrasco, Jones, Liccardo.)

## RECESS/RECONVENE

The City Council recessed at 2:17 p.m. from the afternoon Council Session and reconvened at 7:03 p.m. in the Council Chambers, City Hall.

Present: Councilmembers - Herrera, Kalra, Khamis, M. Nguyen, T. Nguyen, Oliverio, Peralez, Rocha.

Absent: Councilmembers - Carrasco, Jones; Liccardo. (Excused)

City Clerk Toni J. Taber, CMC read the requests for continuance of the applications. Upon motion by Vice Mayor Rose Herrera, seconded by Councilmember Pierluigi Oliverio and carried unanimously, the below noted continuances and actions were taken as indicated. (8-0-3. Absent: Carrasco, Jones, Liccardo.)

## CEREMONIAL ITEMS

### 1.3 Presentation of a Commendation to Payne Elementary Students for creating a Safety Program for students in school crosswalks. (Jones)

Vice Mayor Rose Herrera presented a Commendation to Payne Elementary Students for creating a Safety Program for students in school crosswalks.

## PUBLIC HEARINGS ON CONSENT CALENDAR

- 11.1 (a) **Street Renaming of Portion of Via Del Oro to Raleigh Road.**  
Adopt a resolution to rename an approximately 1,300 foot long portion of Via Del Oro from the intersection of Via Del Oro and Raleigh Road to the western terminus of Via Del Oro, a public street, to Raleigh Road. CEQA: Exempt, Section 15301 Existing Facilities. (Planning, Building and Code Enforcement)  
**ST15-005 – Council District 2**

Documents Filed: (1) City Council Action Request from Director of Planning, Building and Code Enforcement, Harry Freitas, dated March 22, 2016, recommending adoption of a resolution. (2) Proof of Publication of Notice of Public Hearing executed on March 4, 2016, submitted by the City Clerk.

Action: Upon motion by Councilmember Johnny Khamis, seconded by Councilmember Tam Nguyen and carried unanimously, Resolution No. 77689, entitled: “A Resolution of the Council of the City of San José Renaming an Approximately 1,300 Foot Long Portion of Via Del Oro to Raleigh Road from the Intersection of Via Del Oro and Raleigh Road to the Western Terminus of Via Del Oro”, was adopted. (8-0-3. Absent: Carrasco, Jones, Liccardo.)

**END OF CONSENT CALENDAR**

- 11.2 (a) **Adopt a resolution approving the 6082 Almaden Expressway Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program.**
- (b) **Consideration of an ordinance rezoning the real property located at 6082 Almaden Expressway from the A Agricultural Zoning District to the A(PD) Planned Development Zoning District to allow the construction of up to eight single-family detached residences on the east side of Almaden Expressway approximately 1,320 feet south of Winfield Boulevard on a 1.81 gross acre site (Benjamin Mazzone Trustee & Et Al, Owner).**

**CEQA: Mazzone Property Planned Development Rezoning Revised Initial Study/Mitigated Negative Declaration to be considered for adoption by Council. Planning Commission recommends approval (5-0-1-1, Yob absent; Abelite abstained). (Planning, Building and Code Enforcement) PDC13-028 – District 10**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC13-028, dated February 1, 2016. (2) Memorandum from Planning Commission Secretary Harry Freitas, dated March 1, 2016, transmitting the Planning Commission recommendation. (3) Proof of Publication of Notice of Public Hearing executed on January 22, 2016, submitted by the City Clerk.

Director of Planning, Building and Code Enforcement, Harry Freitas provided an introduction.

Vice Mayor Rose Herrera opened the public hearing.

Public Comment: (1) Applicant Mark Lazarini urged approval of the recommendation for rezoning. (2) Nancy Wilson, offered criticism of the project, citing environmental, aesthetic and safety issues.

Vice Mayor Rose Herrera closed the public hearing.

Mark Lazarini responded to questions from the Council, and discussed proposals upon completion of construction as indicated below in “Action”.

Action: Upon motion by Councilmember Johnny Khamis, seconded by Councilmember Donald Rocha and carried unanimously, Resolution No. 77690, entitled: “A Resolution of the Council of the City of San José Adopting the Mazzone Rezoning 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, and Ordinance No. 29711, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property of Approximately 43.0 Gross Acres Situated on the East Side of Almaden Expressway, 1320 Feet South of Winfield Boulevard (6082 Almaden Expressway), from the A Agricultural Zoning District to the A(PD) Planned Development Zoning District”, was passed for publication, with direction to staff that street signs restricting parking be removed once construction is completed to allow ample street parking for visitors. (7-0-4. Absent: Carrasco, Jones, Rocha; Liccardo.)

- 11.3 (a) Consider the Addendum to the Legacy Terrace Development Planned Development Rezoning and Prezoning Final EIR for the Residence Inn and Fairfield Inn and Suites America Center Court Development Project and adopt a related Mitigated Monitoring and Reporting Program.
- (b) Consideration of an ordinance rezoning the real property located east of the northerly terminus of America Center Court from the A(PD) Planned Development Zoning District to the A(PD) Planned Development Zoning District to allow the construction of a four-story, 261 room hotel (Residence Inn by Marriott & Fairfield Inn and Suites by Marriott) and associated parking on a 6.7 gross acre site. (Silicon Valley Club LLC, Owner).

**CEQA: Addendum to the Legacy Terrace Development Planned Development Rezoning and Prezoning Final EIR (Resolution No. 69392). Planning Commission recommends approval (4-1-1-1, Ballard opposed; Yob absent; Yesney abstained). (Planning, Building and Code Enforcement)**

**PDC15-016 – Council District 4**

Documents Filed: (1) Joint memorandum from Mayor Sam Liccardo, Vice Mayor Rose Herrera and Councilmember Manh Nguyen and Councilmember Johnny Khamis, dated March 18, 2016, recommending approval of the staff and Planning Commission recommendations. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC15-016, dated February 1, 2016. (3) Memorandum from Planning Commission Secretary Harry Freitas, dated February 29, 2016, transmitting the Planning Commission recommendation. (4) Supplemental memorandum from Director of Planning, Building and Code Enforcement, Harry Freitas, dated March 21, 2016, summarizing results of the toxic air contaminants (TAC) Assessment. (5) Proof of Publication of Notice of Public Hearing executed on January 22, 2016, submitted by the City Clerk. (6) Letter from San Francisco Baykeeper, Citizens Committee to Complete the Refuge, Santa Clara Valley Audubon Society, Sierra Club and Committee for Green Foothills, dated March 18, 2016. (7) Forty-one emails dated March 17-19, 2016, raising concerns regarding this project. (8) Letter from Shani Kleinhaus, Santa Clara Valley Audubon Society, dated March 21, 2016, offering concerns regarding impacts of the project. (9) Letter from Christopher Barr, San Francisco Bay National Wildlife Refuge Complex, dated March 17, 2016, offering comments on the Legacy Terrace Development. (10) Memorandum from Ginger Bolen, H.T. Harvey & Associates, dated March 21, 2016, providing its evaluation on potential effects of this proposal.

Director of Planning, Building and Code Enforcement, Harry Freitas provided an introduction.

Vice Mayor Rose Herrera opened the public hearing.

Public Comment: Randy Johnson, representing the applicant, addressed the Council and urged approval. Expressing support to the project were Lonnie Gross, Dr. Bob Gross Ph.D., and Krishna Jhaveri. Citing environmental concerns and a newer more relevant EIR were Shani Kleinhaus, Eileen McLaughlin, Ralph Schardt, Philip Higgins, James Eggers, Patricia Delaney, David McIntyre, Pragma Venu and Ada Marquez.

### 11.3 (Cont'd.)

Vice Mayor Rose Herrera closed the public hearing.

Director of Planning, Building and Code Enforcement, Harry Freitas provided an overview, introduced the letter from Ecological Consultants, H.T. Harvey & Associates, dated March 21, 2016, providing its evaluation on potential effects of this proposal, and read an EIR addendum into the record reflecting changes in the physical and regulatory environment since certification.

Motion: Councilmember Manh Nguyen moved approval of the staffs' recommendations including the memorandum he coauthored with Mayor Sam Liccardo, Vice Mayor Rose Herrera and Councilmember Johnny Khamis, dated March 18, 2016, including direction that the developers contribute \$50,000 toward wetland restoration, addressing flood control and sea-level rise. Councilmember Johnny Khamis seconded the motion.

Action: On a call for the question, the motion carried unanimously, and the Addendum to the Legacy Terrace Development Planned Development Rezoning and Prezoning Final EIR for the Residence Inn and Fairfield Inn and Suites America Center Court Development Project was approved, the related Mitigated Monitoring and Reporting Program was adopted, and Ordinance No. 29712, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property East of the Northerly Terminus of America Center Court, from the A(PD) Planned Development Zoning District to the A(PD) Planned Development Planned Development District", was passed for publication, including the joint memorandum from Mayor Sam Liccardo, Vice Mayor Rose Herrera, Councilmember Manh Nguyen and Councilmember Johnny Khamis, dated March 18, 2016, approving the Staff and Planning Commission recommendations with direction that the developers contribute \$50,000 toward wetland restoration, addressing flood control and sea-level rise. (7-0-4. Absent: Carrasco, Jones; Liccardo.)

- 11.4 (a) **Adopt a resolution approving the Canyon Creek Plaza Retail/Commercial Building Initial Study/Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program.**
- (b) **Consideration of an ordinance rezoning the real property located at the south side of Silver Creek Valley Road, approximately 320 feet southeast of Beaumont Canyon Drive (5601-5667 Silver Creek Valley Road), from the A(PD) Planned Development Zoning District to the CG(PD) Planned Development Zoning District to allow the construction of 8,413 sq ft office and retail commercial building within an existing commercial center complex on a 8.33 gross acre site (Canyon Creek Plaza, LP, Owner).**

**CEQA: Canyon Creek Plaza Retail/Commercial Building Initial Study/Mitigated Negative Declaration to be considered for adoption by Council. Planning Commission recommends approval (5-0-2; Yesney and Abelite abstained). (Planning, Building and Code Enforcement)**

**PDC15-022 – Council District 8**

#### 11.4 (Cont'd.)

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC15-022, dated February 2, 2016. (2) Memorandum from Planning Commission Secretary Harry Freitas, dated February 29, 2016, transmitting the Planning Commission recommendation. (3) Proof of Publication of Notice of Public Hearing executed on January 29, 2016, submitted by the City Clerk.

Vice Mayor Rose Herrera opened the public hearing.

Public Comment: Erik Schoennauer, representing the applicant, requested support to the project.

Vice Mayor Rose Herrera closed the public hearing.

Action: Upon motion by Vice Mayor Rose Herrera, seconded by Councilmember Johnny Khamis and carried unanimously, Resolution No. 77691, entitled: "A Resolution of the Council of the City of San José Adopting the Canyon Creek Plaza Retail/Commercial Building 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; and Ordinance No. 29713, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property of Approximately 8.33 Gross Acre Site Situated on the South Side of Silver Creek Valley Road, Approximately 320 Feet Southeast of Beaumont Canyon Drive (5601-5667 Silver Creek Valley Road), from the A(PD) Planned Development Zoning District to the CG(PD) Planned Development Zoning District", was passed for publication. (8-0-3. Absent: Carrasco, Jones, Liccardo.)

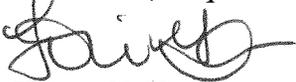
#### OPEN FORUM

Dry Creek Road residents, Richard and Karen Loftus, complained that a neighboring construction project is violating ordinance and design guidelines by building an oversized 3-story residence next door to them, and the Planning Commission is neglecting its obligation to protect the integrity of their neighborhood.

#### ADJOURNMENT

The Council of the City of San José was adjourned at 9:16 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,



Toni J. Taber, CMC  
City Clerk

rmk/3-22-16MIN