



MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, AUGUST 23, 2016

The Council of the City of San José convened in Regular Session at 9:34 a.m. in the Council Chamber at City Hall.

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

Absent: Council Members - All Present.

STRATEGIC SUPPORT SERVICES

3.2 Accept Labor Negotiations Update.

There was no report.

CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:44 a.m. to a Closed Session in Room W133 (A) to confer with Legal Counsel pursuant to Government Code 54956.9 subsection (c) pertaining to initiation of 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) In re: Claim of O'Connor. Amount: Administrative Appeal. (2) City of San José v. City of Santa Clara. Court: Superior Court of California, County of Santa Clara; Case No: 16CV298317; Amount of Money or Other Relief Sought: Damages According to Proof. (3) Haug, et al v. Taber, et al. Names of Parties Involved: Steve Haug, Mark Hinkle, Toni Taber, City of San José, Shannon Bushey, Santa Clara County Registrar of Voters, City Council of the City of San José; Court: Superior Court of California, County of Santa Clara; Case No: 16CV298602; Amount of Money or Other Relief Sought: Damages According to Proof. (4) IAFF Local 230 v. City of San José; Names of Parties Involved: International Association of Firefighters Local 230, City of San José; Court: State of California Public Employment Relations Board; Case No: SF-CE-969-M. Amount of Money or Other Relief Sought: Damages According to Proof. (5) IFPTE Local 21 v. City of San José; Names of Parties Involved: International Federation of Professional and

CLOSED SESSION (Cont'd.)

Technical Engineers Local 21, City of San José; Court: State of California Public Employment Relations Board; Case No: SF-CE-996-M; Amount of Money or Other Relief Sought: Damages according to proof. (6) American Federation of State, County and Municipal Employees, et al. v. City; Names of Parties Involved: American Federation of State, County and Municipal Employees, City of San José; Court: State of California Public Employment Relations Board; Case No: SF-CE-924-M; Amount of Money or Other Relief Sought: Damages According to Proof. (7) OE#3 v. City of San José; Names of Parties Involved: Operating Engineers Local Union No. 3, City of San José; Court: State of California Public Employment Relations Board; Case No: SF-CE-900-M. (8) ABMEI v. City, et al. Names of Parties Involved: Association of Building, Mechanical and Electrical Inspectors, City of San José; Court: State of CA Public Employment Relations Board; Case No: UPC SF 1358 M; Amount of Money or Other Relief Sought: Damages according to proof. (9) 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 the State of California for County of Santa Clara, Sixth District Court of Appeal; Case No: 1-12-CV-233660, H040979, H042074; Amount of Money or Other Relief Sought: Declaratory Relief and Verified Petition for Writ of Mandate. (10) 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 the State of California for County of Santa Clara, Sixth District Court of Appeal; Case No: 1-12-CV-225928, H040979, H042074; Amount of Money or Other Relief Sought: Challenge to Measure B. (11) 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 the State of California for County of Santa Clara, Sixth District Court of Appeal; Case: 1-12-CV-226570, H040979, H042074; Amount of Money or Other Relief Sought: Challenge to Measure B. (12) Mukhar, et al. v. City of San José, et al; Names of Parties Involved: John Mukhar, Dale Dapp, James Atkins, William Buffington, Kirk Pennington, 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 the State of California for County of Santa Clara, Sixth District Court of Appeal; Case: 1-12-CV-226574, H040979, H042074; Amount of Money or Other Relief Sought: Challenge to Measure B. (13) 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 the State of California for County of Santa Clara, Sixth District Court of Appeal; Case: 1-12-CV-225928, H040979, H042074; Amount of Money or Other Relief Sought: Challenge to Measure B. (14) People of the State of California, et al. v. City of San José, et al. Names of Parties Involved: The

CLOSED SESSION (Cont'd.)

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 the State of California for the County of Santa Clara; Case No: 1-13-CV-245503; Amount of Money or Other Relief Sought: Verified Complaint in Quo Warranto. (15) Peter Constant, Steven Haug and Silicon Valley Taxpayers' Association v. Superior Court. Names of Parties Involved: Peter Constant, Steven Haug, Silicon Valley Taxpayers' Association, A California Non-Profit Corporation, Proposed Intervenors, Appellants and Petitioners, Superior Court of California, County of Santa Clara, Respondent, The People of the State of California ex rel, San José Police Officers' Association, Plaintiff, Respondent and Real Party in Interest, City of San José, City Council of San José, Defendants, Respondents and Real Parties in Interest; Court: Sixth District Court of Appeal; Case No: H043540; Amount of Money or Other Relief Sought: Petition for Writ of Mandate or in the alternative, supersedes or other appropriate relief. (16) San José Retired Employees Association, et al V. City of San José, et al. Names of Parties 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-2680085; 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: City Designee 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 Contract or 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 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

CLOSED SESSION (Cont'd.)

City of San José and San José Police Officers' Association (SJPOA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association. (SJPOA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing 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 11:35 a.m. and reconvened to Regular Session at 1:34 p.m. in the Council Chamber.

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

Absent: Council Members - All Present.

INVOCATION

Grupo Folklorica Alika del Nayar offered the Invocation. (District 7)

PLEDGE OF ALLEGIANCE

Mayor Sam Liccardo led the Pledge of Allegiance.

ORDERS OF THE DAY

Heard following the Ceremonial Items.

Upon motion by Vice Mayor Rose Herrera, seconded by Council Member Johnny Khamis and carried unanimously, the Orders of the Day and the Amended Agenda were approved, Item 4.1 was deferred to August 30, 2016; Item 4.3 was deferred to September 13, 2016; Item 4.4 was dropped and Item 6.1 was referred to the November 17, 2016 Public Safety, Finance and Strategic Support Committee Meeting per the approved memorandum from Mayor Sam Liccardo, dated August 19, 2016. Council to reconvene to Closed Session following the Meeting. (11-0.)

CEREMONIAL ITEMS

1.1 Presentation of a commendation to the Small Business Association for their dedication in assisting small businesses. (Khamis)

Mayor Sam Liccardo and Council Member Johnny Khamis recognized and commended the Small Business Association for their dedication and commitment. Mayor Sam Liccardo presented the plaque to Mark Quinn, Director, Small Business Association.

1.2 Presentation of a proclamation recognizing August 26, 2016 as Women's Equality Day in the City of San José. (Herrera)

Mayor Sam Liccardo and Vice Mayor Rose Herrera recognized August 26, 2016 as "Women's Equality Day" in the City of San José and honored Tanis Crosby, CEO YWCA Silicon Valley; Cindy Chavez, former San José Council Member and County Supervisor; Julianne Miller, former Mayor of Sunnyvale; Kim Walesh and Julie Edmonds-Mares, City of San José; Marilyn Librers, Council Member of Morgan Hill; Shirley Lewis, former Council Member of San José; Suzanne (Susie) Wilson, former Council Member of San José and County Supervisor; Ketzal Sanchez and Julie Ramirez, Office of Women's Policy; Tanya Bakhru, San José State University Women's Studies; Mary Collins, President, League of Women Voters; Mary Anne Haggerty, Vice President, League of Women Voters; Namrata Mohan, Evergreen Valley High School Social Studies and Jennifer Smith, Bay Area Sports Initiative.

1.3 Presentation of a commendation to Yolanda Cruz, dedicated Library employee and long-term president of the Municipal Employees' Federation, for her strong commitment to public service, her many accomplishments over her 30 years of service with the City of San José, and her leadership of the City's largest bargaining unit, Municipal Employees' Federation, AFSCME, Local 101. (Mayor/City Manager)

Mayor Sam Liccardo, Vice Mayor Rose Herrera, Council Member Magdalena Carrasco, Council Member Johnny Khamis, Council Member Donald Rocha, Council Member Chappie Jones, Council Member Ash Kalra, Council Member Raul Peralez and City Manager Norberto Dueñas recognized and commended Yolanda Cruz for her strong commitment to public service, her many accomplishments over her 30 years of service with the City of San José, and her leadership of the City's largest bargaining unit, Municipal Employees' Federation, AFSCME, Local 101.

CONSENT CALENDAR

Upon motion by Vice Mayor Rose Herrera, seconded by Council Member Tam Nguyen and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (10-0-1. Absent: Oliverio.)

2.1 Approval of Minutes.

There were none.

2.2 Final adoption of ordinances.

- (a) **ORD. NO. 29771** – An ordinance of the City of San José amending various sections of Chapter 2.08 of Title 2 of the San José Municipal Code to update and clarify provisions such as voting and appointment processes for various Boards and Commissions, Retirement Board and Youth Commission term limits, and deleting sections relating to eliminated commissions. CEQA: Not a Project, File No. PP10-068(b), General Procedure & Policy Making. (City Clerk)

Documents Filed: Proof of Publication of Ordinance No. 29771 executed on August 12, 2016 submitted by the City Clerk.

Action: Ordinance No. 29771 was adopted. (10-0-1. Absent: Oliverio.)

- (b) **ORD. NO. 29772** – An ordinance of the City of San José amending Section 2.08.1600 of Chapter 2.08 of Title 2, and Section 12.02.010 of Chapter 12.02, Sections 12.04.025, 12.04.080, and 12.04.100 of Chapter 12.04, Section 12.05.080 of Chapter 12.05, Section 12.06.920 of Chapter 12.06, and Section 12.21.430 of Chapter 12.21 of Title 12 of the San José Municipal Code renaming the Ethics Commission to Board of Fair Campaign and Political Practices to reflect the Commission’s duties and responsibilities as set forth in Section 12.04.070 of the San José Municipal Code. CEQA: Not a Project, File No. PP10-068(b), General Procedure & Policy Making. (City Clerk)

Documents Filed: Proof of Publication of Ordinance No. 29772 executed on August 12, 2016 submitted by the City Clerk.

Action: Ordinance No. 29772 was adopted. (10-0-1. Absent: Oliverio.) (First Reading: 10-1. Noes: M. Nguyen.)

- (c) **ORD. NO. 29781** – An ordinance of the City of San José rezoning certain real property of approximately 10.53 acres situated on the northerly side of Story Road, approximately 1,250 feet easterly of South White Road (14271 Story Road), from the A(PD) Planned Development Zoning District to the PQP Public/Quasi-Public Zoning District. CEQA: Determination of Consistency with the Envision San José 2040 General Plan Final Program Environmental Impact Report (Resolution No. 76041) and Supplemental EIR (Resolution No. 77617). (Planning, Building and Code Enforcement)
C16-026

Documents Filed: Proof of Publication of Ordinance No. 29781 executed on August 19, 2016 submitted by the City Clerk.

Action: Ordinance No. 29781 was adopted. (10-0-1. Absent: Oliverio.)

2.3 Approval of Council Committee Minutes.

(a) Rules and Open Government Committee Minutes of August 3, 2016. (Mayor) CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities.

Documents Filed: The Rules and Open Government Committee Minutes dated August 3, 2016.

Action: The Rules and Open Government Committee Minutes were approved. (10-0-1. Absent: Oliverio.)

2.4 Request for an excused absence for Council Member Jones from the City Council Meeting on September 20, 2016 and the Regular Meeting of the Rules and Open Government Committee meeting on September 21, 2016 due to authorized City business. CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities. (Jones)

Documents Filed: Memorandum from Council Member Chappie Jones, dated August 3, 2016, requesting an excused absence.

Action: Dropped.

2.5 City Council Travel Reports.

No Report.

2.6 Report from the Council Liaison to the Retirement Boards.

No Report.

2.7 Adopt a resolution:

- (a) Declaring approximately 5,926 square feet of vacant City-owned property adjacent to San Felipe Road, being a portion of Assessor's Parcel Number 660-07-024, surplus to the needs of the City.**
- (b) Approving the sale of the property to James Tri Nguyen, for the amount of \$8,889.**
- (c) Authorizing the City Manager or his designee to execute a purchase and sale agreement, the deed, and all other documents necessary to complete the transaction.**

CEQA: Exempt, File No. PP14-086. Council District 8. (Economic Development)

Documents Filed: Memorandum from Deputy City Manager/Director of Economic Development Kim Walesh, dated August 8, 2016, recommending adoption of a resolution.

2.7 (Cont'd.)

Action: Resolution No. 77912, entitled: "A Resolution of the Council of the City Of San Jose Declaring Approximately 5,926 Square Feet of Vacant City-Owned Property Adjacent to San Felipe Road, Being a Portion of Assessor's Parcel Number 660-07-024, Surplus to the Needs of the City; Approving the Sale of Property to James Tri Nguyen for the Amount Of \$8,889; and Authorizing the City Manager or His Designee to Execute a Purchase and Sale Agreement, the Deed, and All Other Documents Necessary To Complete the Transaction", was adopted. (10-0-1. Absent: Oliverio.)

2.8 Adopt a resolution to authorize the City Manager to:

- (a) Execute a Purchase Order with Oshkosh Corporation (Appleton, WI) for the purchase of two new crash rescue and firefighting vehicles for the Airport, in an amount not to exceed \$1,388,065, including inspection and training, plus applicable sales taxes.**
- (b) Approve a contingency of \$100,000 for any unforeseen changes or modifications that may be required during the manufacturing process and amend the purchase order to address these changes, as required.**

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

Documents Filed: City Council Action Request from Director of Finance Julia Cooper, dated August 8, 2016, recommending adoption of a resolution.

Action: Resolution No. 77913, entitled: "A Resolution of the Council of the City of San Jose Authorizing The City Manager To Execute A Purchase Order With Oshkosh Corporation For The Purchase Of Two New Crash Rescue And Firefighting Vehicles For The Airport, In An Amount Not To Exceed \$1,388,065, Including Inspection and Training, Plus Applicable Sales Taxes; And Approve A Contingency Of \$100,000 For Any Unforeseen Changes Or Modifications That May Be Required During The Manufacturing Process and Amend The Purchase Order To Address These Changes, As Required", was adopted. (10-0-1. Absent: Oliverio.)

2.9 Adopt a resolution to amend the City of San José Pay Plan effective August 23, 2016, to create the Director, City Manager's Office (1701) classification with a salary range of \$142,016.65 - \$221,973.36 annually. CEQA: Not a Project, File No. PP10-068(b), Municipal Code, Title 3. (Human Resources)

Documents Filed: Memorandum from Director of Human Resources Joseph Angelo, dated August 8, 2016, recommending adoption of a resolution.

Action: Resolution No. 77914, entitled: "A Resolution of the Council of the City of San José Amending the City of San José Pay Plan", was adopted. (10-0-1. Absent: Oliverio.)

2.10 Approve travel by Council Member Chappie Jones to Pittsburgh, Pennsylvania on September 21 – 23, 2016 for the San José Silicon Valley Chamber of Commerce Annual Study Mission. Source of Funds: Office Budget. CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities. (Jones)

2.10 (Cont'd.)

Documents Filed: Memorandum from Council Member Chappie Jones, dated August 17, 2016, requesting approval to travel.

Action: The travel request for Council Member Chappie Jones was approved. (10-0-1. Absent: Oliverio.)

2.11 Retroactively approve travel to Villanueva, Honduras for Mario Maciel, Division Manager for Parks, Recreation and Neighborhood Services, as the City Manager's designated representative for the Alianzas Municipales para la Prevencio de la Violencia – AMUPREV (Municipal Alliance for the Prevention of Violence) Program, August 2 through 5, 2016. CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities, Travel. (Parks, Recreation and Neighborhood Services)

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Angel Rios, Jr., dated August 5, 2016, recommending retroactive approval of travel.

Mayor Sam Liccardo opened the floor for public testimony.

Public Comments: Blair Beekman offered comments pertaining to travel to Honduras for Division Manager Mario Maciel.

Action: The travel for Division Manager Mario Maciel was retroactively approved. (10-0-1. Absent: Oliverio.)

- 2.12 (a) Adopt a resolution approving the San José – Santa Clara Regional Wastewater Facility Plant Instrument Air System Upgrade Project Initial Study/Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program (File No. PP15-114).**
- (b) Report on bids and award of construction contract for 7617- Plant Instrument Air System Upgrade Project to the sole bidder, Anderson Pacific Engineering Construction, Inc., in the amount of \$2,848,000, and approve a 15 percent construction contingency in the amount of \$427,200.**
- (c) Adopt a resolution authorizing the Director of Public Works to negotiate and execute one or more change orders in excess of \$100,000 for the duration of the Plant Instrument Air System Upgrade Project, not to exceed the total contingency amount approved for the Project.**

CEQA: San José - Santa Clara Regional Wastewater Facility Plant Instrument Air System Upgrade Project Mitigated Negative Declaration (MND), File No. PP15-114. (Environmental Services)

Item 2.12 was renumbered from Item 7.2.

2.12 (Cont'd.)

Documents Filed: (1) Memorandum from Director of Environmental Services Kerrie Romanow and Director of Public Works Barry Ng, dated August 2, 2016, recommending adoption of resolutions and approval of the report on bids and award of the contract to the low bidder with related contingency. (2) Letter from the Treatment Plant Advisory Committee, Sam Liccardo, Chair, dated August 12, 2016, expressing concurrence with the Staff recommendations.

Action: Resolution No. 77915, entitled: "A Resolution of the Council of the City of San José Adopting the Wastewater Plant Instrument Air System Upgrade 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" and Resolution No. 77916, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Public Works to Negotiate and Execute Any Single and/or Multiple Change Orders for the 7617 – Plant Instrument Air System Update Project Up to the Contingency Amount of \$427,200", was adopted and report on bids and award of construction contract for 7617- Plant Instrument Air System Upgrade Project to the sole bidder, Anderson Pacific Engineering Construction, Inc., in the amount of \$2,848,000, with related contingency, was approved. (10-0-1. Absent: Oliverio.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

- 3.3 Accept the report on the Request for Proposal for the purchase and implementation of a Service Request Management (SRM) / Customer Relationship Management (CRM) Software System, and adopt a resolution authorizing the City Manager to:**
- (a) Negotiate and execute Agreements with AST Corporation (Naperville, IL) and Oracle America, Inc. (Redwood City, CA) for the purchase and implementation of a SRM/CRM Software System, including software, implementation, configuration, hosting, testing, training, and related professional services, for an initial five-year term commencing on or about July 1, 2016 and ending on or about July 31, 2021, with maximum compensation amounts of not-to-exceed \$173,600 and \$380,706, respectively, subject to the appropriation of funds.**
 - (b) Execute change orders to cover any additional requirements during the initial five-year term including but not limited to additional mobile application development, and enhanced integration/automation, not-to-exceed \$200,000, subject to the appropriation of funds.**

- 3.3 (c) Execute up to five one-year options to extend the term of the Agreements after the initial five-year term through July 31, 2026 to provide ongoing software subscription, hosting, and technical support services, estimated at \$76,141 per year, subject to the appropriation of funds.

CEQA: Not a Project, File No. PP10-066, Agreements and Contracts. (Finance)
(Deferred from 6/28/16 – Item 3.4 and 8/9/16 – Item 3.4)

Action: Deferred to August 30, 2016 Per Administration.

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.1 Adopt a resolution approving an amendment to Resolution No. 61114 for the existing regulations for the operation and administration of the San José Rental Dispute Mediation and Arbitration Ordinance to add Chapter 9 which provides the procedural direction needed for the interim fair return hearing process implemented by the Interim Ordinance amending Chapter 17.23 of Title 17 of the San José Municipal Code (Apartment Rent Ordinance). CEQA: Exempt, Section 15061(b)(3), No potential for causing a significant effect on the environment, File No. PP16-051. (Housing)

Action: Deferred to August 30, 2016 per Orders of the Day.

- 4.2 (a) Approve an ordinance amending Sections 20.100.500, 20.100.630, 20.100.720, 20.100.820, 20.100.940, 20.100.1010, 20.100.1020, 20.100.1030, 20.100.1040, 20.100.1050, 20.100.1080, and 20.100.1090 of Chapter 20.100 and adding Sections 20.200.1052 and 20.200.1054 of Chapter 20.200 of Title 20 of the San José Municipal Code (Zoning Code) and repealing Section 23.02.465 of Chapter 23.02 of Title 23 of the San José Municipal Code (Sign Code) to:
- (1) Add provisions requiring findings of consistency with General Plan goals and policies, and other City Council-adopted policies including the new City Council Policy described under subsection (b) below.
 - (2) Add provisions requiring proposed single-family house development in conventional zoning districts that involves ground-disturbing activity within one hundred (100) feet of a riparian corridor to obtain approval of a Single-Family House Permit.
 - (3) Add a definition of “riparian”, and “riparian corridor” in the Zoning Code and delete the Sign Code Definition of “riparian corridor”.
 - (4) Correct inadvertent deletion of previously approved code amendments.
 - (5) Make other technical, formatting or non-substantive changes with the Zoning Code.
- (b) Adopt a resolution approving a new City Council Policy, entitled “Riparian Corridor Protection and Bird-Safe Design Policy”, to provide guidance for riparian corridor protection in furtherance of the goals, policies, and actions of the General Plan for: (1) protecting, preserving, or restoring riparian habitat; (2) minimizing urban runoff to creeks, rivers, and streams; (3) controlling erosion; and (4) encouraging bird-safe design within the area north of State Route 237, by:

- 4.2 (b) (1) **Clarifying standards for development and activities located up to three hundred (300) feet of the edge of a riparian corridor, including but not limited to limitations on activities, new structures, and impervious surfaces within riparian setbacks.**
- (2) **Providing bird-safe design standards for development located within the north of State Route 237 to reduce the potential for bird strikes for species associated with baylands or riparian habitats of lower Coyote Creek.**

Planning Commission recommends approval (5-0-2, Ballard and Pham absent). CEQA: Determination of Consistency with the Envision San José 2040 General Plan Final EIR and Supplemental EIR, File No. PP15-118. (Planning, Building and Code Enforcement) PP15-118 – Citywide (Deferred from 6/28/16 – Item 4.6 and 8/9/16 – Item 4.2)

Documents Filed: (1) Memorandum from Mayor Sam Liccardo, Vice Mayor Rose Herrera, Council Member Chappie Jones, Council Member Ash Kalra and Council Member Raul Peralez, dated August 19, 2016, recommending approval of the Planning Commission and the Staff recommendations with modifications as described in “Action”. (2) Memorandum from Planning Commission Secretary Harry Freitas, dated June 2, 2016, transmitting the recommendation of the Planning Commission and the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PP15-118 dated May 17, 2016. (3) Supplemental memorandum from Director of Planning, Building and Code Enforcement Harry Freitas, dated June 20, 2016, providing clarification of the boundaries of the area subject to voluntary bird-safe design measures. (4) Supplemental memorandum from Director of Planning, Building and Code Enforcement Harry Freitas, dated August 19, 2016, summarizing additional stakeholder outreach by Staff and public correspondence. (5) Staff presentation dated August 23, 2016 describing the Riparian Corridor Protection and Bird-Safe Design. (6) Proof of Publication of Notice of Public Hearing executed on May 6, 2016 submitted by the City Clerk. (7) Forty Five letters from members of the public, all dated August 23, 2016, expressing support, objection to Riparian Setbacks over 50 feet, suggestions and comments.

Director of Planning, Building and Code Enforcement Harry Freitas presented introductory comments. Supervising Planner, Ordinance and Policy Team Jenny Nusbaum provided the report.

Mayor Sam Liccardo opened the floor for public testimony.

Public Comments: Expressing support to the Planning/Staff recommendations were James Eggers, Charuta Kulkarni, Sierra Club; Shani Kleinhaus, Santa Clara Valley Audubon Society; Carolyn Straub, Alice Kaufman, Committee for Green Foothills; Pat Sausedo, NAIOP, Dennis Martin, BIA Bay Area; David Poeschel, Bill Baron, Brandenburg Properties; Eileen McLaughlin and Linda Ruthruff, California Plant Society.

Motion: Vice Mayor Rose Herrera moved approval of the memorandum she cosigned with Mayor Sam Liccardo, Council Member Chappie Jones, Council Member Ash Kalra and Council Member Raul Peralez, dated August 19, 2016, as described in “Action” on Page 13. Council Member Raul Peralez seconded the motion.

4.2 (Cont'd.)

Council discussion ensued.

Action: On a call for the question, the motion carried unanimously, the memorandum from Mayor Sam Liccardo, Vice Mayor Rose Herrera, Council Member Chappie Jones, Council Member Ash Kalra and Council Member Raul Peralez, dated August 19, 2016, was approved, approving the Planning Commission and Staff recommendations on a new Council Policy to enhance the protection of riparian corridors and the proposed amendments to Title 20 (Zoning Code) with the following modifications and direction: (1) The Administration to incorporate as a guideline in the new Council Policy under Item 4.a on Materials and Lighting that see-through Building and Material finishes are discouraged on Buildings and Structures. (2) The Administration to return through a Council Priority Setting Session with a work plan to: (a) Study the impacts of bird strikes in San José (working with local companies and developers to obtain pertinent data as necessary) and include analyses on potential mitigations that balance City land use planning, development and environmental priorities, recognize the habitat and geographic characteristics of the area within the City, do not impose unreasonable additional costs to development and additionally identify those mitigations that can be implemented sooner rather than later. (b) Explore the implications of incorporating current voluntary bird-safe design measures as a citywide requirement along riparian habitats, creek corridors and open spaces. (c) Evaluate if additional environmental review may be needed to implement a citywide program. The Administration was further advised to: (1) Determine Staffing and funding needs associated with undertaking this work plan. (2) Obtain input from representatives of the environmental community, in particular the Audubon Society and representatives of the corporate and development community (both residential and commercial) and other professional development experts prior to the preparation of the work plan. (3) Initiate discussions with neighboring Silicon Valley cities to forge a regional partnership. (4) Prepare a scope and cost estimate for an education program in collaboration with the Audubon Society. Ordinance No. 29785, entitled: "An Ordinance of the City of San José Amending Sections 20.100.500, 20.100.630, 20.100.720, 20.100.820, 20.100.940, 20.100.1010, 20.100.1020, 20.100.1030, 20.100.1040, 20.100.1050, 20.100.1080, And 20.100.1090 Of Chapter 20.100 Of Title 20, Adding Sections 20.200.1052 And 20.200.1054 Of Chapter 20.200 Of Title 20 And Repealing Section 23.02.465 Of Chapter 23.02 Of Title 23 Of The San Jose Municipal Code To Require That Permits Be Consistent With The Envision San Jose 2040 General Plan Goals And Policies, Zoning Code And City Council-Adopted Policies, Require A Single-Family House Permit For Single-Family House Development In Conventional Zoning Districts That Involve Ground-Disturbing Activity Within 100 Feet Of A Riparian Corridor, Add Definitions For "Riparian" And "Riparian Corridor", Correct Inadvertent Deletion Of Previously Approved Code Amendments And Make Other Technical, Formatting Or Non-Substantive Changes Within The Zoning Code", was passed for publication and Resolution No. 77917, entitled: "A Resolution of the Council of the City of San José Approving a New Council Policy, Entitled "Riparian Corridor Protection and Bird-Safe Design Policy", was adopted. (11-0.)

- 4.3 (a) Adopt a resolution consenting to the establishment of the Urban Agriculture Incentive Zone (UAIZ) in certain unincorporated Santa Clara County (County) areas in the City of San José's Urban Service Area/Urban Growth Boundary (USA/UGB) consistent with State Assembly Bill 551 that supersedes Resolution No. 77584 and maintains the inclusion of the following conditions from Resolution No. 77584, which was adopted by Council on November 17, 2015:
- (1) The UAIZ shall not be established in areas that are outside the City of San José's USA/UGB.
 - (2) The UAIZ shall be established only in areas and for parcels where the land use designation under the City of San José General Plan supports agriculture or urban agriculture use including but not limited to Open Hillside, Lower Hillside, Rural Residential, Residential Neighborhood, and Neighborhood/Community Commercial.
 - (3) In compliance with the Santa Clara County Code of Ordinances, including but not limited to Section 5.20.060 (City General Plan Conformance), Section 5.20.070 (Properties subject to Annexation), and Section C1-52 (Properties subject to annexation), the County shall complete or require the completion of a Contiguity/Annexation Statement form and refer the proposal for the UAIZ incentive and contract for such parcels to the City of San José for the City's determination as to whether the proposed use will require annexation.
 - (4) The production, cultivation, growing and harvesting of marijuana shall be prohibited in the UAIZ.
 - (5) The raising of livestock (except poultry for egg laying), fur-bearing animals, and dairy-producing animals shall be prohibited in the UAIZ.
- (b) Based on a letter from the California Department of Housing and Community Development (HCD) dated April 28, 2016 (see Attachment 1 of the memorandum to City Council), eliminate the following condition that was included in Resolution No. 77584: Parcels that are identified as adequate sites for housing in the Housing Element Inventory of the City of San José General Plan Housing Element certified by the California Department of Housing and Community Development (HCD) shall not be included within a UAIZ.
- CEQA: Exempt, File No. PP15-108. (Planning Building and Code Enforcement)**

Action: Deferred to September 13, 2016.

- 4.4 As recommended by the Rules and Open Government Committee on August 17, 2016, adopt a position of Oppose Unless Amended for Budget Trailer Bill 707. CEQA: Not a Project, File No. PP10-069, City Administrative Activities. (Housing/Planning, Building and Code Enforcement)

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated August 19, 2016, transmitting the recommendations of the Rules and Open Government Committee.

Action: Dropped per Orders of the Day.

TRANSPORTATION & AVIATION SERVICES

- 6.1 Adopt a resolution authorizing the Director of Aviation to allow taxi drivers operating within the Airport On-Demand Taxi Dispatch Program to utilize two Airport Access Permits for On Demand Taxicab Services. CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment. (Airport)**

Per Orders of the Day, the memorandum from Mayor Sam Liccardo, dated August 19, 2016, was approved: The Operating with Two Permits within the On Demand Ground Transportation Program Item was deferred. The item was referred to the November 17, 2016 Transportation and Environment Committee Meeting where an update on Ground Transportation issues is already scheduled to be heard.

- 6.2 Adopt a resolution authorizing the Director of Public Works to:**

- (a) Award and execute the 8100 – Mineta San José International Airport Southeast Apron Reconstruction Project to the low bidder, Graniterock Company for the base bid in an amount of \$2,315,085, contingent on the award and execution of an Airport Improvement Program (AIP) grant from the Federal Aviation Administration (FAA) of a minimum amount of \$2,800,000, and for Add Alternates 1 and/or 2 contingent on the amount of any FAA AIP grant being sufficiently above the minimum amount to fund either or both of the add alternates.**
- (b) Establish a construction contingency of fifteen percent of the amount of the construction contract for the Project if the Director awards and executes a contract.**
- (c) Issue any change orders up to the amount of the contingency if the Director awards and executes a construction contract for the Project.**

CEQA: Resolution Nos. 67380 and 71451, Determination of Consistency with the Final EIR, as Supplemented, for the San José International Airport Master Plan Update, File No. PP15-129.

Action: Deferred to August 30, 2016 per Administration.

ENVIRONMENTAL & UTILITY SERVICES

- 7.1 (a) Conduct a Public Hearing for the purpose of accepting and responding to public comment regarding the San José Municipal Water System's 2016 Public Health Goals Report on water quality as required by the California Health and Safety Code.**
- (b) Approve the San José Municipal Water System's 2016 Public Health Goals Report and direct staff to file the report with the State Water Resources Control Board.**

CEQA: Not a Project, File No. PP10-069(a), Staff Reports involving no approvals of City actions. Council Districts 2, 7, and 8. (Environmental Services)

7.1 (Cont'd.)

Documents Filed: (1) Memorandum from Director of Environmental Services Kerrie Romanow, dated August 1, 2016, recommending conducting a public hearing and approval of the report with direction to Staff. (2) Three Proofs of Publications of Notices of Public Hearings executed August 5, 2016 and August 19, 2016 submitted by the City Clerk. (3) One letter from the public dated August 3, 2016 pertaining to the San José Municipal Water System's 2016 Public Health Goals Report.

Mayor Sam Liccardo opened the Public Hearing.

Public Comments: There was no public testimony from the floor. Mayor Sam Liccardo closed the Public Hearing.

Action: Upon motion by Vice Mayor Rose Herrera, seconded by Council Member Johnny Khamis and carried unanimously, the San José Municipal Water System's 2016 Public Health Goals Report was approved and Staff was directed to file the report with the State Water Resources Control Board. (11-0.)

- 7.2 (a) **Adopt a resolution approving the San José – Santa Clara Regional Wastewater Facility Plant Instrument Air System Upgrade Project Initial Study/Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program (File No. PP15-114).**
- (b) **Report on bids and award of construction contract for 7617- Plant Instrument Air System Upgrade Project to the sole bidder, Anderson Pacific Engineering Construction, Inc., in the amount of \$2,848,000, and approve a 15 percent construction contingency in the amount of \$427,200.**
- (c) **Adopt a resolution authorizing the Director of Public Works to negotiate and execute one or more change orders in excess of \$100,000 for the duration of the Plant Instrument Air System Upgrade Project, not to exceed the total contingency amount approved for the Project.**

CEQA: San José - Santa Clara Regional Wastewater Facility Plant Instrument Air System Upgrade Project Mitigated Negative Declaration (MND), File No. PP15-114. (Environmental Services)

Note: Item 7.2 was renumbered to Item 2.12. See Item 2.12 for Action.

REDEVELOPMENT – SUCCESSOR AGENCY

- 9.1 **Successor Agency Board approve the Purchase and Sale Agreement and Escrow Instructions between the Successor Agency to the Redevelopment Agency of the City of San José, as seller, and the County of Santa Clara, as buyer, to allow the sale of 300 South Almaden Boulevard to the County for the appraised value of \$96,000. CEQA: Not a Project, File No. PP10-066, Agreements and Contracts. (Successor Agency) (Deferred from 6/14/16 – Item 9.2; 6/28/16 – Item 9.2; and 8/16/16 – Item 9.1)**

9.1 (Cont'd.)

Documents Filed: (1) Memorandum from Mayor Sam Liccardo, dated June 13, 2016, with direction to Staff to return to Council with an analysis of: (a) Whether the Oversight Board maximized revenue to local tax payers in accepting the County's offer to acquire the real property beneath the San Jose Hilton Hotel in the Downtown over a higher price, and (b) The public purpose behind the County's acquisition of such property. (2) Memorandum from Successor to the Redevelopment Agency Managing Director Richard A. Keit, dated June 8, 2016, recommending approval of the purchase. (3) Supplemental memorandum from Successor to the Redevelopment Agency Managing Director Richard A. Keit, dated June 27, 2016, regarding the analysis requested by Mayor Sam Liccardo pertaining to the Hilton Purchase and Sale Agreement. (4) Two letters from the Office of the County Counsel of the County of Santa Clara, dated June 14, 2016 and August 3, 2016, pertaining to the purchase and sale agreement.

Mayor Sam Liccardo recommended directing the City Manager to convey this property interest and also directing the City Attorney to create findings. Mayor Sam Liccardo pointed out that the County made a determination of public purpose but has not sent a written response to the City to articulate what that public purpose is, even though the City has made repeated inquiries. Mayor Sam Liccardo reiterated that while the County is paying a price equal to the appraised value, a higher offer was received by the Successor Agency from a private entity, which is a party to the ground lease agreement with the Successor Agency, and as a result does not maximize the revenue that might accrue to the public agencies. Mayor Sam Liccardo added that the City has yet to receive from the County a clear definition of what the public purpose might be in order to justify the direct sale in this instance.

Motion: Council Member Pierluigi Oliverio moved approval of the Staff recommendations, including the recommendations from Mayor Sam Liccardo. Vice Mayor Rose Herrera seconded the motion.

Council Member Johnny Khamis expressed objection to the motion on the floor.

Action: On a call for the question, the motion carried, SARA Resolution No. 7054, entitled: "A Resolution of the Successor Agency to the Redevelopment Agency of the City of San José Approving the Purchase and Sale Agreement and Escrow Instructions for the Sale of Successor Agency Owned Real Property Located at 300 South Almaden Boulevard to the County of Santa Clara for the Appraised Value of Ninety Six Thousand Dollars and Making Certain Findings", was adopted. The following recommended by Mayor Sam Liccardo and approved: The City Manager was directed to convey this property interest and the City Attorney was directed to create findings. The following was approved: (1) The County made a determination of public purpose but has not sent a written response to the City to articulate what that public purpose is, even though the City has made repeated

(Action Continued on the Next Page)

9.1 (Action Cont'd.)

inquiries. (2) While the County is paying a price equal to the appraised value, a higher offer was received by the Successor Agency from a private entity which is a party to the ground lease agreement with the Successor Agency, and as a result does not maximize the revenue that might accrue to the public agencies. (3) The City has yet to receive from the County a clear definition of what the public purpose might be in order to justify the direct sale in this instance. (8-3. Noes: Khamis, M. Nguyen, Rocha.)

OPEN FORUM

- (1) Blair Beekman opined about the City of San José's resolution process, openness and transparency.
- (2) Ray Perez voiced his views on the California Tobacco 21 Law, which went into effect on June 9, 2016.
- (3) Roy Sherrill informed the Council about the lack of ADA services and accessible housing for handicapped residents in San José.

Mayor Sam Liccardo directed Assistant City Manager David Sykes to speak with Mr. Sherrill following the Council Meeting.

ADJOURNMENT

The Council of the City of San José was adjourned at 3:20 p.m. in memory of General Owens, Jr., a beloved teacher who served the students of Evergreen School District for 30 years. (Herrera)

The Council of the City of San José recessed to Closed Session at 3:21 p.m. to reconvene in Open Session at 9:30 a.m. on Tuesday, August 30, 2016.

Minutes Recorded, Prepared and Respectfully Submitted by,



Toni J. Taber, CMC
City Clerk

smd/08-23-16 MIN

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

NOTICE OF CITY ENGINEER'S PENDING DECISION ON FINAL MAPS

In accordance with Sec. 19.16.140d of the San José Municipal Code, this is notice of the City Engineer's receipt of the following Final Maps for review:

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/Units</u>	<u>Type</u>
10377	Flea Market	4	KB Home	26/162	MFA

This notice is to be posted with the City Council's Regular Agenda for August 23, 2016.