



MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, SEPTEMBER 1, 2015

The Council of the City of San José convened in Regular Session at 9:03 a.m. in the Council Chambers at City Hall.

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

Absent: Councilmembers - All Present.

STRATEGIC SUPPORT SERVICES

3.2 Accept Labor Negotiations Update.

There was no report.

CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:06 a.m. to a Closed Session in Room W133(A) regarding Public Employment/Public Employee Appointment Pursuant to Government Code Section 54957; Title: City Clerk; Name: Toni J. Taber, CMC; (B) to confer with Legal Counsel pursuant to Government Code Section 54956.9(d)(1) with respect to anticipated litigation in three (3) matters; (C) to confer with Legal Counsel pursuant to Government Code Section 54956.9(d)(1) with respect to existing litigation; (1) In re: Claim of Lee.; Amount of Money or Other Relief Sought: Administrative Appeal; (2) Stephens, et al. v. City of San José, et al.; Names of Partie(s) Involved: Emmanuel Stephens, Jasmine Whiteley, Davian George and Emani Stephens, City of San José, San José Police Department, and Does 1-25, inclusive; Court: United States District Court, Northern District of California; Case No.: 15-CV-03454-PSG; Amount of Money or Other Relief Sought: Damages According to Proof; (3) Burt v. City of San José, et al.; Names of Partie(s) Involved: Shauncey Curt, City of San José, San José Police Department, Unidentified San José Police Officers Numbered 1 through 6, and Does 7 through 50, inclusive; Court: Superior Court of California, County of Santa Clara; Case

CLOSED SESSION (Cont'd.)

No: 1-15-CV-280121; Amount of Money or Other Relief Sought: Damages According to Proof; (4) 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; (5) 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; (6) 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; (6) 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-972-M; Amount of Money or Other Relief Sought: Damages According to Proof; (7) 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; (8) San José Police Officers' Association v. City, et al; Names of Parties Involved: San José Police Officers' Association, City of San José, Board of Administration for Police and Fire Department Retirement Plan of City of San José and Does 1-100; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-225926; Amount of Money or Other Relief Sought: Declaratory and injunctive relief. (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 California, County of Santa Clara; Case No: 1-12-CV-233660; Amount of Money or Other Relief Sought: Declaratory Relief and Verified Petition for Writ of Mandate. (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 California, County of Santa Clara; Case No: 1-12-CV-225928; 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 California, County of Santa Clara; Case: 1-12-CV-226570; 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

CLOSED SESSION (Cont'd.)

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. (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 California, County of Santa Clara; 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 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; (D) to Confer with Labor Negotiator Pursuant to Government Code Section 54957.6: City Negotiator: Jennifer Schembri, Director of Employee Relations; Employee Organizations: (1) Association of Building, Mechanical and Electrical Inspectors (ABMEI); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and ABMEI. (2) Association of Engineers & Architects (AEA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AEA. (3) Association of Maintenance Supervisory Personnel (AMSP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AMSP. (4) City Association of Management Personnel Agreement (CAMP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CAMP. (5) Confidential Employees' Organization, AFSCME Local 101 (CEO); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CEO; (6) International Association of Firefighters, Local 230 (IAFF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Association of Firefighters. (7) International Brotherhood of Electrical Workers (IBEW); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and IBEW; (8) Municipal Employees' Federation, AFSCME Local 101, AFL-CIO (MEF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and MEF; (9) International Union of Operating Engineers, Local No. 3 (OE#3); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Union of Operating Engineers, Local No. 3. (10) San José Police Officers' Association (SJPOA); Nature of Negotiations: Salaries, Hours, Working Conditions, etc.;

CLOSED SESSION (Cont'd.)

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

By unanimous consent, Council recessed from the Closed Session at 11:40 p.m. and reconvened to Regular Session at 1:32 p.m. in the Council Chambers.

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

Absent: Councilmembers - All Present.

INVOCATION

Pastor Gary Grundman, Evergreen Valley United Methodist Church, provided the Invocation.

PLEDGE OF ALLEGIANCE

Mayor Liccardo led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Vice Mayor Rose Herrera, seconded by Councilmember Tam Nguyen and carried unanimously, the Orders of the Day and the Amended Agenda were approved.(11-0.)

CEREMONIAL ITEMS

1.1 Presentation of a proclamation declaring the Month of September 2015 as "Hispanic Heritage Month" in the City of San José. (Carrasco)

Mayor Sam Liccardo and Councilmembers Magdalena Carrasco, Raul Peralez, and Donald Rocha declared the Month of September 2015 as "Hispanic Heritage Month" in the City of San José.

1.2 Presentation of a commendation to the Ethiopian Services of San José in honor of the Ethiopian New Year. (Kalra)

Mayor Sam Liccardo and Councilmember Ash Kalra offered a commendation to the Ethiopian Services of San José in honor of the Ethiopian New Year.

1.3 Presentation of a proclamation acknowledging eBay for their contributions to the City of San José over 20 years. (Mayor)

Mayor Sam Liccardo and Councilmembers Manh Nguyen and Pierluigi Oliverio presented a proclamation acknowledging eBay for their contributions to the City of San José.

CONSENT CALENDAR

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

2.1 Approval of Minutes.

- (a) **Regular Minutes of May 05, 2015.**
 - (b) **Budget Study Session Minutes of May 6, 7, and 8, 2015.**
 - (c) **Special Closed Session Minutes of May 11, 2015.**
 - (d) **Regular Minutes of May 12, 2015.**
 - (e) **Regular Minutes of May 19, 2015.**
 - (f) **Joint/San José Financing Authority Minutes of May 19, 2015.**
- CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities.**

Documents Filed: (1) Regular Minutes of May 5, May 12 and May 19, 2015. (2) Budget Study Session Minutes of May 6 – 8, and May 11, 2015. (3) Special Closed Session Minutes of May 11, 2015. (4) Joint Financing Authority Minutes of May 19, 2015.

Action: The Council Minutes were approved. (11-0.)

2.2 Final adoption of ordinances.

- (a) **ORD. NO. 29607 – Rezoning certain real property of approximately 3.69 acres at the southeast corner of Monterey Highway and East Alma Avenue (1402 Monterey Highway), from the HI Heavy Industrial Zoning District and LI Light Industrial Zoning District to the CIC Combined Industrial/Commercial Zoning District. CEQA: Section 15168, Determination of Consistency with the Envision San José 2040 General Plan Final Program EIR (Resolution No. 76041)**

Action: Ordinance No. 29607 was adopted. (11-0.)

- 2.2 (b) **ORD. NO. 29608** – Rezoning certain real property of approximately 0.3 gross acre situated approximately 300 feet north of Heather Drive on the east side of Warwick Road (15350 Warwick Road) from the R-1-2 Single-Family Residence Zoning District to the R-1-5 Single-Family Residence Zoning District. CEQA: Section 15168, Determination of Consistency with the Envision San José 2040 General Plan Final Program EIR (Resolution No. 76041)

Action: Ordinance No. 29608 was adopted. (11-0.)

2.3 **Approval of Council Committee Reports.**

- (a) **Transportation and Environment Committee Minutes of August 10, 2015. (Kalra)**

Action: Deferred to September 15, 2015 per City Clerk.

- (b) **Rules and Open Government Committee Report of August 12, 2015. (Mayor)**

CEQA: Not a Project, File No. PP15-090, Committee Reports.

Documents Filed: Rules and Open Government Committee Report dated August 12, 2015.

Action: The Committee Reports were approved. (11-0.)

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 resolutions:**

- (a) **Authorizing the Director of Finance to negotiate and execute the following agreements with MuniServices LLC, a Delaware Limited Liability Company (“MuniServices”) to provide:**

- (1) **Sales and Use Tax revenue enhancement services and data analysis for the term of October 1, 2015 through June 30, 2018 at a maximum annual compensation not to exceed \$412,000 (first year prorated 9 month period maximum compensation shall not exceed \$309,000), with two one-year options to extend through June 30, 2020, at the same rate of compensation for each additional optional year subject to the City Council’s annual appropriation of funds; and**

2.7 (Cont'd.)

- (a) (2) Telephone Line Tax, Utility Users Tax and Franchise Fee compliance services for the term of October 1, 2015 through June 30, 2018 at a maximum annual compensation not to exceed \$70,000 (first year prorated 9 month period maximum compensation shall not exceed \$52,500), with two one-year options to extend through June 30, 2020, at the same rate of compensation for each additional optional year subject to the City Council's annual appropriation of funds.
- (b) Authorizing MuniServices to examine all Sales and Use Tax records of the California State Board of Equalization for tax collection purposes and other governmental functions of the City of San José.

CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment. (Finance)

(Deferred from 6/16/15 – Item 2.13, 8/4/15 – Item 2.7, and 8/25/15 – Item 2.7)

Documents Filed: Replacement memorandum from Director of Finance Julia H. Cooper, dated August 14, 2015, recommending adoption of resolutions and providing updated information and cost calculations.

Councilmember Johnny Khamis pulled Item 2.7 to commend the Finance Department for their thoroughness in this project.

Action: Upon motion by Councilmember Johnny Khamis, seconded by Vice Mayor Rose Herrera and carried unanimously, Resolution No. 77506, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Finance to Negotiate and Execute Agreements with Muniservices, LLC for Services Relating to Sales and Use Tax, Telephone Line Tax, and Utility Users Tax and Franchise Fees"; and Resolution No. 77507, entitled: "A Resolution of the Council of the City of San José Authorizing Muniservices, LLC to Examine all Sales and Use Tax Records of the California State Board of Equalization for Tax Collection Purposes and Other Governmental Functions", were adopted. (11-0.)

2.8 **Approve a Third Amended and Restated Agreement between the City of San José and the San José Community Media Access Corporation (dba CreaTV San José) that:**

- (a) Extends the term of the agreement by ten years; and
- (b) Revises the franchise fee revenue sharing structure for Public and Educational Access cable programming services for the City of San José to provide long-term stability for CreaTV San José and increase investment in the City's CivicCenter Television infrastructure.

CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment. (City Manager)

2.8 (Cont'd.)

Documents Filed: Memorandum from Director of Communications, David Vossbrink, dated August 10, 2015, recommending approval of an amended and restated agreement.

Vice Mayor Rose Herrera pulled Item 2.8 to thank staff for their diligence and hard work.

Motion: Vice Mayor Rose Herrera moved approval of the staff recommendation, and Councilmember Tam Nguyen seconded the motion.

Councilmember Manh Nguyen requested an amendment to the motion, to direct staff to explore the potential for more culturally diverse programming options. Vice Mayor Rose Herrera and Councilmember Tam Nguyen accepted the amendment to the motion.

Action: On a call for the question, the motion carried unanimously, the Third Amended and Restated Agreement between the City of San José and the San José Community Media Access Corporation (dba CreaTV San José) to (a) extend the term of the agreement by ten years; and (b) revise the franchise fee revenue sharing structure for Public and Educational Access cable programming services for the City of San José to provide long-term stability for CreaTV San José and increase investment in the City's CivicCenter Television infrastructure, was approved, with staff directed to explore the potential for more culturally diverse programming options. (11-0.)

- 2.9 (a) **Accept an update on the 2014-2015 Stormwater Permit Annual Report developed in conformance with the Municipal Regional Stormwater National Pollutant Discharge Elimination System Permit (Stormwater Permit) requirements, pursuant to the Federal Clean Water Act; and**
- (b) **Authorize certification and submittal of the 2014-2015 Stormwater Permit Annual Report to the San Francisco Bay Regional Water Quality Control Board in conformance with the Stormwater Permit requirements.**

CEQA: Not a Project, File No. PP10-069 (a), Annual reports that involve no approvals that would result in a change in the physical environment. (Environmental Services)

Documents Filed: Memorandum from Environmental Services Director Kerrie Romanow, dated August 10, 2015, recommending acceptance of the update on the Annual Report and authorization for certification and submittal.

Action: The update on the 2014-2015 Stormwater Permit Annual Report developed in conformance with the Municipal Regional Stormwater National Pollutant Discharge Elimination System Permit (Stormwater Permit) requirements, pursuant to the Federal Clean Water Act, was accepted; and certification and submittal of the 2014-2015 Stormwater Permit Annual Report to the San Francisco Bay Regional Water Quality Control Board in conformance with the Stormwater Permit requirements, was authorized. (11-0.)

- 2.10 Adopt a resolution to amend the City of San José Pay Plan effective September 1, 2015, to change the salary range and title for the classification Retirement Investment Analyst I/II U (7502/7503) (formerly Retirement Actuarial Analyst I/II). CEQA: Not a Project, File No. PP10-068(b), Municipal Code, Title 3. (Personnel)**

Action: Deferred to September 22, 2015 per Administration.

- 2.11 Adopt a resolution authorizing the City Manager to negotiate and execute an Agreement with Vision Service Plan to provide vision care insurance services to employees, retirees and their dependents and beneficiaries for an initial period of January 1, 2016 to June 30, 2016, with compensation not to exceed \$545,000, and to exercise up to three (3) one-year options and a final six-month option to extend the Agreement for a total maximum compensation not to exceed \$4,360,000 for the period of January 1, 2016 to December 31, 2019, subject to the annual appropriation of funds by the City Council. CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment. (Human Resources)**

Documents Filed: Memorandum from Director of Human Resources, Joe Angelo, dated August 10, 2015, recommending adoption of a resolution.

Action: Resolution No. 77508, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with Vision Service Plan to Provide Vision Care Insurance Services to Employees, Retirees, and their Dependents and Beneficiaries in an Amount Not to Exceed \$4,360,000 for the Period of January 1, 2016 through December 31, 2019, Subject to the Appropriation of Funds”, was adopted. (11-0.)

- 2.12 Adopt a resolution authorizing the City Manager to:**
- (a) Negotiate and execute an Agreement or Agreements with Delta Dental of California to provide the dental insurance group plans listed below for employees and their dependents, and retirees and their dependents and beneficiaries and support services for City’s dental benefits program, for the initial period of January 1, 2016 to June 30, 2016, and to exercise up to four (4) one-year options and a final six month option to renew the Agreement or Agreements through December 31, 2020, for total costs for both dental insurance group plans not to exceed \$10,993,900 for the period of January 1, 2016 to December 31, 2016 and with annual cost adjustments for each subsequent year based on the number of enrollees in the plans, plan utilization and pursuant to collective bargaining agreements, for a maximum amount for both dental insurance group plans not to exceed \$57,434,100 for a potential five (5) year term, subject to the appropriation of funds by the City Council:**

- 2.12 (a) (1) **Group Dental Service Contract for DeltaCare USA, a Dental Health Maintenance Organization Program for insurance and service costs not to exceed \$253,500 for the period of January 1, 2016 to December 31, 2016 and with annual cost adjustments for each subsequent year based on the number of enrollees in the plan, plan utilization and pursuant to collective bargaining agreements, for a total plan amount not to exceed \$1,306,200 for a potential five (5) year term, and**
- (2) **Group Administrative Services Contract issued by Delta Dental of California for the Delta Dental Preferred Provider Organization (PPO) Program for insurance and service costs not to exceed \$10,740,400 for the period of January 1, 2016 to December 31, 2016 and with annual cost adjustments for each subsequent year based on the number of enrollees in the plan, plan utilization and pursuant to collective bargaining agreements, for a total plan amount not to exceed \$56,127,900 for a potential five (5) year term;**
- (b) **Negotiate and execute any group plan or policy contracts, Evidence of Coverage documents, Business Associate Agreements, or other ancillary documents necessary to facilitate the above Agreements for the period of January 1, 2016 to December 31, 2020; and**
- (c) **Subject to the terms of City's collective bargaining agreements, terminate the agreement(s) or group plan contract(s) in the event that Delta Dental of California's proposed annual renewal rates are not acceptable by the City Manager.**

CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment. (Human Resources)

Documents Filed: Memorandum from Director of Human Resources, Joe Angelo, dated August 10, 2015, recommending adoption of a resolution.

Action: Resolution No.77509, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement or Agreements with Delta Dental of California, and Any Ancillary Documents Necessary to Facilitate the Agreements, for Dental Insurance Group Plans and Support Services in an Amount Not to Exceed \$57,434,100 for a Potential Five (5) Year Term of January 1, 2016 Through December 31, 2010, Subject to the Appropriation of Funds", was adopted. (11-0.)

- 2.13 **Adopt a resolution authorizing the City Manager to execute a Letter of Agency to confirm participation in the Corporation for Education Network Initiatives in California for the purposes of connecting San José Public Library to the California Research & Education Network and authorizing the City Manager to negotiate and execute all related agreements subject to appropriation of funds. CEQA: Not a Project, File No. PP10-066(a), Agreements and Contracts with no changes in the physical environment. (Library)**

Documents Filed: Memorandum from Library Director Jill Bourne, dated August 10, 2015, recommending adoption of a resolution.

2.13 (Cont'd.)

Action: Resolution No. 77510, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute a Letter of Agency to Confirm Participation in the Corporation for Education Network Initiatives in California for the Purposes of Connecting San José Public Library to the California Research & Education Network", was adopted. (11-0.)

- 2.14 (a) Accept invitation from the Knight Foundation to participate in a tour of best practices for urban park design and activation in Copenhagen, Denmark from September 20 - 24, 2015. The Knight Foundation will pay the cost for travel, lodging and meals during the study tour.**
- (b) Approve travel to Copenhagen for Marybeth Harasz, Interim Deputy Director of Parks, Recreation and Neighborhood Services as the City's official staff representative on the study tour.**

CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities. (Parks, Recreation and Neighborhood Services)

Documents Filed: Memorandum from City Manager Norberto Dueñas, dated August 20, 2015, recommending acceptance for an invitation from the Knight Foundation and approval of travel to Copenhagen for Marybeth Harasz.

Action: An invitation from the Knight Foundation for a City staff representative to participate in a tour of best practices for urban park design and activation in Copenhagen, Denmark from September 20 - 24, 2015, with the Knight Foundation to pay the cost for travel, lodging and meals during the study tour, and travel to Copenhagen for Marybeth Harasz, Interim Deputy Director of Parks, Recreation and Neighborhood Services as the City's official staff representative on the study tour, were approved. (11-0.)

- 2.15 Approve a Funding Agreement between the City of San José and the Santa Clara Valley Transportation Authority for the State Route 237 Express Lanes - Phase 2 Project in the amount of \$1,000,000. CEQA: Legacy Terrace Development Terrace Final EIR (Resolution No. 69392), as addended. Council District 4. (Transportation)**

Documents Filed: Memorandum from Interim Director of Transportation Jim Ortbal, dated August 10, 2015, recommending approval of a funding agreement.

Action: A Funding Agreement between the City of San José and the Santa Clara Valley Transportation Authority for the State Route 237 Express Lanes - Phase 2 Project in the amount of \$1,000,000, was approved. (11-0.)

- 2.16 Retroactively approve travel by Councilmember Peralez to Monterey, CA on July 11 – 12, 2015 to attend the League of California Cities’ Latino Caucus Board Retreat. Source of Funds: Council District 3 Office Budget. CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities. (Peralez)**

Documents Filed: Memorandum from Councilmember Raul Peralez, dated August 14, 2015, requesting approval of travel.

Action: Retroactive travel by Councilmember Peralez to Monterey, CA on July 11 – 12, 2015 to attend the League of California Cities’ Latino Caucus Board Retreat, was approved. (11-0.)

- 2.17 Approve travel by Councilmember Manh Nguyen to Denver, CO on September 16 – 18, 2015 to attend the San José Silicon Valley Chamber of Commerce Annual Study Mission. Source of Funds: Council District 4 Office Budget. CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities. (M. Nguyen)**

Documents Filed: Memorandum from Councilmember Manh Nguyen, dated August 21, 2015, requesting approval of travel.

Action: Travel by Councilmember Manh Nguyen to Denver, CO on September 16 – 18, 2015 to attend the San José Silicon Valley Chamber of Commerce Annual Study Mission, was approved. (11-0.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

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

City Manager Norberto Dueñas encouraged Council, staff and the community to actively participate in Emergency Preparedness Month, urging everyone to update their own emergency preparedness plans.

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.1 Consideration of an ordinance rezoning the real property located on the north side of S. Almaden Avenue approximately 100 feet west of Sutter Street (863 Almaden Avenue) from the CN Commercial Neighborhood Zoning District to the R-M Multiple Residence Zoning District on a 0.16 gross acre site with a General Plan designation of Mixed Use Neighborhood, (Henely Robert, Owner). CEQA: Exempt per Section 15332: Infill Development Project. Planning Commission recommends approval (7-0-0). (Planning, Building, and Code Enforcement)
C15-015 – District 3**

Action: Deferred September 29, 2015 per Administration.

- 4.2 (a) Conduct a Public Hearing regarding an economic subsidy in connection with a Capital Equipment Assistance Agreement with Becton, Dickinson and Company, pursuant to California Government Code Section 53083; and
- (b) Adopt a resolution authorizing the City Manager or his designee to execute the Capital Equipment Assistance Agreement with Becton, Dickinson and Company, in which the City will provide an amount not to exceed \$500,000 for the acquisition of clean room tools and equipment at Becton, Dickinson and Company's manufacturing and production facilities in San José.

CEQA: Not a Project, File No. PP10-066(a), Purchase of equipment with no changes in the physical environment. Council District 4. (Economic Development)

Documents Filed: (1) Joint memorandum from Mayor Sam Liccardo, Vice Mayor Rose Herrera, Councilmember Manh Nguyen, Councilmember Ash Kalra and Councilmember Johnny Khamis, dated August 28, 2015, recommending approval of the staff report with modifications. (2) Memorandum from Deputy City Manager/Director of Economic Development Kim Walesh, dated August 21, 2015, recommending conducting a Public Hearing and adoption of a resolution.

Mayor Liccardo opened the public hearing.

Public Comment: Oscar Gomez representing Becton, Dickinson and Company, spoke on the retrofit of his company's current location.

Mayor Liccardo closed the public hearing.

Staff provided an overview of the agreement.

Motion: Councilmember Manh Nguyen moved approval of the memorandum he coauthored with Mayor Sam Liccardo, Vice Mayor Rose Herrera, and Councilmember Ash Kalra and Councilmember Johnny Khamis, dated August 28, 2015, with modifications as described in "Action". Vice Mayor Rose Herrera seconded the motion.

Action: On a call for the question, the motion carried unanimously, and Resolution No. 77511, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute a Capital Equipment Assistance Agreement with Becton, Dickinson and Company, Inc., In Which the City will Provide an Amount not to Exceed \$500,000 for the Acquisition of Clean Room Tools and Equipment for Becton, Dickinson and Company Inc.'s Manufacturing and Production Facilities in San José", was adopted, including direction as outlined in the joint memorandum from Mayor Sam Liccardo, Vice Mayor Rose Herrera, Councilmember Manh Nguyen, Councilmember Ash Kalra and Councilmember Johnny Khamis, dated August 28, 2015, to include a condition that Becton, Dickinson and Company fully reimburse the City for any City Equipment Assistance it receives under the Agreement if, by the seventh anniversary of the first date of disbursement of City Equipment Assistance, the increase in secured and unsecured property tax revenue and use tax revenue receipts to the City due to the Project and capital investments resulting from this Agreement do not equal or exceed the value of the City Equipment Assistance. (11-0.)

- 4.3 (a) **Accept the staff report and proposed workplan addressing:**
- (1) **Potential modifications to Municipal Code Chapter 17.23, the Apartment Rent Ordinance (ARO) including:**
 - (a) **The annual allowable rent increases;**
 - (b) **The debt-service pass through;**
 - (c) **Revised notification requirements for notices to vacate and rents charged to tenants in properties subject to the ARO;**
 - (d) **Amendments to facilitate monitoring and enforcement of the ARO;**
 - (2) **Consideration of a Just Cause Eviction Ordinance; and**
 - (3) **Evaluation of the Staffing levels to effectively monitor, enforce, and analyze the ARO program.**

(b) **Defer the work on a source of income discrimination ordinance.**

CEQA: Not a Project, File No. PP10-068(c), Municipal Code or Policy change that involves no changes in the physical environment. (Housing)

The staff report and proposed work plan were accepted, including recommendations as outlined in the August 28, 2015 memorandum from Mayor Sam Liccardo, and Councilmembers Carrasco, Jones, Peralez and Rocha, to include: (a) Core Analytical Task #1: Financial Outcomes and Fair Returns; (b) Core Analytical Task #2: Debt-Service Pass-Through, plus the two optional tasks for ARO housing inventory and data by building; (c) Optional Task #1A: Comparison of Rents between ARO v. Market Rate Rentals; and (d) Optional Task #1B: Demographic Characteristics of Renters; and to Defer the work on the source of income discrimination ordinance and return to the full Council once a settlement or update on the City of Santa Monica lawsuit becomes available. Also including recommendations from the August 28, 2015 memorandum from Vice Mayor Rose Herrera and Councilmember Khamis, directing staff to convene an *advisory committee* made up of renters, property owners, landlords, and advocates to review the final suggestions of staff before the item is brought to Council for a final vote; and to include in the Workplan an exploration of income eligibility criteria for rent-controlled units, including consideration of duplexes.

Documents Filed: (1) Joint memorandum from Mayor Sam Liccardo, Councilmember Magdalena Carrasco, Councilmember Chappie Jones, Councilmember Raul Peralez and Councilmember Donald Rocha, dated August 28, 2015, to accept the staff report with additional direction. (2) Joint memorandum from Vice Mayor Rose Herrera and Councilmember Johnny Khamis, dated August 28, 2015, to accept the staff report with additional direction. (3) Memorandum from Councilmember Raul Peralez, dated August 31, 2015, to include additional information to the workplan with direction to the City Manager. (4) Memorandum from Interim Director of Housing Jacky Morales-Ferrand, dated August 21, 2015, to accept the staff report and workplan and defer the work on a source of income discrimination ordinance. (5) Memorandum from Roberta Moore, on-site building owner, dated September 1, 2015, offering recommendations to the plan. (6) Memorandum from Jennifer Liu speaking in opposition to the rent proposal. (7) Memorandum from Ryan Kawamoto, Executive Director of Yu-Ai-Kai Japanese American Community Senior Service, dated September 1, 2015, stressing the importance of the Apartment Rent Ordinance and referral plan.

4.3 (Cont'd.)

Interim Director of Housing Jacky Morales-Ferrand, Project Manager Wayne Chen, and Deputy City Attorney Shasta Green provided a presentation. They indicated staff is getting input from focus groups and shared conversations held regarding the public's concerns.

Public Comment: Sixty-three (63) members of the public spoke, to express the need for rent control and supporting staffs' recommendations, and other individuals expressing flaws with the rent control ideas as presented.

Extensive Council discussion followed.

Motion: Councilmember Raul Peralez moved approval of the Staffs' recommendations and recommendations as outlined in the joint memorandum he coauthored with Mayor Sam Liccardo, Councilmember Magdalena Carrasco, Councilmember Chappie Jones and Councilmember Donald Rocha, leaving out a 'time certain' and to include final recommendations as outlined in his memorandum of August 31, 2015. Councilmember Donald Rocha seconded the motion.

Councilmember Johnny Khamis indicated that he cannot support Councilmember Raul Peralez' recommendations from his August 31, 2015 memorandum, and would therefore, not support the motion on the floor.

Substitute Motion: Councilmember Johnny Khamis moved approval of the memorandum by Mayor Sam Liccardo and Councilmembers Carrasco, Jones, Rocha and Peralez, and including suggestions #2 and #3 from the memorandum he coauthored with Vice Mayor Rose Herrera, dated August 28, 2015. Vice Mayor Rose Herrera seconded the substitute motion.

Council discussed assembly of a potential task force and questioned staff on the feasibility of engaging a task force without delaying the process. Interim Director of Housing Jacky Morales-Ferrand indicated that an advisory committee would be an acceptable format.

Vice Mayor Rose Herrera asked that an advisory committee be convened as indicated in "Action". Councilmember Johnny Khamis agreed to the inclusion of an advisory committee in the substitute motion.

Action: On a call for the question, the substitute motion carried, the staff report and proposed work plan were accepted, including recommendations as outlined in the August 28, 2015 memorandum from Mayor Sam Liccardo, and Councilmembers Carrasco, Jones, Peralez and Rocha, to include: (a) Core Analytical Task #1: Financial Outcomes and Fair Returns; (b) Core Analytical Task #2: Debt-Service Pass-Through, plus the two optional tasks for ARO housing inventory and data by building; (c) Optional Task #1A: Comparison of Rents between ARO v. Market Rate Rentals; and (d) Optional Task #1B: Demographic Characteristics of Renters; and to defer the work on the source of income

4.3 (Cont'd.)

discrimination ordinance and return to the full Council once a settlement or update on the City of Santa Monica lawsuit becomes available. Also including recommendations from the August 28, 2015 memorandum from Vice Mayor Rose Herrera and Councilmember Khamis, directing staff to convene an *advisory committee* made up of renters, property owners, landlords, and advocates to review the final suggestions of staff before the item is brought to Council for a final vote; and to include in the Workplan an exploration of income eligibility criteria for rent-controlled units, including consideration of duplexes. (9-2. Noes: Carrasco, Rocha.)

4.4 Consider a Historic Landmark Nomination and Mills Act Historic Property Contract for the “Wilmer and Dorothy Gross House” located at 1156 McKendrie Street.

- (a) Conduct a Public Hearing and adopt a resolution designating the “Wilmer and Dorothy Gross House” as a landmark of special historic, architectural, aesthetic or engineering interest, or value of a historic nature; and
- (b) Conduct a Public Hearing on the Historic Property Contract (California Mills Act contract) between the City of San José and the owners of the subject property (Steven and Lisa Berry, Owners) and adopt a resolution approving the contract.

CEQA: Exempt per Section 15331. Historical Resource Restoration/Rehabilitation. The Historic Landmarks Commission recommends that the City Council approve the proposed Landmark Designation for the “Wilmer and Dorothy Gross House” located at 1156 McKendrie Street (6-0-1, Gomez absent) (Planning, Building and Code Enforcement)

HL15-217/MA15-001 – District 3

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. HL15-217 and MA15-001, dated July 28, 2015. (2) Memorandum from Planning Commission Secretary Harry Freitas, dated August 13, 2015, transmitting the Planning Commission recommendation. (3) Proof of Publication of Notice of Public Hearing executed on July 17, 2015, 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.

Action: Upon motion by Councilmember Pierluigi Oliverio, seconded by Vice Mayor Rose Herrera and carried unanimously, Resolution No. 77512, entitled: “A Resolution of the Council of the City of San José Designating, Pursuant to the Provisions of Chapter 13.48 of Title 13 of the San José Municipal Code, the Gross/Low House, Located at 1156 Mckendrie Street as a City Landmark of Special Historical, Architectural, Cultural, Aesthetic or Engineering Interest or Value of a Historic Nature”; and Resolution No. 77513, entitled: “A Resolution of the Council of the City of San José Approving a Historical Property Contract with Steve and Lisa Berry for the Gross/Low House (City Landmark No. HL15-217) Located at 1156 McKendrie Street”, were adopted. (11-0.)

NEIGHBORHOOD SERVICES

- 5.1 (a) **Adopt a resolution adopting the Mitigated Negative Declaration for the Lake Cunningham Bike Park Project and related Mitigation Monitoring and Reporting Program in accordance with the California Environmental Quality Act.**
- (b) **Approve the First Amendment to the Master Agreement with Verde Design, Inc. for architectural, civil, landscape architectural, and environmental consultant design services for the Lake Cunningham Bike Park increasing the total compensation by \$300,000 for a total agreement amount of \$500,000 in order to provide construction assistance services for the project.**
- (c) **Adopt a resolution authorizing the Director of Public Works to:**
- (1) **Award the construction contract for the Lake Cunningham Bike Park Project to the lowest responsive bidder in an amount not to exceed \$2,200,000;**
 - (2) **Decide any timely bid protest(s), make the City's final determination as to the lowest responsive bidder that is responsible, or reject all bids and re-bid the project;**
 - (3) **Establish a construction contingency not to exceed ten percent of the construction contract amount; and**
 - (4) **Execute change order in excess of \$100,000 within the contingency amount.**

CEQA: Mitigated Negative Declaration, File No. PP15-008, to be considered for adoption. Council District 8. (Public Works/Parks, Recreation and Neighborhood Services)

Note: heard directly following Item 4.4.

Documents Filed: (1) Joint memorandum from Vice Mayor Rose Herrera and Councilmember Magdalena Carrasco, dated August 28, 2015, recommending approval of staff's recommendations with additional direction. (2) Joint memorandum from Director of Parks, Recreation and Neighborhood Services, Angel Rios and Director of Public Works Barry Ng, dated August 21, 2015 recommending adoption of a resolutions and approval of a first amendment to the master agreement.

Motion: Vice Mayor Rose Herrera moved approval of the memorandum she coauthored with Councilmember Magdalena Carrasco, dated August 28, 2015, as described in "Action". Councilmember Pierluigi Oliverio seconded the motion.

Action: On a call for the question, the motion carried unanimously, and Resolution No. 77514, entitled: "A Resolution of the Council of the City of San José Approving the Lake Cunningham Bike Park Project Mitigated Negative Declaration, for which an Initial Study was Prepared, all in Accordance with the California Environmental Quality Act, and Adopting a Related Mitigation Monitoring and Reporting Program"; and Resolution No. 77515, Entitled: "A Resolution of the Council of the City of San José Authorizing

5.1 (Cont'd.)

the Director of Public Works to Award the Construction Contract for the Lake Cunningham Bike Park Project to the Lowest Responsive Bidder in an Amount Not to Exceed \$2,200,000, to Establish a Construction Contingency Not to Exceed Ten Percent of the Contract Amount, and to Execute Change Orders in Excess of \$100,000 Not to Exceed the Contingency”, were adopted, including direction to staff as outlined in the memorandum from Vice Mayor Rose Herrera and Councilmember Magdalena Carrasco, dated August 28, 2015, to reach out to the private sector and private non-profit businesses, especially those with a focus on bikes and health, along with interested community members to assist staff in promotion and support of the new BMX park. (11-0.)

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 pending decision on the following Final Maps:

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/ Units</u>	<u>Type</u>	<u>Proposed Decision</u>
10259	E. Terminus of Lexington Ave. w/o Endicott Blvd. and s/o Great Oaks Pkwy.	2	Taylor Morrison	143	MFA/condo	Approve

OPEN FORUM

Jeffrey Bedolla offered personal observations.

ADJOURNMENT

The Council of the City of San José adjourned at 6:30 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,



Toni J. Taber, CMC
City Clerk