

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, SEPTEMBER 23, 2014

The Council of the City of San José convened in Regular Session at 9:35 a.m. in the Council Chambers at City Hall.

Present: Council Members - Campos, Chu, Constant, Khamis, Liccardo, Oliverio, Rocha; Reed.

Absent: Council Members - Herrera, Kalra, Nguyen. (Excused)

STRATEGIC SUPPORT SERVICES

3.2 Accept Labor Negotiations Update.

There was no report.

CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:37 a.m. to a Closed Session in Room W133 (A) to confer with Legal Counsel pursuant to Government Code Section 54956.9 Subsection (d)(1) with respect 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) City v. RossDrulisCusenbery Architecture, Inc., et al. Names of Parties Involved: City of San José, RossDrulisCusenbery Architecture, Inc. aka Michael Ross Charles Drulis Architects & Planners, a purported California Corporation and Does 1-100; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV- 237767; Amount of Money or Other Relief Sought: Damages according to proof. (2) 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. (3) 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

CLOSED SESSION (Cont'd.)

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. (4) 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 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. (5) 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 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. (6) 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 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; Amount of Money or Other Relief Sought: Challenge to Measure B. (7) 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; Amount of Money or Other Relief Sought: Challenge to Measure B. (8) 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-268085; Amount of Money or Other Relief Sought: Change to City Medical Plan. (C) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; 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

CLOSED SESSION (Cont'd.)

between City of San José and CAMP. (5) Confidential Employees' Organization, AFSCME Local 101 (CEO); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CEO. (6) International Association of Firefighters, Local 230 (IAFF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Association of Firefighters. (7) International Brotherhood of Electrical Workers (IBEW); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and IBEW. (8) Municipal Employees' Federation, AFSCME Local 101, AFL-CIO (MEF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and MEF; (9) International Union of Operating Engineers, Local No. 3 (OE#3); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Union of Operating Engineers, Local No. 3. (10) San José Police Officers' Association (SJPOA); Nature of Negotiations: Salaries, Hours, Working Conditions, etc; Name of Existing Wages Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association. (11) Association of Legal Professionals of San José (ALP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc. Web: <http://www.sanjoseca.gov/?nid=186>; Telephone for Employee Relations: 408-535-8150.

By unanimous consent, Council recessed from the Closed Session at 9:57 a.m. and reconvened to Regular Session at 1:32 p.m. in the Council Chambers.

Present: Council Members - Campos, Chu, Constant, Herrera, Kalra, Khamis, Liccardo, Oliverio, Rocha; Reed.

Absent: Council Members - Nguyen. (Excused)

INVOCATION

Father Bob Fambrini, Most Holy Trinity Catholic Church offered the Invocation. (District 8)

PLEDGE OF ALLEGIANCE

Mayor Reed, accompanied by third graders from Rosemary Elementary School, led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Herrera, seconded by Council Member Khamis and carried unanimously, the Orders of the Day and the Amended Agenda were approved, and Item 4.1 was deferred to September 30, 2014. (10-0-1. Absent: Nguyen.)

CEREMONIAL ITEMS

**1.4 Presentation of a Proclamation declaring the week of September 21-27, 2014 as Falls Prevention and Active Aging Week. (Constant)
(Rules Committee referral 9/17/14)**

Mayor Reed and Council Member Constant recognized the week of September 21, 2014 through September 27, 2014 as “Falls Prevention and Active Aging Week” in the City of San José.

**1.5 Presentation of a proclamation declaring the week of September 21 – 28, 2014 as Bollywood Week in the City of San José in celebration of the Indian entertainment industry and the arrival of Shah Rukh Khan's "SLAM! The Tour" at the SAP Center. (Herrera)
(Rules Committee referral 9/17/14)**

Mayor Reed and Council Members Herrera, Kalra and Campos recognized the week of September 21, 2014 through September 28, 2014 as “Bollywood Week” in the City of San José.

CONSENT CALENDAR

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

2.1 Approval of minutes.

- (a) Regular Minutes of June 3, 2014.**
- (b) Special Minutes of June 9, 2014 on the Final Public Hearing of the Proposed FY 2014-2015 Budgets.**
- (c) Regular Minutes of June 10, 2014.**
- (d) Minutes of the Joint / San José Financing Authority of June 10, 2014.**
- (e) Regular Minutes of June 17, 2014.**
- (f) Minutes of the Joint / San José Financing Authority of June 17, 2014.**
- (g) Special Closed Session Minutes of June 27, 2014.**

2.1 (Cont'd.)

Documents Filed: (1) The Regular Minutes dated June 3, 2014, June 10, 2014 and June 17, 2014. (2) Special Minutes dated June 9, 2014 on the Final Public Hearing of the Proposed FY 2014-2015 Budgets. (3) Minutes of the Joint/San José Financing Authority dated June 10, 2014 and June 17, 2014. (4) Special Closed Session Minutes dated June 27, 2014.

Action: The Council Minutes were approved. (10-0-1. Absent: Nguyen.)

2.2 Final adoption of ordinances.

- (a) **ORD. NO. 29484 – Amending Sections 20.100.180, 20.100.220, 20.100.630, 20.100.800, 20.100.820, 20.100.830, 20.100.920, 20.100.940 and 20.100.950 of Chapter 20.100 of Title 20 and Section 21.04.140 of Chapter 21.04 of Title 21 and Sections 21.07.040, 21.07.050, 21.07.060 and 21.07.080 of Chapter 21.07 of Title 21 of the San José Municipal Code to streamline the City's Environmental Clearance and Permitting Processes.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29484 executed on September 12, 2014, submitted by the City Clerk.

Action: Ordinance No. 29484 was adopted. (10-0-1. Absent: Nguyen.) (First Reading: 10-1. Noes: Campos.)

2.3 Approval of Council Committee Reports.

- (a) **Rules and Open Government Committee Report of September 3, 2014. (Mayor)**

Documents Filed: (1) The Rules and Open Government Committee Report dated September 3, 2014. (2) Memorandum from Council Member Kalra, dated September 19, 2014, requesting to agendize a resolution in support of an amendment to the United States Constitution for a full Council discussion on October 21, 2014.

Mayor Reed pointed out that Council has already considered and approved a resolution regarding the Citizens United case.

Mayor Reed opened the floor for public testimony.

Public Comments: Speaking in support to the memorandum from Council Member Kalra were Herb Engstrom, John Fioretta, Santa Clara County Move to Amend and William Barrett.

Council Member Kalra moved approval to agendize a “Resolution in Support of an Amendment to the United States Constitution” for a full Council discussion on October 21, 2014. Council Member Campos seconded the motion.

2.3(a) (Cont'd.)

Action: On a call for the question, the motion to agendize a “Resolution in Support of an Amendment to the United States Constitution” for a full Council discussion on October 21, 2014, failed. (5-5-1. Noes: Constant, Herrera, Khamis, Oliverio; Reed. Absent: Nguyen.)

Upon motion by Council Member Constant, seconded by Council Member Campos and carried unanimously, the Rules and Open Government Committee Report dated September 3, 2014, was approved. (10-0-1. Absent: Nguyen.)

2.4 Mayor and Council Excused Absence Requests.

There were none.

2.5 City Council Travel Reports.

Mayor Reed and Council Member Constant attended the 2014 Silicon Valley Chamber of Commerce Study Mission Trip to New York, New York to meet with business, community and civic leaders and learn more about their best practices for disaster readiness, urban revitalization and economic development. Mayor Reed and Council Member Constant concurred that Bryant Park was the highlight of their trip.

Council Member Constant shared that he attended the League of California Cities Public Safety Committee Meeting and Annual Conference on September 3, 2014.

Council Member Campos reported that he attended the National Association of Latino Elected and Appointed Officials’ National Policy Institute on Infrastructure in Dallas, Texas on September 12, 2014 through September 13, 2014.

2.6 Report from the Council Liaison to the Retirement Boards.

There were none.

2.7 Approve travel by Council Member Kalra to Houston, TX on October 12 – 14, 2014 to attend the annual meeting and expo of the American Public Transportation Association. Source of Funds: Santa Clara Valley Transportation Authority. (Kalra)

Documents Filed: Memorandum from Council Member Kalra, dated September 4, 2014, requesting approval of travel.

Action: The travel request for Council Member Kalra was approved. (10-0-1. Absent: Nguyen.)

- 2.8 Adopt a resolution approving the use of the design-build project delivery method in accordance with California Public Contract Code Section 20193 for the construction of the Cogeneration Facility Project, which is estimated to cost in excess of \$2,500,000. CEQA: Mitigated Negative Declaration, File No. PP14-005. (Public Works/ Environmental Services)**

Action: Deferred to September 30, 2014 per Administration.

- 2.9 (a) Approve travel by Council Member Campos to Guadalajara, Mexico on September 29, 2014 – October 1, 2014 to attend the World Conference on Information Technology (WCIT) Conference. Source of Funds: District 5 Council Funds, the WCIT and the City of Guadalajara. (Any personal travel or activities will be paid for using personal funds.)**
- (b) Request for an excused absence for Council Member Campos from the Regular Meeting of the City Council on September 30, 2014 due to Authorized City Business: WCIT Conference.**

(Campos)

(Rules Committee referral 9/17/14)

Documents Filed: Memorandum from Council Member Campos, dated September 10, 2014, requesting approval of travel and an excused absence.

Action: The travel for Council Member Campos was approved and the absence was excused. (10-0-1. Absent: Nguyen.)

- 2.10 Approve travel by Mayor Reed to New York, NY on September 17 – 19, 2014 to attend the 2014 Silicon Valley Chamber of Commerce Study Mission Trip. Source of Funds: Mayor’s Office Fund. (Mayor)**
- (Rules Committee referral 9/17/14)**

Documents Filed: Memorandum from Mayor Reed, dated September 16, 2014, requesting authorization to travel.

Action: The travel request for Mayor Reed was approved. (10-0-1. Absent: Nguyen.)

- 2.11 As recommended by the Rules and Open Government Committee on September 17, 2014, consider a draft Council Policy establishing a job descriptions and qualifications required for the position of Independent Police Auditor. (Mayor)**
- [Rules Committee referral 9/17/14 – Item G(2)]**

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated September 18, 2014, transmitting the recommendations of the Rules and Open Government Committee.

Mayor Reed opened the floor for public testimony.

Public Comments: David Wall expressed opposition to the Staff recommendations.

2.11 (Cont'd.)

Mayor Reed requested that the following three clarifications be included in the motion and incorporated into the job description and qualifications of the Independent Police Auditor: (1) Job Description: Participates as a member of the In-Custody Death Training Review Panel. (2) Qualifications: A member in good standing with a state bar, not necessarily the California bar. (3) Qualifications: Include “domestic partner” to the definition of immediate family members.

Council discussions ensued.

Independent Police Auditor Judge LaDoris Cordell stressed that it is critical to maintain the credibility and trust with the community; and that there is separation and a good distance between the Independent Police Auditor Office and law enforcement.

Motion: Council Member Kalra moved approval of the Staff recommendations, Mayor Reed’s three clarifications and clarifications referring to Qualifications, Item (7), and to keep the word “shall” in lieu of “should” throughout the policy as described in detail below in “Action”. Council Member Herrera seconded the motion.

Council Member Liccardo concurred with Independent Police Auditor Judge LaDoris Cordell, expressed concern about the selection process and disagreed with the motion on the floor.

Action: On a call for the question, the motion carried, the following were approved by the Council for additional clarifications to the job description and qualifications of the Independent Police Auditor: (1) Job Description: Participates as a member of the In-Custody Death Training Review Panel. (2) Qualifications: A member in good standing with a state bar, not necessarily the California bar. (3) Qualifications: Include “domestic partner” to the definition of immediate family members. (4) Qualifications: keep the word “shall” in lieu of “should” throughout the policy. (5) Qualifications: referring to Item (7) “Does not have any immediate family members, defined as a spouse, parent, sibling, child, grandparent or domestic partners who are sworn law enforcement officers with any law enforcement agency”, i.e. a grandparent that retired 15 years earlier would not necessarily be held against them. Resolution No. 77161 adopted, entitled: “A Resolution of the Council of the City of San José Approving a New Council Policy Entitled: Job Description and Qualifications for the Independent Police Auditor”, was adopted, as amended. (6-4-1. Noes: Constant, Khamis, Liccardo, Oliverio. Absent: Nguyen.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

- 3.3 (a) Adopt a resolution authorizing the City Manager to select and purchase certain City property and liability insurance policies for the period October 1, 2014 to October 1, 2015, at a total cost not to exceed \$1,700,000 for all policies, with the following insurance carriers, subject to the appropriation of funds:
- (1) Lexington Insurance Company, Boston, MA for Property Insurance, including Boiler & Machinery.
 - (2) QBE Insurance for Airport Owners and Operators Liability including War Risks & Extended Perils Coverage (Primary and Excess) and Police Aircraft Hull & Liability including War Risks & Extended Perils.
 - (3) Travelers - or other insurers that the City is currently in negotiations with - for Automobile Liability (Airport fleet vehicles including Shuttle Buses, Regional Wastewater Facility fleet vehicles, and Airport Shuttle Bus physical damage.
 - (4) Indian Harbor Insurance Company for Secondary Employment Law Enforcement Professional Liability.
- (b) Adopt the following 2014-2015 Appropriation Ordinance amendments in the Convention and Cultural Affairs Fund:
- (1) Increase the Insurance Expenses appropriation to the Finance Department for Insurance Expenses by \$11,000.
 - (2) Decrease the Ending Fund Balance by \$11,000.

CEQA: Not a Project, File No. PP 10-066(a), Agreements and Contracts for purchase of insurance. (Finance/City Manager)

Documents Filed: (1) Memorandum from Director of Finance Julia H. Cooper and Deputy City Manager/Budget Director Jennifer A. Maguire, dated September 2, 2014, recommending adoption of a resolution and appropriation ordinance amendments. (2) Staff presentation dated September 23, 2014 summarizing the Citywide Insurance Renewals. (3) Letter from the Treatment Plant Advisory Committee Chair Chuck Reed, dated September 12, 2014, expressing concurrence with the Staff recommendations.

Motion: Council Member Constant moved approval of the Staff recommendations. Council Member Oliverio seconded the motion.

Public Comments: David Wall presented comments pertaining to the Staff recommendations.

3.3 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, Resolution No. 77162, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Select and Purchase Insurance Policies for the Period of October 1, 2014 to October 1, 2015 At A Cost Not To Exceed \$1,700,000" and Ordinance No. 29487, entitled: "An Ordinance of the City of San José Amending Ordinance No. 29431 to Appropriate Monies in the Convention and Cultural Affairs Fund for the Insurance Expenses Appropriation to the Finance Department; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption", were adopted. (10-0-1. Absent: Nguyen.)

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.1 Adopt a resolution initiating proceedings and setting November 18, 2014 at 1:30 p.m. for Council consideration on the reorganization of the territory designated as Communications Hill No. 1 which involves the annexation to the City of San José of an approximately 310.20 gross-acre portion of County territory consisting of twenty (20) lots and public right-of-way generally located on the south side of the Union Pacific Railroad tracks, west side of Hillsdale Ave., northerly of Adeline Ave. and Altino Blvd., and easterly of Highway 87 at the terminus of Carol Drive; and the detachment of the same area from the appropriate special districts, including Central Fire Protection and Area No. 01 (Library Services) County Service. (Multiple Property Owners). CEQA: Not a Project, File No. PP10-069, City Organizational and Administrative Activities. Council Districts 6 and 7. (Planning, Building and Code Enforcement)**

Action: Deferred to September 30, 2014 per Orders of the Day.

PUBLIC SAFETY SERVICES

- 8.1 (a) As recommended by the Public Safety, Finance, and Strategic Support Committee on May 15, 2014, accept the report on the Use of Police Reserves.**
(b) Accept the Police Department's work plan for revisions to San José Municipal Code Chapter 8.12 – San José Police Reserve.
CEQA: Not a Project, File No. PP10-069(A), Staff Reports. (Police)
[Public Safety, Finance, and Strategic Support Committee 5/15/14 – Item D(2)]
(Deferred from 6/17/14 – Item 8.1, et al 9/16/14 – Item 8.1)

Documents Filed: (1) Memorandum from City Clerk Toni J. Taber, CMC, dated July 22, 2014, transmitting the referral from the Public Safety, Finance and Strategic Support Committee. (2) Supplemental memorandum from Chief of Police Larry Esquivel, dated September 11, 2014, outlining the work plan to delete obsolete references and update the San José Municipal Code Chapter 8.12 San José Police Reserve.

8.1 (Cont'd.)

Council Member Constant and City Attorney Richard Doyle provided clarifications.

Action: Upon motion by Council Member Constant, seconded by Council Member Khamis and carried unanimously, the reports on the Use of Police Reserves and the Police Department's work plan for revisions to San José Municipal Code Chapter 8.12 San José Police Reserve, were accepted. (10-0-1. Absent: Nguyen.)

REDEVELOPMENT – SUCCESSOR AGENCY

9.1 **Adopt a resolution approving compensation changes for Successor Agency to the Redevelopment Agency of the City of San José (Successor Agency) employees reflecting a 5.0% salary increase for Fiscal Year 2014-2015, effective retroactively to June 22, 2014. CEQA: Not for Project, File No. PP10-069(b), Personnel Related Decisions. (Successor Agency)**

Documents Filed: (1) Memorandum from Mayor Reed, dated September 17, 2014, recommending adoption of the Staff recommendations with the following addition: Award each Successor Agency employee a one-time, non-pensionable cash payment equal to 12 months of the 2% pay increase that they would have enjoyed had they been included in the increase granted to other City employees in FY 2013-2014. (1) Memorandum from City Manager Edward K. Shikada, dated September 3, 2014, recommending adoption of a resolution.

Mayor Reed requested that his memorandum dated September 17, 2014 regarding the one time catch-up for the Successor Agency employees, is included in the motion.

Motion: Council Member Constant moved approval of the memorandum from Mayor Reed, dated September 17, 2014, as described below in "Action" and the Staff recommendations. Council Member Oliverio seconded the motion.

Public Comments: David Wall expressed comments about the compensation changes for the Successor Agency employees.

Action: On a call for the question, the motion carried unanimously, the memorandum from Mayor Reed, dated September 17, 2014, was approved, adopting the Staff recommendations as indicated in the memorandum dated September 3, 2014, with the following addition: Award each Successor Agency employee a one-time, non-pensionable cash payment equal to 12 months of the 2% pay increase that they would have enjoyed had they been included in the increase granted to other City employees in FY 2013-2014 and SARA Resolution No. 7033, entitled: "A Resolution of the Successor Agency to the City of San José Approving Compensation Changes for Successor Agency Employees Reflecting a 5% Salary Increase for Fiscal Year 2014-2015, Effective Retroactively to June 22, 2014", was adopted. (10-0-1. Absent: Nguyen.)

OPEN FORUM

David Wall complained about a “junk” vehicle that has been parked on his neighborhood street for two weeks creating blight and unsanitary conditions.

ADJOURNMENT

The Council of the City of San José adjourned the afternoon session at 3:00 p.m.

RECESS/RECONVENE

The City Council recessed at 3:00 p.m. from the afternoon Council Session and reconvened at 7:03 p.m. in the Council Chambers, City Hall.

Present: Council Members - Campos, Chu, Constant, Herrera, Kalra, Khamis, Liccardo, Oliverio (7:13 p.m.), Rocha; Reed.

Absent: Council Members - Nguyen. (Excused)

City Clerk Toni J. Taber, CMC read the requests for continuance of the applications. Upon motion by Council Member Liccardo, seconded by Council Member Constant and carried unanimously, the below noted continuances and actions were taken as indicated. (10-0-1. Absent: Nguyen.)

CEREMONIAL ITEMS

1.1 Presentation of a commendation to the three six grade classes at Renaissance Academy at Fischer for their beautification of the community through their artwork. (Campos)

Mayor Reed and Council Members Campos, Khamis, Herrera and Rocha recognized and commended three Six Grade Classes at Renaissance Academy at Fischer for their beautiful artwork.

1.2 Presentation of a commendation to Legends Futsal Alevin team for their first place finish at the 2014 World Futsal Championships in Kissimmee, Florida. (Campos) (Rules Committee referral 9/17/14)

Mayor Reed and Council Member Campos recognized and commended Legends Futsal Alevin team for their first place finish at the 2014 World Futsal Championships in Kissimmee, Florida.

1.3 Presentation of a commendation to the League of Women Voters for their voter service activities and active participation in government. (Chu) (Rules Committee referral 9/17/17)

Mayor Reed and Council Members Chu, Herrera and Kalra recognized and commended the League of Women Voters for their service.

GENERAL PLAN PUBLIC HEARINGS ON CONSENT CALENDAR

Mayor Reed opened the General Plan Public Hearing on the Consent Calendar.

Public Comments: There was no testimony from the floor.

Mayor Reed closed the General Plan Public Hearing on the Consent Calendar.

Upon motion by Council Member Campos, seconded by Council Member Oliverio and carried unanimously, the General Plan Public Hearings on the Consent Calendar were approved and the below listed actions were taken as indicated. (9-0-2. Absent: Herrera, Nguyen.)

- 10.1 (a) Tentative approval of a General Plan Amendment to change the Land Use/Transportation Diagram designation from Public/Quasi-Public to Residential Neighborhood to reflect the existing residential use of three parcels totaling approximately 0.91 gross acres, located on the east side of San Tomas Expressway between the southern terminus of Coakley Drive and northern terminus of Vicar Lane (855 Coakley Drive; 925 Vicar Lane; 929 Vicar Lane) (Multiple Owners). CEQA: Envision San José 2040 General Plan EIR, Resolution No. 76041 and Addenda thereto. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1). (Planning, Building and Code Enforcement)
GP13-010 – District 1**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. GPa13-010, dated August 4, 2014. (2) Memorandum from Planning Commission Secretary Harry Freitas, dated September 12, 2014, transmitting the recommendation of the Planning Commission. (3) Proof of Publication of Notice of Public Hearing executed on July 25, 2014, submitted by the City Clerk.

Action: The City Council tentatively approved the proposed General Plan Amendment. (9-0-2. Absent: Herrera, Nguyen.)

- (b) Tentative approval of a General Plan Amendment to change the Land Use/Transportation Land Use designation from Open Space, Parklands and Habitat to Residential Neighborhood to align with the existing residential use on a 3.05 gross acre site, located at 1452 & 1460 Cote de Rosa and 1472, 1477, 1478, 1483, 1486, 1489 Corte de Maria (Edenbridge Capital Parts LP, Owner). CEQA: Envision San José 2040 General Plan EIR, Resolution No. 76041 and Addenda thereto. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1). (Planning, Building and Code Enforcement)
GP13-011- District 10**

10.1 (b) (Cont'd.)

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. GP13-011, dated August 5, 2014. (2) Memorandum from Planning Commission Secretary Harry Freitas, dated September 12, 2014, transmitting the recommendation of the Planning Commission. (3) Proof of Publication of Notice of Public Hearing executed on July 25, 2014, submitted by the City Clerk.

Action: The City Council tentatively approved the proposed General Plan Amendment. (9-0-2. Absent: Herrera, Nguyen.)

- (c) **Tentative approval of a General Plan Amendment to change the Land Use/Transportation Diagram designation from Lower Hillside to Public/Quasi-Public to reflect the existing religious assembly use on an approximately 1.7 gross acre site, located at the northeast corner of Clayton Road and Hickerson Drive (10160 Clayton Road) (Hillhouse Construction Company Inc, Owner). CEQA: Envision San José 2040 General Plan EIR, Resolution No. 76041 and Addenda thereto. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1). (Planning, Building and Code Enforcement)**
GP13-012 – District 5

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. GP13-012, dated August 5, 2014. (2) Memorandum from Planning Commission Secretary Harry Freitas, dated September 12, 2014, transmitting the recommendation of the Planning Commission. (3) Proof of Publication of Notice of Public Hearing executed on July 25, 2014, submitted by the City Clerk.

Action: The City Council tentatively approved the proposed General Plan Amendment. (9-0-2. Absent: Herrera, Nguyen.)

- (d) **Tentative approval of a General Plan Amendment to change the Land Use/Transportation Diagram designation from Residential Neighborhood to Public/Quasi-Public to reflect the existing education-related use on a 1.4 acre portion of an approximately 6.4 gross acre site, located at the southwest terminus of Trinity Place (3235 Union Avenue) (Campbell Union HSD, Owner). CEQA: Envision San José 2040 General Plan EIR, Resolution No. 76041 and Addenda thereto. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1). (Planning, Building and Code Enforcement)**
GP13-013 – District 9

10.1 (d) (Cont'd.)

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. GP13-013, dated August 4, 2014. (2) Memorandum from Planning Commission Secretary Harry Freitas, dated September 12, 2014, transmitting the recommendation of the Planning Commission. (3) Proof of Publication of Notice of Public Hearing executed on July 25, 2014, submitted by the City Clerk.

Action: The City Council tentatively approved the proposed General Plan Amendment. (9-0-2. Absent: Herrera, Nguyen.)

- (e) **Tentative approval of a General Plan Amendment to change the Land Use/Transportation Diagram designation from Industrial Park to Public/Quasi-Public to reflect the existing public use (Police Substation) on a 10.5 gross acre site located at the southwesterly corner of Great Oaks Parkway and Perimeter Road (6087 Great Oaks Parkway) (City Of San José, Owner). CEQA: Envision San José 2040 General Plan EIR, Resolution No. 76041 and Addenda thereto. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1). (Planning, Building and Code Enforcement)
GP13-014 – District 2**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. GP13-014, dated August 4, 2014. (2) Memorandum from Planning Commission Secretary Harry Freitas, dated September 12, 2014, transmitting the recommendation of the Planning Commission. (3) Proof of Publication of Notice of Public Hearing executed on July 25, 2014, submitted by the City Clerk.

Action: The City Council tentatively approved the proposed General Plan Amendment. (9-0-2. Absent: Herrera, Nguyen.)

- (f) **Tentative approval of a General Plan to change the Land Use/Transportation Diagram designation from Open Space, Parklands and Habitat to Public/Quasi-Public to reflect the existing use on an approximately 0.76 gross acre site, located on the east site of Ruby Avenue, approximately 375 feet south of Aborn Road (3100 Ruby Avenue) (City Of San José, Owner). CEQA: Envision San José 2040 General Plan EIR, Resolution No. 76041 and Addenda thereto. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1). (Planning, Building and Code Enforcement)
GP13-015 – District 8**

10.1 (f) (Cont'd.)

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. GP13-015, dated August 4, 2014. (2) Memorandum from Planning Commission Secretary Harry Freitas, dated September 12, 2014, transmitting the recommendation of the Planning Commission. (3) Proof of Publication of Notice of Public Hearing executed on July 25, 2014, submitted by the City Clerk.

Action: The City Council tentatively approved the proposed General Plan Amendment. (9-0-2. Absent: Herrera, Nguyen.)

- (g) **Tentative approval of a General Plan Amendment to change the Land Use/Transportation Diagram designation from Public/Quasi-Public to Urban Residential on an approximately 0.38 gross acre site located on the northwest corner of Gallup Drive and Mesa Drive (5647 Gallup Drive & 1171 Mesa Drive) (Successor Agency to the San José Redevelopment Agency, Owner). CEQA: Envision San José 2040 General Plan EIR Resolution No. 76041 and Addenda thereto. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1). (Planning, Building and Code Enforcement)**
GP13-016 – District 10

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. GP13-016, dated August 4, 2014. (2) Memorandum from Planning Commission Secretary Harry Freitas, dated September 12, 2014, transmitting the recommendation of the Planning Commission. (3) Proof of Publication of Notice of Public Hearing executed on July 25, 2014, submitted by the City Clerk.

Action: The City Council tentatively approved the proposed General Plan Amendment. (9-0-2. Absent: Herrera, Nguyen.)

- (h) **Tentative approval of a General Plan Amendment to change the Land Use/Transportation Diagram designation from Mixed Use Neighborhood to Neighborhood/Community Commercial to reflect to existing retail use on an approximately 3.92 gross acre site, located on the south side of Aborn Road, approximately 300 feet east of Silver Creek Road (1900 Aborn Road) (Evergreen Valley Estates LLC, Owner). CEQA: Envision San José 2040 General Plan EIR, Resolution No. 76041 and Addenda thereto. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1). (Planning, Building and Code Enforcement)**
GP13-008 – District 8

10.1 (h) (Cont'd.)

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. GP13-008, dated August 20, 2014. (2) Memorandum from Planning Commission Secretary Harry Freitas, dated September 12, 2014, transmitting the recommendation of the Planning Commission. (3) Proof of Publication of Notice of Public Hearing executed on August 8, 2014, submitted by the City Clerk.

Action: The City Council tentatively approved the proposed General Plan Amendment. (9-0-2. Absent: Herrera, Nguyen.)

- (i) **Adopt a Negative Declaration and tentative approval of a General Plan Amendment to change the Land Use/Transportation Diagram designation from Neighborhood/Community Commercial to Residential Neighborhood on a 1.35 gross acre site, located easterly of North Capitol Avenue, approximately 470 feet south of Sierra Road (1280, 1284, and 1288 North Capitol Avenue) (Lena E Scimeca, Owner). CEQA: Negative Declaration to be adopted. Planning Commission recommends approval (6-0-1). (Planning, Building and Code Enforcement)**
GP14-004 – District 4

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. GP14-004, dated September 2, 2014. (2) Memorandum from Planning Commission Secretary Harry Freitas, dated September 10, 2014, transmitting the recommendation of the Planning Commission. (3) Proof of Publication of Notice of Public Hearing executed on August 8, 2014, submitted by the City Clerk.

Action: The City Council tentatively approved the proposed General Plan Amendment. (9-0-2. Absent: Herrera, Nguyen.)

- (j) **Tentative approval of General Plan Amendment to change the Land Use/Transportation Diagram designation from Open Space/Parklands/Habitat to Downtown on a 0.13 gross acre site, located on the southwest corner of West Julian Street and North Almaden Boulevard, approximately 125 feet westerly of North Almaden Boulevard, 150 feet northerly of West St. John Street, and 200 feet southerly of West Julian Street (APNs: 259-30-105 & 259-30-106) (Silicon Valley Homes LLC, Owner). CEQA: Envision San José 2040 General Plan EIR, Resolution No. 76041 and Addenda thereto. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1). (Planning, Building and Code Enforcement)**
GP14-006- District 3

10.1 (j) (Cont'd.)

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. GP14-006, dated August 19, 2014. (2) Memorandum from Planning Commission Secretary Harry Freitas, dated September 12, 2014, transmitting the recommendation of the Planning Commission. (3) Proof of Publication of Notice of Public Hearing executed on August 8, 2014, submitted by the City Clerk.

Action: The City Council tentatively approved the proposed General Plan Amendment. (9-0-2. Absent: Herrera, Nguyen.)

10.1 (k) Tentative approval of General Plan Amendment to change the Land Use/Transportation diagram designation from Mixed Use Commercial to Urban Residential on an approximately 0.6 acre portion of two adjoining parcels with a combined area of 2.9 acres, located on the east side Sunol Street approximately 100 feet north of West San Carlos Street (258 and 270 Sunol Street) (Santa Clara County Board Of Education and James R Marcus Trustee, Owners). CEQA: Envision San José 2040 General Plan EIR, Resolution No. 76041 and Addenda thereto. Planning Commission recommends approval (5-0-1-1). (Planning, Building and Code Enforcement) GP14-007 – District 6

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. GP14-007, dated September 3, 2014. (2) Memorandum from Planning Commission Secretary Harry Freitas, dated September 12, 2014, transmitting the recommendation of the Planning Commission. (3) Proof of Publication of Notice of Public Hearing executed on August 22, 2014, submitted by the City Clerk.

Action: The City Council tentatively approved the proposed General Plan Amendment. (9-0-2. Absent: Herrera, Nguyen.)

(l) Tentative approval of a General Plan Amendment request to change the Land-Use/Transportation Diagram land use designation from Residential Neighborhood on three parcels totaling 0.70 acres and Neighborhood Community Commercial on four parcels totaling 0.72 acres to Downtown Core, located on the east side of North 4th Street between East Saint James and East Julian Streets (210, 222, 234, 246, 250, 260, and 298 North 4th Street) (Green Valley Corporation, Owner). CEQA: Envision San José 2040 General Plan EIR, Resolution No. 76041 and Addenda thereto. (Planning, Building and Code Enforcement) GP14-003 – District 3

Action: Item 10.1(l) was dropped.

END OF GENERAL PLAN PUBLIC HEARING ON CONSENT CALENDAR

GENERAL PLAN PUBLIC HEARINGS

- 10.2 Tentative approval of a General Plan text amendment request to revise the Envision San José 2040 General Plan Text to incorporate the Housing Element for 2014-2023, which text amendments include but are not limited to: revising Chapter 7 “Implementation”; adding new Appendices including but not limited to Appendix 11 “Housing Element for 2014-2023”; and revising or deleting references to Appendix C “Housing Element Update 2007-2014,” of the San José 2020 General Plan, all to update demographic and housing data, goals, policies, and implementation actions and to make other minor technical, clarifying and clerical revisions, as necessary, to comply with State Housing Element Law (Government Code Section 65580-65589.8). CEQA: Envision San José 2040 General Plan EIR, Resolution No. 76041, and Addenda thereto; Downtown Strategy 2000 EIR, Resolution No. 72767, and Addenda thereto; North San José Development Policies EIR, Resolution No. 72768, and Addenda thereto; and Diridon Station Area Plan EIR, Resolution No. 77096 and Addenda thereto (collectively, the “Final Program EIRs”). Pursuant to Section 15168 of the CEQA Guidelines, the City of San José has determined that this activity is within the scope of the earlier approved programs and the Final Program EIRs adequately describe the activity for purposes of CEQA. The project does not involve new significant effects beyond those analyzed in the Final Program EIRs. Planning Commission recommends approval (6-0-1). (Planning, Building and Code Enforcement)
GPT14-001 – District: Citywide**

Documents Filed: (1) Memorandum from Council Member Rocha, dated September 23, 2014, recommending taking public input, viewing the Staff presentation, deferring final action and direction to Staff at the September 30, 2014 meeting. (2) Staff presentation dated September 23, 2014 summarizing the 2014-2023 Housing Element Update.

Director of Planning, Building and Code Enforcement Harry Freitas presented introductory remarks. Director of Housing Leslye Corsiglia explained the Housing Element. Housing Department, Director of Policy and Planning Wayne Chen and Planning, Building and Code Enforcement Senior Planner Jenny Nusbaum summarized the other aspects of the Housing Element.

Mayor Reed opened the Public Hearing.

Public Comments: The following speakers expressed their perspectives on the General Plan Text Amendment and the Housing Element for 2014-2023: Jim Reyner, Kent Greathouse, Ruth Greathouse, Phyllis Tripp, Winchester Ranch Senior Homeowners Association; Erik Schoennauer, Pilar Lorenzana-Campo, Poncho Guevara, Robert Aguirre, Anthony T. King, Pat Farrow, Bill Black, Sacred Heart Housing Action Committee; Phil Olmstead, Diana Castillo, Law Foundation of Silicon Valley; Susan Norris, Michele Beasley, Greenbelt Alliance; Stan Soles, Sandy Perry, Affordable Housing Network; Matt Huerta, Neighborhood Housing Services Silicon Valley; Dayana Salazar, CommUniverCity San José; Maria Gabriella and Marina Tilbury.

10.2 (Cont'd.)

Mayor Reed closed the Public Hearing.

City Attorney Richard Doyle, Director of Planning, Building and Code Enforcement Harry Freitas, Director of Housing Leslye Corsiglia and Planning, Building and Code Enforcement Senior Planner Jenny Nusbaum responded to Council questions and concerns.

Extensive Council discussion ensued.

Mayor Reed and the Council Members provided comments and revisions for Staff to incorporate into the document.

Motion: Council Member Herrera moved tentative approval of the General Plan Text Amendments and with direction to Staff to incorporate all the comments in the Council discussion today and return to Council on September 30, 2014. Council Member Liccardo seconded the motion.

Action: On a call for the question, the motion carried unanimously, the City Council tentatively approved the proposed General Plan Amendment. Staff was directed to incorporate the comments from Council and return to Council on September 30, 2014. The Housing Element for 2014-2023 was continued to September 30, 2014. (10-0-1. Absent: Nguyen.)

10.3 **Tentative approval of a General Plan Text Amendment request to modify policies in the Environmental Leadership chapter of the Envision San José 2040 General Plan to require that pre-construction surveys for migratory birds be conducted for certain projects that propose to disturb trees. CEQA: Envision San José 2040 General Plan EIR, Resolution No. 76041 and Addenda thereto. (Planning, Building and Code Enforcement)** **GPT14-002 – District: Citywide**

Action: Deferred to September 30, 2014 per Administration.

10.4 **Adopt a resolution approving all of the General Plan amendment actions taken on September 23, 2014. (Planning, Building and Code Enforcement)**

Action: Continued to September 30, 2014 per Administration.

PUBLIC HEARINGS

11.2 Conduct an Administrative Hearing and consider an Appeal of the Planning Commission's decision to approve a Conditional Use Permit to allow installation of a 65-foot tall monopine and associated ground mounted equipment facility on an approximately 0.32 gross acre site, in the CP Commercial Pedestrian Zoning District, located at 3649 Union Avenue (David G Roberts Trustee & Et Al, Owner). CEQA: Exempt, File No. CP14-030. (Planning, Building and Code Enforcement) CP14-030 – District 9

Documents Filed: (1) Memorandum from Council Member Rocha, dated September 23, 2014, recommending approval of the Staff recommendations with amendments. (2) Memorandum from Council Member Liccardo, dated September 19, 2014, recommending granting the appeal and denying the issuance of the Conditional Use Permit. (3) Statement and Declaration of Conflict of Interest from Council Member Khamis, dated September 23, 2014, declaring a conflict of interest because of an investment with AT&T. (4) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. CP14-030, dated June 4, 2014. (5) Memorandum from Director of Planning, Building and Code Enforcement Harry Freitas, dated September 2, 2014, recommending conducting an Administrative Hearing, consider an Appeal to approve a Conditional Use Permit and adoption of a resolution. (6) Proof of Publication of Notice of Public Hearing executed on September 5, 2014, submitted by the City Clerk. (7) Eleven emails from the members of the public, all dated September 23, 2014, expressing support to AT&T's effort to upgrade the wireless coverage network. (8) Petition of Two Hundred and Ninety Seven (297) signatures dated September 23, 2014 supporting AT&T's efforts to bring a world class wireless infrastructure to the community.

Council Member Khamis recused himself from participating in the voting and discussion of this issue disclosing an investment with AT&T.

Howie Spinner, the Appellant, advised the Council that the Conditional Use Permit should be denied because it fails to comply with the City codes.

Leon Beechum, External Affairs Consultant, AT&T pointed out the merits of the project and presented two hundred and ninety-seven signatures from AT&T customers in favor of the monopole to the City Clerk for the record. Jimmy Stillman, Modus Corporation, detailed the specifics of the project and noted that he has performed due diligence and was confident his company was presenting the least obtrusive design.

Mayor Reed opened the Administrative Hearing.

Public Comments: The following speakers expressed opposition to the installation of a 65-foot tall monopine and associated ground mounted equipment facility: Emilio Alarcon, Vanessa, Pam Falk, Vera Sarkasian, Peter, Ruben Sarkasian, Ron Lewis, Mike R., Joe, MyLynn, Serya, George, Dave Schneider, Laura Schneider, Jean Spinner, Sue Walker, Alex, Berge Y. and Dee.

11.2 (Cont'd.)

Howie Spinner, the Appellant, recommended looking for a responsible solution and reiterated that the addition of the cell tower will adversely impact the area.

Jimmy Stillman, Modus Corporation, pointed out that he is open to a 10 Year Use Permit Renewal wherein it is possible to come back to the Council, Planning Commission or Staff and determine if the site still conforms.

Mayor Reed closed the Administrative Hearing.

Motion: Council Member Rocha moved approval of his memorandum dated September 23, 2014, approving the Staff recommendations with amendments with the condition that the monopine be revised and to not add a monopole. Council Member Constant seconded the motion.

Council Member Constant requested to amend the motion to add a new condition to the motion that permits co-location. Council Member Rocha accepted the amendment.

Council Member Liccardo expressed opposition citing that the General Plan supports the provision of state-of-the-art telecommunication services and pointed out that contrary to the Staff Report communication, antennae like the one being proposed are quickly becoming yesterday's technology.

On a call for the question, the amended motion failed. (2-7-1-1. Noes: Campos, Herrera, Kalra, Liccardo, Oliverio, Rocha; Reed. Absent: Nguyen. Abstain: Khamis.)

Second Motion: Council Member Rocha moved approval of his memorandum dated September 23, 2014, approving the Staff recommendations with amendments and to revise condition around the monopole and not the monopine. Council Member Oliverio seconded the motion.

Action: On a call for the question, the second motion carried, the revised memorandum from Council Member Rocha, dated September 23, 2014, was approved, the Staff recommendations were approved with the following amendments: (1) Provide that the permit shall expire ten years from the date on which it is issued. The use would be able to continue on the site after the expiration of this permit, if a new permit is obtained. (2) Make the following amendments to the provision concerning co-location: (a) Delete Permit Condition 12, which requires that the Applicant allow co-location of antennas for other providers at the proposed monopole facility, as well as allow additional at-grade equipment to facilitate co-location. (b) Replace the deleted condition with a new condition that prohibits co-location on the site. (3) Revise condition around the monopole and not the monopine. Resolution No. 77164, entitled: "A Resolution of the Council of the City of San José Approving a Conditional Use Permit To Allow Installation of a 65-Foot Tall Wireless Communication Antenna Slimline Monopole and Associated Ground Mounted Equipment on a 0.32 Gross Acre Site, Located on the West Side of Union Avenue Approximately 250 Feet Southerly of Camden Avenue (3649 Union Avenue)", was adopted. (8-1-1-1. Noes: Liccardo. Absent: Nguyen. Abstain: Khamis.)

- 11.3 Consideration of ordinance rezoning the real property located at 1365 North Tenth Street from LI Light Industrial Zoning District to HI Heavy Industrial Zoning District on a 0.90 gross acre site. CEQA: Envision San José 2040 General Plan EIR, Resolution No. 76041 and Addenda thereto. (Planning, Building and Code Enforcement)**
C14-041 – District 3

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. CP14-041, dated September 2, 2014. (2) Proof of Publication of Notice of Public Hearing executed on September 5, 2014, submitted by the City Clerk.

Mayor Reed opened the Public Hearing.

Public Comments: There was no testimony from the floor.

Mayor Reed closed the Public Hearing.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, the recommendation of the Planning Director was approved, Ordinance No. 29488, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the West Side of North 10th Street Approximately 500 Feet Northerly of Bayshore Highway on a 0.90 Gross Acre Site (AP:N 237-06-003) from the LI Light Industrial Zoning District to the HI Heavy Industrial Zoning District”, was passed for publication. (9-0-2. Absent: Constant, Nguyen.)

- 11.4 (a) Adopt a resolution adopting the Mitigated Negative Declaration for the Park Avenue Senior and Multi-Family Housing Project and a related Mitigation Monitoring and Reporting Program.**
- (b) Consideration of an ordinance rezoning the real property located at the northeast corner of Park Avenue and Laurel Grove Lane (777 Park Avenue) from the A(PD) Planned Development Zoning District to the A(PD) Planned Development Zoning District to allow up to 182 multi-family attached units on 2.14 gross acres site (County of Santa Clara Housing Authority, Owner).**
CEQA: Mitigated Negative Declaration to be considered for adoption. Planning Commission recommends approval (5-0-2). (Planning, Building and Code Enforcement)
PDC13-012 – District 6

Action: Deferred to September 30, 2014 per Rules And Open Government Committee.

- 11.5 (a) **Certify the Environmental Impact Report for the Bay 101 Casino and Mixed Use Project, and adopt a resolution making certain findings concerning significant environmental impacts, mitigation measures and alternatives, adopting a mitigation monitoring and reporting program, and adopting a statement of overriding considerations, all in accordance with the California Environmental Quality Act.**
- (b) **Consideration of an ordinance rezoning the real property located on the northeast corner of North First Street and Matrix Boulevard (1740 North First Street) from the CG Commercial Zoning District to the CG(PD) Planned Development Zoning District to allow the uses of the CG Commercial General Zoning District, including a relocated cardroom (Bay 101) on a 19.4 gross acre site (Bumb & Associates et al, Owner).**

CEQA: Bay 101 Casino and Mixed Use Project Environmental Impact Report (EIR) to be considered for certification and adoption. Planning Commission recommends approval (6-0-1). (Planning, Building and Code Enforcement) PDC13-017 – District 3

Documents Filed: (1) Memorandum from Council Member Liccardo, dated September 22, 2014, recommending acceptance of the Staff recommendations with revisions. (2) Memorandum from Council Member Rocha, dated September 23, 2014, recommending approval of the Planning Commission recommendation. (3) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC13-017, dated September 2, 2014. (4) Memorandum from Planning Commission Secretary Harry Freitas, dated September 12, 2014, transmitting the recommendation of the Planning Commission. (5) Supplemental memorandum from Director of Planning, Building and Code Enforcement Harry Freitas, dated September 22, 2014, responding to correction from Caltrans. (6) Proof of Publication of Notice of Public Hearing executed on August 22, 2014, submitted by the City Clerk.

Mayor Reed opened the Public Hearing.

Erik Schoennauer, representing the Applicant, Bumb and Associates/Bay 101, pointed out that this rezoning represents a significant economic development for the City of San José.

Public Comments: Art Fernandes, Unite Here, Local 19, expressed support to the Staff recommendations.

Mayor Reed closed the Public Hearing.

Motion: Council Member Rocha moved approval of his memorandum dated September 23, 2014, accepting the recommendation of the Planning Commission to approve the proposed Planned Development Rezoning. Council Member Constant seconded the motion.

11.5 (Cont'd.)

Council Member Liccardo expressed concerns for the rezoning and opposition for the motion on the floor.

Action: On a call for the question, the motion carried, the recommendation of the Planning Commission was approved, the memorandum from Council Member Rocha, dated September 23, 2014, was approved, Resolution No. 77165, entitled: “A Resolution of the Council of the City of San José Making Certain Findings Concerning Mitigation Measures, and Adopting A Mitigation Monitoring and Reporting Program, In Accordance With the California Environmental Quality Act for The Bay 101 Casino and Mixed Use Project (SCH# 2013122053) For Which an Environmental Impact Report Has Been Prepared”, was adopted and Ordinance No. 29489, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the Northeast Corner of North First Street and Matrix Boulevard from the CG Commercial General Zoning District to the CG(PD) Planned Development Zoning District”, was passed for publication. (9-1-1. Noes: Liccardo. Absent: Nguyen.)

11.6 **Consideration of ordinance rezoning the real property located on the southwest side of the terminus of Technology Drive (1601 Technology Drive) from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District to allow 350,000 square feet of office use on a 5.29 gross acre site (Blackhawk Parent, LLC, Owner). CEQA: Addendum to the Final Program EIR for the North San José Development Policies Update, Resolution No. 72768; the Final Program EIR for the Spieker/Skyport Project, Resolution No. 69421; and the Final Program EIR for the Envision San José 2040 General Plan, Resolution No. 76041. Planning Commission recommends approval (6-0-1). (Planning, Building and Code Enforcement) PDC13-041 – District 3**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC13-041 dated September 3, 2014. (2) Memorandum from Planning Commission Secretary Harry Freitas, dated September 12, 2014, transmitting the recommendation of the Planning Commission. (3) Proof of Publication of Notice of Public Hearing, executed on August 22, 2014, submitted by the City Clerk.

Mayor Reed opened the Public Hearing.

Kenneth Rodrigues, the Applicant, spoke to the merits of the project.

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

Council Member Khamis moved approval of the Staff recommendations. Council Member Herrera seconded the motion.

11.6 (Cont'd.)

Council Member Khamis withdrew the motion in order for Council Member Liccardo to present his motion with certain conditions to be followed.

Motion: Council Member Liccardo moved approval of Staff recommendation with the following conditions as described below in “Action”. Council Member Herrera seconded the motion.

Action: On a call for the question, the motion carried unanimously, the recommendation of the Planning Commission and the following conditions were approved: (1) No encroachment in terms of height or reduction in setback from that seven boundary as indicated on the Conceptual Site Plan 1.2 submitted by the Applicant. (2) The Applicant was directed to contribute to lighting improvements along Sonora Drive to accommodate Light Rail riders walking to and from the development. (3) The Applicant was directed to continue to work with Staff and the community to protect the reasonable privacy and interest of residents who live nearby. Ordinance No. 29490, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the Southwest Side of the Terminus of Technology Drive, From the A(PD) Planned Development Zoning District to the A(PD) Planned Development Zoning District”, was passed for publication, as amended. (10-0-1. Absent: Nguyen.)

11.7 **Conduct an Administrative Hearing and consideration of an Appeal of the Planning Director’s adoption of addendum to the Chaboya Ranch Mitigated Negative Declaration and Richmond Ranch Final Environmental Impact Report which will increase the area of site disturbance due to the construction of the Chaboya Ranch project from about 3.03 acres to 4.3 (with a total of 72,200 cubic yards of cut and 10,200 cubic yards of fill, expand grading onto an adjacent undeveloped property to the northwest of the project site (APN 660-58-002), and alter grading with a 100 feet riparian corridor setback. Location: East side of San Felipe Road and west side of Livery Lane, approximately 650 feet southerly of Running Springs Road (7500 San Felipe Road). (Planning, Building and Code Enforcement)**

PDA94-021-01/PDA13-008-01 – District 8

Documents Filed: Proof of Publication of Notice of Public Hearing executed on September 5, 2014, submitted by the City Clerk.

Action: Dropped; To Be Renoticed.

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>
10154	W/S of N. 1 st Street, 450’ S/O Rio Robles	4	Irvine Company	4 Lots/ 0 Units	None (Land only)	Approve

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>
10262	1590 Berryessa Rd	4	Flea Market Inc	6 / 45	MFA

ADJOURNMENT

The Council of the City of San José was adjourned at 11:11 p.m. in memory of Haylie Lynn Jackson. At the age of nine, Haylie’s courageous fight against bone cancer inspired and educated many, especially in the Sartorette Elementary School community. Her courage and joy were virtues we should all aspire to. (Rocha)

Minutes Recorded, Prepared and Respectfully Submitted by,

Toni J. Taber, CMC
City Clerk

smd/09-23-14 MIN

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