

## MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, NOVEMBER 04, 2014

The Council of the City of San José convened in Regular Session at 9:39 a.m. in the Council Chambers at City Hall.

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

Absent: Council Members - All Present.

### STRATEGIC SUPPORT SERVICES

#### 3.2 Accept Labor Negotiations Update.

There was no report.

### CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:40 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 two (2) matters. (B) to confer with Legal Counsel pursuant to Government Code Section 54956.9(d)(1) with respect to existing litigation: (1) In re: Claim of Goldsmith; Amount of Money or Other Relief Sought: Administrative Appeal. (2) Direct Access Botanical and Supplements, Inc. et al v. City of San José, et al. Names of Parties Involved: Direct Access Botanical and Supplements, Inc., Erika Mielenz, Meleki Manu and Giteet Amar, City of San José, et al; Court: Superior Court of California, County of Santa Clara; Case No: 1-14-CV-272165; Amount of Money or Other Relief Sought: Preliminary Injunction and Temporary Restraining Order. (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

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

Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AEA. (3) Association of Maintenance Supervisory Personnel (AMSP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AMSP. (4) City Association of Management Personnel Agreement (CAMP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CAMP. (5) Confidential Employees' Organization, AFSCME Local 101 (CEO); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CEO. (6) International Association of Firefighters, Local 230 (IAFF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Association of Firefighters. (7) International Brotherhood of Electrical Workers (IBEW); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and IBEW. (8) Municipal Employees' Federation, AFSCME Local 101, AFL-CIO (MEF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and MEF; (9) International Union of Operating Engineers, Local No. 3 (OE#3); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Union of Operating Engineers, Local No. 3. (10) San José Police Officers' Association (SJPOA); Nature of Negotiations: Salaries, Hours, Working Conditions, etc; Name of Existing Wages Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association. (11) Association of Legal Professionals of San José (ALP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc. Web: <http://www.sanjoseca.gov/?nid=186>; Telephone for Employee Relations: 408-535-8150.

By unanimous consent, Council recessed from the Closed Session at 10:45 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, Nguyen, Oliverio (1:45 p.m.), Rocha; Reed.

Absent: Council Members - All Present.

## **INVOCATION**

President Scott Jensen, The Church of Jesus Christ of Latter-Day Saints offered a prayer for the Invocation. (District 10)

## **PLEDGE OF ALLEGIANCE**

Mayor Reed, accompanied by Third Graders of Lynhaven 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 Amended Agenda were approved. (10-0-1. Absent: Oliverio.)

## **CEREMONIAL ITEMS**

### **1.1 Presentation of a proclamation declaring November 11, 2014 as Veterans Day in the City of San José. (Mayor/Herrera)**

Mayor Reed and Council Member Herrera recognized November 11, 2014 as Veterans Day in San José. Mayor Reed presented the commendation to Ernie Glave, President, United Veterans Council.

### **1.2 Presentation of a Commendation to Charles Fowler for his achievement in receiving "Teacher of the Year" Award from Santa Clara County. (Nguyen)**

Mayor Reed and Vice Mayor Nguyen recognized and commended Mr. Charles Fowler for his accomplishments.

### **1.3 Presentation of a proclamation in support of the Shop San José Campaign to Women Impacting Public Policy and representatives of San José's neighborhood business associations declaring November 29, 2014 as "Small Business Saturday" in the City of San José. (Reed/Herrera/Economic Development)**

Mayor Reed, Council Member Herrera, Council Members Khamis and Oliverio recognized November 29, 2014 as "Small Business Saturday" in the City of San José.

### **2.7 (b) Administer Oath of Office to District 7 Youth Commissioner Theresa Do. (City Clerk) (Rules Committee referral 10/29/14)**

*Heard before the Consent Calendar.*

City Clerk Toni J. Taber, CMC administered the Oath of Office to District 7 Youth Commissioner Theresa Do. Mayor Reed and Vice Mayor Nguyen congratulated Ms. Do.

## CONSENT CALENDAR

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

### 2.1 Approval of Minutes.

There were none.

### 2.2 Final adoption of ordinances.

- (a) **ORD. NO. 29499** – An ordinance of the City of San José: (1) Rezoning certain real property of approximately 1.02 acres situated approximately 400 feet south of the southern terminus of Pullman Way from Santa Clara County to the IP Industrial Park Zoning District; and (2) Rezoning certain real property of approximately 8,6 acres situated approximately 320 feet south of the southern terminus of Pullman Way from Santa Clara County to the PQP Public/Quasi-Public Zoning District. **C14-046**

Documents Filed: (1) Proof of Publication of the Title of Ordinance No. 29499 executed on October 24, 2014, submitted by the City Clerk. (2) Statement and Declaration of Conflict of Interest Form from Council Member Khamis dated November 4, 2014, disclosing that he owns property on Communications Hill.

Council Member Khamis recused himself from participating in the discussion and voting on Items 2.2(a)-(e) and disclosed that he owns property on Communications Hill.

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Herrera and carried unanimously, Ordinance No. 29499 was adopted. (10-0-0-1. Abstain: Khamis.)

- (b) **ORD. NO. 29500** – An ordinance of the City of San José: (1) Rezoning certain real property of approximately 2.1 acres situated approximately 250 feet north east of Canoas Garden Avenue from Santa Clara County to the OS Open Space Zoning District; and (2) Rezoning certain real property of approximately 10.3 acres situated east of Canoas Garden Avenue, north and south of Millpond Drive from Santa Clara county to the PQP Public/Quasi-public Zoning District. **C14-047**

Documents Filed: (1) Proof of Publication of the Title of Ordinance No. 29500 executed on October 24, 2014, submitted by the City Clerk. (2) Statement and Declaration of Conflict of Interest Form from Council Member Khamis dated November 4, 2014, disclosing that he owns property on Communications Hill.

2.2 (b) (Cont'd.)

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Herrera and carried unanimously, Ordinance No. 29500 was adopted. (10-0-0-1. Abstain: Khamis.)

(c) **ORD. NO. 29501 – Prezoning certain real property of approximately 2.0 acres situated northeast of St. Florian Way and Adeline Avenue from Santa Clara County to the PQP Public/Quasi-Public Zoning District. C14-048**

Documents Filed: (1) Proof of Publication of the Title of Ordinance No. 29501 executed on October 24, 2014, submitted by the City Clerk. (2) Statement and Declaration of Conflict of Interest Form from Council Member Khamis dated November 4, 2014, disclosing that he owns property on Communications Hill.

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Herrera and carried unanimously, Ordinance No. 29501 was adopted. (10-0-0-1. Abstain: Khamis.)

(d) **ORD. NO. 29502 – Prezoning certain real property of approximately 10.9 acres situated at the terminus of Carol Drive to the PQP Public/Quasi-Public Zoning District. C14-049**

Documents Filed: (1) Proof of Publication of the Title of Ordinance No. 29502 executed on October 24, 2014, submitted by the City Clerk. (2) Statement and Declaration of Conflict of Interest Form from Council Member Khamis dated November 4, 2014, disclosing that he owns property on Communications Hill.

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Herrera and carried unanimously, Ordinance No. 29502 was adopted. (10-0-0-1. Abstain: Khamis.)

(e) **ORD. NO. 29503 – Prezoning and rezoning certain real property situated on the south side of The Union Pacific Railroad Tracks, west of Hillsdale Avenue, northerly of Adeline Avenue and Altino Blvd. and Easterly Of Highway 87 at the terminus of Carol Drive to A(PD) Planned Development Zoning District. PDC13-009**

Documents Filed: (1) Proof of Publication of the Title of Ordinance No. 29503 executed on October 24, 2014, submitted by the City Clerk. (2) Statement and Declaration of Conflict of Interest Form from Council Member Khamis dated November 4, 2014, disclosing that he owns property on Communications Hill.

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Herrera and carried unanimously, Ordinance No. 29503 was adopted. (10-0-0-1. Abstain: Khamis.)

- 2.2 (f) **ORD. NO. 29504 – Rezoning certain real property of approximately 0.87 acre on the southwest side of Dove Hill Road, approximately 1,370 feet southerly of Yerba Buena Avenue (0 Dove Hill Road) from the A Agricultural Zoning District to the R-1-2 Single-Family Residence Zoning District. C14-031**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29504 executed on October 24, 2014, submitted by the City Clerk.

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Herrera and carried unanimously, Ordinance No. 29504 was adopted. (11-0.)

- (g) **ORD. NO. 29505 – Rezoning certain real property of approximately 4.64 acres situated on the east side of Stone Avenue approximately 650 feet northerly of Cimino Street (1850 Stone Avenue) from the IP Industrial Park Zoning District to the HI Heavy Industrial Zoning District. C14-037**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29505 executed on October 24, 2014, submitted by the City Clerk.

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Herrera and carried unanimously, Ordinance No. 29505 was adopted. (11-0.)

- (h) **ORD. NO. 29506 – Rezoning certain real property of approximately 0.20 acre situated on the southeast corner of South Winchester Boulevard and Williams Road from the CO Commercial Office Zoning District to the CP Commercial Pedestrian Zoning District. C14-043**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29506 executed on October 24, 2014, submitted by the City Clerk.

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Herrera and carried unanimously, Ordinance No. 29506 was adopted. (11-0.)

### 2.3 **Approval of Council Committee Reports.**

- (a) **Neighborhood Services and Education Committee Report of October 9, 2014. (Nguyen)**
- (b) **Rules and Open Government Committee Report of October 15, 2014. (Mayor)**
- (c) **Public Safety, Finance, and Strategic Support Committee Report of October 16, 2014. (Constant)**

Documents Filed: (1) The Neighborhood Services and Education Committee Report dated October 9, 2014. (2) The Rules and Open Government Committee Report dated October 15, 2014. (3) The Public Safety, Finance and Strategic Support Committee Report dated October 16, 2014.

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

**2.4 Mayor and Council Excused Absence Requests.**

There were none.

**2.5 City Council Travel Reports.**

There were none.

**2.6 Report from the Council Liaison to the Retirement Boards.**

There were none.

- 2.7 (a) Appoint Theresa Do to the District 7 Seat on the Youth Commission to an unexpired term ending May 31, 2015.**  
**(b) Administer Oath of Office to District 7 Youth Commissioner Theresa Do.**  
**(City Clerk)**  
**(Rules Committee referral 10/29/14)**

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated October 21, 2014, recommending appointing Theresa Do to the Youth Commission.

Action: Theresa Do was appointed to the District 7 Seat on the Youth Commission to an unexpired term ending May 31, 2015. (11-0.)

**2.8 Approve the following appointment to the Special Eligibility Seats on the Library and Early Education Commission:**

- (a) Kayla Thuy-Khanh Tran to a term ending June 30, 2016.**  
**(City Clerk)**

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated October 22, 2014, recommending the appointment of Kayla Thuy-Khanh Tran.

Action: Kayla Thuy-Khanh Tran was appointed to the Special Eligibility Seats on the Library and Early Education Commission to a term ending June 30, 2016. (11-0.)

**2.9 Adopt the following Appropriation Ordinance and Funding Source Resolution Amendments in the General Fund to:**

- (a) Increase the estimate for Other Revenue by \$7,347.**  
**(b) Increase the appropriation to Council District #07 (July – December) by \$7,347.**

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

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC and Deputy City Manager/Budget Director Jennifer A. Maguire, recommending adoption of appropriation ordinance and funding sources resolution amendments.

**2.9 (Cont'd.)**

Action: Ordinance No. 29508, entitled: An Ordinance of the City of San José Amending Ordinance No. 29431 To Appropriate Monies in the General Fund for Council District 7 (July-December); and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption” and Resolution No. 77203, entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 77037 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2014-2015 To Adjust Revenues in the General Fund”, were adopted. (11-0.)

**2.10 Adopt a resolution setting a Public Hearing on Tuesday, December 16, 2014, at 1:30 p.m. for the approval of the report from the Director of Finance for the cost of sidewalk repairs. CEQA: Not a Project, File No. PP10-066069 (a), staff reports. (Finance)**

Documents Filed: Memorandum from Director of Finance Julia H. Cooper, dated October 14, 2014, recommending adoption of a resolution.

Action: Resolution No. 77204, entitled: “A Resolution of the Council of the City of San José Setting a Public Hearing for the Approval of a Report of the Director of Finance on the Cost of Unpaid Sidewalk Repairs for December 16, 2014”, was adopted. (11-0.)

**2.11 Adopt a resolution setting a Public Hearing on Tuesday, December 16, 2014, at 1:30 p.m. for the approval of the report from the Director of Finance for the cost of corrective actions for tree violations. CEQA: Not a Project, File No. PP10-069(a), staff reports. (Finance)**

Documents Filed: Memorandum from Director of Finance Julia H. Cooper, dated October 14, 2014, recommending adoption of a resolution.

Action: Resolution No. 77204, entitled: “A Resolution of the Council of the City of San José Setting a Public Hearing for the Approval of a Report of the Director of Finance on the Cost of Corrective Actions for Tree Violations for December 16, 2014”, was adopted. (11-0.)

**2.12 (a) Approve a Third Amendment to the agreement for consultant services with IBI Group for the Transportation Incident Management Center Facility Improvement project to increase the total compensation from \$485,000 to \$535,000 and to extend the term of the agreement to June 30, 2015.  
(b) Reduce the project construction contingency amount from the Council approved 15% to 7½%.**

**CEQA: Exempt, File No. PP09-108. (Public Works/Transportation)**

Documents Filed: Memorandum from Director of Public Works David Sykes and Director of Transportation Hans F. Larsen, dated October 14, 2014, recommending approval of a third amendment to the agreement with related contingency.



**2.12 (Cont'd.)**

Action: A Third Amendment to the agreement for consultant services with IBI Group for the Transportation Incident Management Center Facility Improvement project to increase the total compensation from \$485,000 to \$535,000 and to extend the term of the agreement to June 30, 2015, with related contingency, was approved. (11-0.)

**2.13 Adopt a resolution to:**

(a) **Amend the City of San José Pay Plan effective October 28, 2014, to create the following classification:**

(1) **Planner IV (4127)**

(b) **Amend the City of San José Pay Plan effective October 28, 2014, to change the salary range and title for the following classification:**

(1) **Planner I/II/III (4121/4122/4125) (formerly Planner I/II)**

**CEQA: Not a Project, File No. PP10-068(b), Municipal Code, Title 3. (Human Resources)**

**(Deferred from 10/28/14 – Item 2.7)**

Documents Filed: Memorandum from Director of Human Resources Joseph Angelo, dated October 6, 2014, recommending adoption of a resolution.

Action: Resolution No. 77206, entitled: “A Resolution of the Council of the City of San José Amending the City of San José Pay Plan for Various Job Classifications”, was adopted. (11-0.)

**2.14 As recommended by the Rules and Open Government Committee on October 29, 2014, approve the proposed designation of Council Member Pete Constant as the voting delegate at the November 22, 2014 Annual Business Meeting for the National League of Cities. (City Manager)**

**[Rules Committee referral 10/29/14 – Item G(2)]**

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated October 31, 2014, transmitting the recommendations of the Rules and Open Government Committee.

Action: The designation of Council Member Pete Constant as the voting delegate at the November 22, 2014 Annual Business Meeting for the National League of Cities, was approved.

**END OF CONSENT CALENDAR**

## STRATEGIC SUPPORT SERVICES

### 3.3 Consistent with the California Elections Code Section 9215 and San José City Charter, Article 16, Sections 1601(b) and 1603(a)(2):

- (a) Adopt the proposed initiative ordinance as submitted; or
- (b) Adopt a resolution calling an election to submit the initiative to the voters at a Special Municipal Election on a date to be decided, not less than 88 days or more than 103 days from the date of the resolution; or

There was no action.

- (c) Adopt a resolution calling a Special Municipal Election to be consolidated with the General Election on Tuesday, June 7, 2016 to submit the initiative to the voters and direct the City Clerk to return to the City Council at a later date with all necessary actions related to consolidation of the Special Municipal Election with the General Election.

**CEQA: Not a Project, File No. PP10-069(c), Potential actions under Elections Code §9214, in response to voter-sponsored initiative. (City Manager/City Attorney/City Clerk)**

Documents Filed: (1) Memorandum from Council Member Rocha, dated November 3, 2014, providing analysis on the Marijuana Ballot Measure. (2) Memorandum from City Clerk Toni J. Taber, CMC, dated October 30, 2014, presenting three options for the Council to consider related to the Medical Marijuana Initiative amending Title 6 and Title 20.

City Attorney Richard Doyle read amended proposed ballot language: “Shall an ordinance be adopted amending the San José Municipal Code to include Medical Marijuana Collectives as an allowed land use in agricultural, commercial pedestrian, commercial neighborhood, industrial park, light industrial, heavy industrial zoning districts, and certain planned development zoning districts, and to establish a registration process and zoning code verification certificate process?”

Mayor Reed recommended Option (c) the adoption of a resolution calling a Special Municipal Election to be consolidated with the General Election on Tuesday, June 7, 2016 to submit the initiative to the voters and to direct the City Clerk to return to the City Council at a later date with all necessary actions related to consolidation of the Special Municipal Election with the General Election.

Motion: Council Member Constant moved approval of Option (c) and the amended proposed ballot language as presented by the City Attorney. Vice Mayor Nguyen seconded the motion.

City Attorney Richard Doyle, Director of Planning, Building and Code Enforcement Harry Freitas and Code Enforcement Officer Diane Buchanan responded to Council questions and concerns.

### 3.3 (Cont'd.)

Mayor Reed requested to amend the motion to direct Staff to report to Council on a weekly basis per the status of the enforcement activities on the 26 plus collectives that are operating illegally. The amendment was accepted by Council Member Constant and Vice Mayor Nguyen.

Mayor Reed opened the floor for public testimony.

Public Comments: Susan Landry expressed support to the motion on the floor.

Action: On a call for the question, the motion carried unanimously, Resolution No. 77207, entitled: “A Resolution of the Council of the City of San José Calling and Giving Notice of the Submission to the Electors of the City of San José at a Special Municipal Election To Be Consolidated with the Next General Election To Be Held on June 7, 2016, An Initiative to Amend Title 6 and Title 20 of the San José Municipal Code to Include Medical Marijuana Collectives as an Allowed Land Use in Agricultural, Commercial Pedestrian, Commercial Neighborhood, Industrial Park, Light Industrial and Heavy Industrial Zoning Districts and To Establish a Registration Process and Zoning Code Verification Certificate Process”, was adopted, as amended: (1) The ballot language: “Shall an ordinance be adopted amending the San José Municipal Code to include Medical Marijuana Collectives as an allowed land use in agricultural, commercial pedestrian, commercial neighborhood, industrial park, light industrial, heavy industrial zoning districts, and certain planned development zoning districts, and to establish a registration process and zoning code verification certificate process?” (2) Staff was directed to report to Council on a weekly basis per the status of the enforcement activities on the 26 plus collectives that are operating illegally. (11-0.)

### 3.4 **As recommended by the Public Safety, Finance, and Strategic Support Committee on October 16, 2014, accept the 2013 – 14 Annual Performance Audit of Team San José’s Management of the City’s Convention and Cultural Facilities.**

**CEQA: Not, a Project, File PP10-069(c), staff reports. (City Auditor)**

**[Public Safety, Finance, and Strategic Support Committee referral 10/16/14 – Item D(4)]**

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated October 23, 2014, transmitting the recommendations of the Public Safety, Finance and Strategic Support Committee.

City Auditor Sharon W. Erickson offered the report and responded to Council questions.

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

Brief Council discussion ensued.

### 3.4 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, the 2013-2014 Annual Performance Audit of Team San José's Management of the City's Convention and Cultural Facilities, was accepted. (11-0.)

## COMMUNITY & ECONOMIC DEVELOPMENT

### 4.1 As recommended by the Community and Economic Development Committee on September 22, 2014, adopt a resolution amending the North San José Area Development Policy to:

- (a) Extend the North San José Traffic Impact Fee Incentive deadline for Tier 2 projects (build to suit projects of over one million square feet) to obtain building permits for one year to December 31, 2017; and to receive a certificate of occupancy for one year to December 31, 2017;
- (b) Limit the amount of development capacity in the incentive to a total of four million square feet across both Tiers; and
- (c) Designate the point at which the allocation of the incentive occurs is at the time of payment of the Traffic Impact Fee, or upon execution of an Industrial Project Completion Agreement upon approval of a valid development permit.

**CEQA: North San José Environmental Impact Report, Resolution No. 72768 and Addenda thereto. (Economic Development /Planning, Building and Code Enforcement/Transportation)**

Action: Deferred to November 18, 2014 per Administration.

### 4.2 Approve an Option and Purchase and Sale Agreement and Escrow Instructions for the potential sale of certain real property located at 105 South Montgomery, 150 South Montgomery, 510 West San Fernando, 102 South Montgomery, 115 South Autumn, and 645 Park Avenue (collectively, "Property") to the Athletics Investment Group, LLC, which Option Agreement provides for an initial option term of four years with initial option consideration of \$100,000, three one-year extensions of the option term for an additional consideration of \$25,000 per year, and a purchase price of \$7,000,000 for the Property if the option is exercised. CEQA: Diridon Station Area Plan EIR, Resolution No. 77096, and the Baseball Stadium in the Diridon/Arena Area EIR, Resolution No. 75432. (City Attorney)

Documents Filed: (1) Memorandum from Mayor Reed, dated October 30, 2014, recommending the approval of the recommendation outlined in the City Attorney's memorandum dated October 24, 2014. (2) Memorandum from City Attorney Richard Doyle, dated October 24, 2014, recommending approval of an option and purchase and sale agreement and escrow instructions, as indicated in Item 4.2 above. (3) Letter from Ronald E. Van Buskirk, Partner, Pillsbury Winthrop Shaw Pittman LLP, dated November 4, 2014, regarding the potential sale of real property in the Diridon Area.

## 4.2 (Cont'd.)

Motion: Council Member Liccardo moved approval of the City Attorney's recommendations. Council Member Herrera seconded the motion.

City Attorney Richard Doyle pointed out that a letter was received from Pillsbury Winthrop Shaw Pittman LLP in which they raised two issues, the California Environmental Quality Act and the other is the need to obtain a vote in advance of this agreement.

Brief Council discussion ensued.

Council Member Oliverio expressed opposition to the motion on the floor.

Council Member Liccardo requested to amend the motion to include direction to the City Clerk to post the appraisal for the property on the Clerk website. Council Member Herrera accepted the amendment.

Action: On a call for the question, the motion carried, an Option and Purchase and Sale Agreement and Escrow Instructions for the potential sale of certain real property located at 105 South Montgomery, 150 South Montgomery, 510 West San Fernando, 102 South Montgomery, 115 South Autumn, and 645 Park Avenue (collectively, "Property") to the Athletics Investment Group, LLC, which Option Agreement provides for an initial option term of four years with initial option consideration of \$100,000, three one-year extensions of the option term for an additional consideration of \$25,000 per year, and a purchase price of \$7,000,000 for the Property if the option is exercised, was approved. Staff was directed to post the appraisal for the property on the City Clerk website. (10-1. Noes: Oliverio.)

## 4.3 Adopt a resolution authorizing the Director of Public Works to:

- (a) **Award a design-build construction contract for the 7458-Police Administration and Communication Buildings Chiller Replacements Project to the lowest responsive and responsible bidder in an amount not to exceed \$1,770,000 and to approve a fifteen percent contingency.**
  - (b) **Decide any timely bid protests, to make the City's final determination as to the lowest responsive bidder that is responsible, or to reject all bids and rebid the project.**
  - (c) **Execute change orders in excess of \$100,000 within the contingency amount.**
- CEQA: Exempt, File No. PP14-068. (Public Works)**

Documents Filed: Memorandum from Director of Public Works David Sykes, dated October 14, 2014, recommending adoption of a resolution.

#### 4.3 (Cont'd.)

Action: Upon motion by Council Member Constant, seconded by Council Member Herrera and carried unanimously, Resolution No. 77208, entitled: "A Resolution of the Council of the City of San José Authorizing The Director Of Public Works To Do The Following With Regard To The 7458 – Police Administration And Communication Buildings Chiller Replacement Project: (1) Award A Design-Build Contract For To The Lowest Responsive And Responsible Bidder, (2) Approve A Contingency Of Fifteen Percent Contract Amount, (3) Decide Any Timely Bid Protests And Make The Final Determination As To The Lowest Responsive Bidder That Is Responsible, (4) Reject All Bids And Re-Bid The Project If Doing So Is In The City's Best Interests, And (5) Execute Change Orders In Excess Of \$100,000 Within The Contingency Amount", was adopted. (11-0.)

- 4.4 (a) **Conduct an Administrative Hearing on and consider an Appeal of the Planning Director's use of the Addendum to the Richmond Ranch Environmental Impact Report (EIR), File No. PDC91-081, and the Chaboya Ranch Mitigated Negative Declaration (MND), File No. PDC11-021, as the environmental clearance for the Director's approval of Planned Development Permit Amendments PDA94-021-01 (Richmond Ranch) and PDA13-008-01 (Chaboya Ranch), which revise the grading plan for the Chaboya Ranch project on a project site located east of San Felipe Road and west of Livery Lane, approximately 650 feet southerly of Running Springs Road.**
- (b) **Adopt a resolution upholding the Planning Director's use of the Addendum, adopting the Mitigation Monitoring and Reporting Program (MMRP) and finding that:**
- (1) **The City Council has read and considered the Addendum to the Richmond Ranch EIR and Chaboya Ranch MND prepared in connection with Planned Development Permit Amendments PDA94-021-01 and PDA13-008-01, as well as the EIR and MND.**
  - (2) **The Addendum, together with the EIR and MND, has been prepared and completed in compliance with the California Environmental Quality Act (CEQA) of 1970, together with state and local implementation guidelines;**
  - (3) **The Addendum, together with the EIR and MND, reflects the independent judgment and analysis of the City of San José.**
  - (4) **Preparation of a subsequent or supplemental EIR is not required because no new environmental impacts have been identified and no new mitigation measures are required.**
  - (5) **The Director of Planning shall transmit copies of the EIR, MND and Addendum to any other decision-making body of the City of San José for the project.**

- 4.4 (c) **Conduct an Administrative Hearing and consider an Appeal of the Planning Director's decision to approve the Planned Development Permit Amendments for the Chaboya Ranch grading modifications (File Nos. PDA94-021-01 and PDA13-008-01), and consider adoption of a resolution approving these Planned Development Permit Amendments.**

**CEQA: Addendum to the Richmond Ranch Environmental Impact Report and the Chaboya Ranch Mitigated Negative Declaration, resolution to be adopted. (Planning, Building and Code Enforcement)  
PDA94-021-01/PDA13-008-01 – District 8**

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Harry Freitas, dated October 6, 2014, recommending conducting two administrative hearings and adoption of a resolution. (2) Supplemental memorandum from Director of Planning, Building and Code Enforcement Harry Freitas, dated October 30, 2014, providing further background information regarding the maintenance of the open space that is labeled as Parcel B. (3) Chaboya Ranch Grading Modifications and Environmental and Permit Appeal Attachments 1-7; Final Environmental Impact Report on Richmond Ranch, dated December 1992. (4) Revised Proof of Publication of Notice of Public Hearing, executed on October 10, 2014, submitted by the City Clerk. (5) Open Space Easement submitted by the Applicant dated November 4, 2014. (6) Letter from Shani Kleinhaus, Santa Clara Valley Audubon Society, dated November 4, 2014, regarding the appeal of the Chaboya Ranch CEQA Addendum.

Mayor Reed opened the Administrative Hearings.

Kevin So, Appellant, provided background information and pointed out that when the 260 homes were built on Richmond Ranch in 1962 there was 85 permanent acres set aside. Mr. So expressed concern that future open space was in jeopardy and should be protected properly.

Mike O'Hara, representing Tim Lewis Communities, addressed the items the Appellant brought up and noted that his company has come up with a compromise plan through the efforts of Council Member Herrera and her Staff.

Public Comments: The following speakers expressed concerns about the significant impacts, the mismanagement of mitigation and how it will move forward, the recordation of open space mitigation accurately and the new zoning of permanent open space: Shani Kleinhaus, Santa Clara Valley Audubon Society, Michael Mace and Bonnie Mace.

Mayor Reed closed the Administrative Hearings.

Director of Planning, Building and Code Enforcement Harry Freitas provided background and responded to Council questions and concerns.

Extensive Council discussion ensued.

#### 4.4 (Cont'd.)

Motion: Council Member Herrera moved approval to deny both appeals, uphold the Planning Director's use of the Addendum, adopt the Mitigation Monitoring and Reporting Program and Findings, approve the Staff supplemental memorandum dated October 30, 2014, including the new grading plan (Revised) Concept 2-6b, with direction to Staff to work with the Applicant to address the Applicant's comments as stated at the dais on November 4, 2014 and to work with the Applicant on a subsequent Planned Development Permit Amendment solely for the consideration of conveyance of the open space on Chaboya Ranch to a proper open space authority. Council Member Khamis seconded the motion.

Council Member Kalra requested to amend the motion to direct Staff to emphasize that until there is an arrangement as to who has the responsibility for maintenance, it will be the developer's responsibility to maintain the open space. The amendment was accepted by Council Members Herrera and Khamis.

Action: On a call for the question, the motion carried unanimously, Resolution No. 77210 was adopted upholding the Planning Director's use of the Addendum, and adopting the Mitigation Monitoring and Reporting Program and Findings. The Staff supplemental memorandum dated October 30, 2014, including the new grading plan (Revised) Concept 2-6b, was approved. Staff was directed to: (1) Work with the Applicant to address the Applicant's comments as stated at the dais on November 4, 2014. (2) Work with the Applicant on a subsequent Planned Development Permit Amendment solely for the consideration of conveyance of the open space on Chaboya Ranch to a proper open space authority. (3) Emphasize that until there is an arrangement as to who has the responsibility for maintenance, it will be the developer's responsibility to maintain the open space. Resolution No. 77209 was adopted denying the appeal of the Planning Director's use of the Addendum to the Richmond Ranch Environmental Impact Report (EIR), File No. PDC91-081, and the Chaboya Ranch Mitigated Negative Declaration (MND), File No. PDC11-021, as the environmental clearance for the Director's approval of Planned Development Permit Amendments PDA94-021-01 (Richmond Ranch) and PDA13-008-01 (Chaboya Ranch), which revise the grading plan for the Chaboya Ranch project on a project site located east of San Felipe Road and west of Livery Lane, approximately 650 feet southerly of Running Springs Road and Resolution No. 77211 was adopted denying the appeal of the Planning Director's decision to approve the Planned Development Permit Amendments for the Chaboya Ranch grading modifications. (10-0-1. Absent: Kalra.)



## NEIGHBORHOOD SERVICES

- 5.1 (a) **Adopt a resolution finding the Initial Study and Mitigated Negative Declaration for the Three Creeks Trail (Western Alignment) Master Plan from Lonus Street to the future Guadalupe River Trail is complete and was prepared in compliance with the California Environmental Quality Act, adopting the Mitigated Negative Declaration and related mitigation monitoring and reporting program.**
- (b) **Approve the Three Creeks Trail (Western Alignment) Master Plan from Lonus Street to the future Guadalupe River Trail.**

**CEQA: Mitigated Negative Declaration, File No. PP14-012, to be considered for adoption. Council District 6. (Public Works/Parks, Recreation and Neighborhood Services)**

Documents Filed: Memorandum from Director of Public Works David Sykes and Director of Parks, Recreation and Neighborhood Services Julie Edmonds-Mares, dated October 14, 2014, recommending adoption of a resolution and approval of the report, and transmitting the report.

Mayor Reed opened the floor for public testimony.

Public Comments: Susan Landry urged the Council to install railroad style crossing arms at all street crossings that intersect the trail. Larry Ames expressed support to the Staff recommendations.

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

Trail Manager Yves Zsutty responded to Council questions and concerns.

Action: On a call for the question, the motion carried unanimously, Resolution No. 77212, entitled: "A Resolution of the Council of the City of San José Adopting the Three Creeks Trail Master Plan – Western Alignment 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", was adopted and the Three Creeks Trail (Western Alignment) Master Plan from Lonus Street to the future Guadalupe River Trail was approved. (11-0.)

## **PUBLIC SAFETY SERVICES**

- 8.1 Approve an ordinance amending Part 6 of Chapter 17.12 of Title 17 of the San José Municipal Code to add a new section 17.12.640 establishing Firefighter Breathing Air Replenishing System requirements in any of the following structures: buildings containing floors which are used for human occupancy and located more than 75 feet above the lowest level of the fire department vehicular or personnel access, whichever access is more restrictive as determined by the fire Chief; buildings with two or more stories underground; tunnels over 500 feet in length; and, buildings where the fire apparatus access point is located more than 150 feet from the nearest entrance to the building. CEQA: Exempt, File PP13-082. (Fire)  
(Deferred from 9/30/14 – Item 8.1)**

Documents Filed: (1) Memorandum from Mayor Reed, dated October 31, 2014, recommending approval of the ordinance and to add a provision that the requirement will not apply to development projects that have applied for building or planning permits before the effective date of the ordinance. (2) Memorandum from Fire Chief Ruben Torres, dated September 8, 2014, recommending approval of an ordinance. (3) Letter from Bob Pester, Boston Properties, dated November 4, 2014, regarding the Firefighter Breathing Air Replenishment System, recommending approval of the ordinance and to exempt pipeline projects. (4) Letter from Scott Knies, San José Downtown Association, dated November 3, 2014, regarding the Firefighter Breathing Air Replenishment System, recommending approval of the ordinance and to exempt pipeline projects.

Mayor Reed presented opening comments.

City Attorney Richard Doyle and Director of Planning, Building and Code Enforcement Harry Freitas responded to Council questions and concerns.

Vice Mayor Nguyen and Council Members Oliverio, Liccardo and Herrera expressed support to the protection of the pipeline projects in the permitting process.

Mayor Reed opened the floor for public testimony.

Public Comments: Jim Reed, San José Silicon Valley Chamber of Commerce, expressed support to the Staff recommendations and to the protection of the pipeline projects in the permitting process.

Action: Upon motion by Council Member Constant, seconded by Vice Mayor Nguyen and carried unanimously, Ordinance No. 29509, entitled: “An Ordinance of the City of San José Amending Part 6 of Chapter 17.12 of Title 17 of the San José Municipal Code To Add a New Section 17.12.640 To Adopt Local Amendments to the 2013 California Fire Code Relating to Breathing Air Replenishment Systems”, was passed for publication, as amended: Staff was directed to add a provision that the requirement will not apply to development projects that have currently applied for building permits or have applied for planning permits and receive their approved building permits by one year from the date of the ordinance being approved. (10-0-1. Absent: Rocha.)

## **ADJOURNMENT**

The Council of the City of San José was adjourned at 3:33 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Toni J. Taber, CMC  
City Clerk

smd/11-04-14 MIN

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