

## MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, DECEMBER 09, 2014

The Council of the City of San José convened in Regular Session at 9:22 a.m. in the Council Chambers at City Hall.

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

Absent: Council Members - All Present.

Vacant: - District 4.

### STRATEGIC SUPPORT SERVICES

#### 3.2 Accept Labor Negotiations Update.

There was no report.

### CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:23 a.m. to a Closed Session in Room W133 (A) to confer with Legal Counsel pertaining to Public Employment/Public Employee Evaluation pursuant to Government Code Section 54957: Title: City Manager; Name: Ed Shikada. (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 Eden; Amount of Money or Other Relief Sought: Administrative Appeal. (2) In re: Claim of Martinez; Amount of Money or Other Relief Sought: Administrative Appeal. (3) In re: Claim of Pringle; Amount of Money or Other Relief Sought: Administrative Appeal. (4) In re: Claim of Mitchell; Amount of Money or Other Relief Sought: Administrative Appeal. (5) In re: Claim of Richard; Amount of Money or Other Relief Sought: Administrative Appeal. (C) to confer with Legal Counsel pursuant to Government Code 54956.9 Subsection (b) with respect to significant exposure: Claimants: In re: Claim of Penaloza; City Department: Police. (D) to confer with Legal Counsel pursuant to Government Code Section 54956.9 Subsection (d)(1) with respect to initiation of

## CLOSED SESSION (Cont'd.)

litigation in one (1) matter. (E) to confer with Legal Counsel with respect to anticipated litigation of significant exposure (Claim Not Filed) pursuant to Government Code 54956.9 Subsection (b) in one (1) matter. (F) to confer with Real Property Designated Representatives pursuant to Government Code Section 54956.8: Property: San José Arena, 525 Santa Clara Street, San José, California. Negotiating Parties: Nanci Klein, Jim Shannon, Bill Hughes, Patricia Deignan for City of San José and Jim Goddard, Sean Morely, Lucy LoFrumento for San José Arena Management; Under Negotiation: The direction will concern price and terms of payment; Likely Range of Value of Property: Negotiated price based on comparable rental values. (G) 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 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 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.

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

By unanimous consent, Council recessed from the Closed Session at 10:45 a.m. and reconvened to Regular Session at 1:30 p.m. in the Council Chambers.

Present: Council Members - Campos, Constant, Herrera, Kalra, Khamis, Liccardo, Nguyen, Oliverio (2:00 p.m.), Rocha; Reed.

Absent: Council Members - All Present.

Vacant: - District 4.

## **INVOCATION**

Reverend Rinban Kenshin Fujimoto, San Jose Buddhist Church Betsuin, offered the Invocation. (Mayor)

## **PLEDGE OF ALLEGIANCE**

Mayor Reed led the Pledge of Allegiance.

## **ORDERS OF THE DAY**

Upon motion by Vice Mayor Nguyen, seconded by Council Member Herrera and carried unanimously, the Orders of the Day and the Amended Agenda were approved. (9-0-1. Absent: Oliverio.)

## **CEREMONIAL ITEMS**

### **1.3 Presentation of a commendation to Driving Industry Companies that generate the most jobs and revenues in San José. (Mayor)**

Mayor Reed recognized and commended the following Driving Industry Companies in San José: Adobe, Advantest, Altera, Avago Technologies, BD, Brocade, Cadence, Canon, Cisco, Ebay, Flextronics, HGST, IBM, JABIL, Philips Lumileds, Maxim Integrated, Micrel, PayPal, Qualcomm, Samsung, Stryker, Supermicr, ThermoFisher Scientific, Tivo and Xilinx.

**1.4 Presentation of a commendation to the Parks, Recreation and Neighborhood Services Digital Arts Program, composed of the Seven Trees Music Studio, Roosevelt Community Center’s Digital Art Troupe Academy and Alma Community Center Music Studio. (Nguyen)**

Mayor Reed, Vice Mayor Nguyen and Council Member Liccardo recognized and commended the Parks, Recreation and Neighborhood Services Digital Arts Program.

**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. (9-0-1. Absent: Oliverio.)

**2.1 Approval of Minutes.**

There were none.

**2.2 Final adoption of ordinances.**

- (a) **ORD. NO. 29515 – An ordinance of the City of San José renumbering and amending Section 11.72.010 of Chapter 11.72 of Title 11 of the San José Municipal Code to be included in Chapter 11.04 of Title 11, adding Section 11.04.031 to Chapter 11.04 of Title 11 To define bicycles and designated areas, adding Sections 11.72.190 and 11.72.200 to Chapter 11.72 of Title 11 to prohibit the riding of bicycles on sidewalks in designated areas, and amending Section 1.08.020 of Chapter 1.08 of Title 1 to designate a violation of Section 11.72.190 as an infraction.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29515 executed on December 5, 2014, submitted by the City Clerk.

Action: Ordinance No. 29515 was adopted. (9-0-1. Absent: Oliverio.)

**2.3 Approval of Council Committee Reports.**

- (a) **Rules and Open Government Committee Report of November 12, 2014. (Mayor)**
- (b) **Neighborhood Services and Education Committee Report of November 13, 2014. (Nguyen)**
- (c) **Community and Economic Development Committee Report of November 17, 2014. (Herrera)**
- (e) **Public Safety, Finance, and Strategic Support Committee Report of November 20, 2014. (Constant)**
- (f) **Transportation and Environment Committee Report of November 3, 2014. (Liccardo)**

## 2.3 (Cont'd.)

Documents Filed: (1) The Rules and Open Government Committee Report dated November 12, 2014. (2) The Neighborhood Services and Education Committee Report dated November 13, 2014. (3) The Community and Economic Development Committee Report dated November 17, 2014. (4) The Public Safety, Finance and Strategic Support Committee Report dated November 20, 2014. (5) The Transportation and Environment Committee Report dated November 3, 2014.

Action: The Council Committee Reports were approved. (9-0-1. Absent: Oliverio.)

### (d) Rules and Open Government Committee Report of November 19, 2014. (Mayor)

Action: Deferred to December 16, 2014 per City Clerk.

## 2.4 Mayor and Council Excused Absence Requests.

There were none.

## 2.5 City Council Travel Reports.

Mayor Reed traveled to Washington D.C. last week to meet with the IRS to encourage them to move ahead and issue guidance to give employees a choice of benefits in retirement plans.

Council Member Constant traveled to Washington D.C. to participate in the Annual Tax and Policy Institute for newly elected State Legislators.

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

Council Member Constant presented brief highlights from the Police and Fire Retirement Board Meeting.

## 2.7 Approve a Third Amendment to the AMS-SJC JV Airport Retail Concession Agreement, a Fifth Amendment to the Airport Food and Beverage Concession Agreement with Pacific Gateway Concessions, LLC, a Third Amendment to the Airport Food and Beverage Concession Agreement with Host International, Inc. and a Fourth Amendment to the WDFG North America, LLC Airport Retail Concession Agreement to grant the Director of Aviation authority to adjust the midterm refurbishment dates for each concession and to provide for the transfer of a Starbucks location from the WDFG Airport Retail Concession Agreement to the Host Airport Food and Beverage Concession Agreement. CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment. (Airport)

**2.7 (Cont'd.)**

Documents Filed: Memorandum from Director of Aviation Services Kimberly Becker Aguirre, dated November 17, 2014, recommending approval of the actions as indicated under Item. 2.7, Page 5.

Action: A Third Amendment to the AMS-SJC JV Airport Retail Concession Agreement, a Fifth Amendment to the Airport Food and Beverage Concession Agreement with Pacific Gateway Concessions, LLC, a Third Amendment to the Airport Food and Beverage Concession Agreement with Host International, Inc. and a Fourth Amendment to the WDFG North America, LLC Airport Retail Concession Agreement to grant the Director of Aviation authority to adjust the midterm refurbishment dates for each concession and to provide for the transfer of a Starbucks location from the WDFG Airport Retail Concession Agreement to the Host Airport Food and Beverage Concession Agreement were approved. (9-0-1. Absent: Oliverio.)

- 2.8 (a) Approve travel by Council Member Constant to Washington, D.C. on December 1 – 2, 2014 to speak at the 2014 Tax and Fiscal Policy Academy. Source of Funds: Reason Foundation.**
- (b) Request for an excused absence for Council Member Constant from the Executive Session and the Regular City Council Meeting on December 2, 2014 due to Authorized City Business: 2014 Tax and Fiscal Policy Academy.**
- (Constant)**

Documents Filed: Memoranda from Council Member Constant, both dated November 20, 2014, requesting approval of travel and an excused absence.

Action: The travel for Council Member Constant was approved and the absence was excused. (9-0-1. Absent: Oliverio.)

- 2.9 Approve settlement contribution in the amount of \$65,000 in the case of *Shirli McLaughlin v. City of San José, et al.*, and authorize the City Attorney to execute a Settlement Agreement and Release with Plaintiff and co-defendant, Legacy San José Holdings, LLC. CEQA: Not a Project; File No. PP10-066(h), Settlement Agreement. (City Attorney)**

Documents Filed: Memorandum from City Attorney Richard Doyle, dated November 25, 2014, recommending approval of the settlement.

Action: The settlement contribution in the amount of \$65,000 in the case of *Shirli McLaughlin v. City of San José, et al.*, and authorize the City Attorney to execute a Settlement Agreement and Release with Plaintiff and co-defendant, Legacy San José Holdings, LLC, was approved. (9-0-1. Absent: Oliverio.)

- 2.10 Adopt a resolution authorizing the City Attorney to negotiate and execute a First Amendment to the Agreement with Hanson Bridgett, LLP to provide legal and investigative services as the Evaluator to the San José Ethics Commission, extending the term through June 30, 2015, and increasing compensation by \$50,000, for a total amount of compensation not to exceed \$300,000. CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment. (City Attorney)**

Documents Filed: City Council Action Request from Deputy City Attorney Arlene Silva, dated November 20, 2014, recommending adoption of a resolution.

Action: Resolution No. 77231, entitled: “A Resolution of the Council of the City of San José Authorizing the City Attorney to Negotiate and Execute a First Amendment to the Agreement with Hanson Bridgett LLP for Legal and Investigative Services as the Evaluator to the San José Ethics Commission”, was adopted. (9-0-1. Absent: Oliverio.)

- 2.11 Approve the Team San José performance measures for 2014-2015. CEQA: Not a Project, File No. PP10-066(e), Agreements and Contracts. (Economic Development)**

Documents Filed: Memorandum from Deputy City Manager/Director of Economic Development Kim Welsh, dated November 17, 2014, recommending approval of the Team San José performance measures for 2014-2015.

Assistant to the City Manager/Downtown Manager Lee Wilcox responded to questions from Mayor Reed, Council Member Liccardo and Council Member Rocha.

Action: Upon motion by Council Member Constant, seconded by Council Member Rose Herrera and carried unanimously, the Team San José performance measures for 2014-2015 were approved. (9-0-1. Absent: Oliverio.)

- 2.12 Accept the report on the Request for Proposal for a Learning Management System with Integrated Online Learning Content and adopt a resolution authorizing the City Manager to:**

- (a) **Negotiate and execute an Agreement with Saba Software, Inc. (Redwood Shores, CA) for the purchase of a Learning Management System with integrated online learning content, including software cloud subscription services, implementation, integration to the Human Resources PeopleSoft System, training and related professional services, for an initial six-year term ending February 2021, with a maximum compensation not-to-exceed \$259,008 for the initial twelve months of the Agreement, and an estimated \$1,146,508 for the six-year term, subject to the annual appropriation of funds.**

- 2.12 (b) **Execute change orders to cover any unanticipated changes or requirements in the system design and implementation, not-to-exceed \$25,900 (10% of first year compensation) as may be required.**
- (c) **Execute amendments to increase maximum compensation in the event a greater number of users than estimated register for e-learning classes, subject to the appropriation of funds.**
- (d) **Execute one-year options to extend the term of the Agreement to provide ongoing cloud subscription and content services after the initial six-year term, subject to the annual appropriation of funds.**

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

Documents Filed: Memorandum from Director of Finance Julia H. Cooper, dated November 17, 2014, recommending acceptance of the report and adoption of a resolution.

Action: The report on the Request for Proposal for a Learning Management System with Integrated Online Learning Content was accepted and Resolution No. 77232, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute An Agreement with Saba Software, Inc. for the Purchase of a Learning Management System”, was adopted. (9-0-1. Absent: Oliverio.)

**2.13 Adopt a resolution:**

- (a) **Accepting the 2015-2016 Hazardous Vegetation Commencement Report compiled by the Santa Clara County Department of Agriculture and Environmental Management.**
- (b) **Declaring that those certain noxious or dangerous seasonal and recurrent weeds, growing or likely to be growing, and refuse, situated or likely to be situated, on those properties identified in the report are a nuisance.**
- (c) **Directing the Santa Clara County Department of Agriculture and Environmental Management to mail notices of a Public Hearing before the City Council, on January 13, 2015 at 1:30 p.m., on the report to property owners of affected real properties, pursuant to Chapter 9.12 of Title 9 of the San José Municipal Code and the Weed Abatement Agreement between the City of San José and the County of Santa Clara.**

**CEQA: Exempt, File No. PP13-097. (Planning, Building and Code Enforcement)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Harry Freitas, dated November 17, 2014, recommending adoption of a resolution.



**2.13 (Cont'd.)**

Action: Resolution No. 77233, entitled: “A Resolution of the Council of the City of San José Accepting and Confirming the 2015-2016 Hazardous Vegetation Commencement Report Compiled by the Santa Clara County Department of Agriculture and Environmental Management; Declaring Certain Noxious or Dangerous Seasonal and Recurrent Weeds Growing or Likely To Be Growing and Refuse Situated or Likely to Be Situated, On Those Properties Identified in the Report Are a Public Nuisance and Directing that Notice of this Resolution and a Public Hearing on the Report on January 13, 2015 at 1:30 p.m. Be Given Pursuant to Chapter 9.12 of Title 9 of the San José Municipal Code”, was adopted. (9-0-1. Absent: Oliverio.)

**2.14 Adopt the following 2014-2015 Appropriation Ordinance and the Funding Sources Resolution amendments in the General Fund:**

- (a) Establish a City-wide appropriation to the Police Department for the Internet Crimes Against Children State Grant 2014-2015 in the amount of \$100,000.**
  - (b) Increase the Revenue from State of California appropriation by \$100,000.**
- CEQA: Not a Project, File No. PP10-066(g), Grant Agreements and MOUs. (Police/City Manager)**

Documents Filed: Memorandum from Chief of Police Larry Esquivel and Deputy City Manager/Budget Director Jennifer A. Maguire, dated November 17, 2014, recommending adoption of appropriation ordinance and funding sources resolution amendments.

Action: Ordinance No. 29518, entitled: “An Ordinance of the Council of the City of San José Amending Ordinance No. 29431 to Appropriate Monies in the General Fund for the Internet Crimes Against Children State Grant 2014-2015; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption” and Resolution No. 77234, 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. (9-0-1. Absent: Oliverio.)

- 2.15 (a) Approve the termination of the construction contract with Interstate Grading and Paving, Inc. for the 6405 – Coleman Soccer Fields Design-Build Rebid Project for convenience.**
- (b) Adopt a resolution authorizing the Director of Public Works to:**
- (1) Rebid the Project.**
  - (2) Negotiate and execute an agreement with Bellinger Foster Steinmetz Landscape Architecture not to exceed \$300,000 to make any necessary revisions to the final plans for rebid.**

**CEQA: Mitigated Negative Declaration, File No. PP10-155, May 10, 2011. Council District 3. (Public Works/Parks, Recreation and Neighborhood Services)**

Action: Deferred to December 16, 2014 per Administration.

**2.16 Adopt a resolution declaring the results of the November 4, 2014 Municipal Election pursuant to Elections Code Section 15400. (City Clerk)**

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated December 2, 2014, recommending adoption of a resolution.

Action: Resolution No. 77235, entitled: "A Resolution of the Council of the City of San José Reciting that a Regular Run-Off Municipal Election and Special Municipal Election Was Held in the City of San José on Tuesday, November 4, 2014; Stating the Offices to be Filled at the Election and Confirming the Passage of Measure G; Finding and Declaring That the Registrar of Voters of the County of Santa Clara Has Canvassed the Returns of the Election and Confirming the Results of the Canvass; Stating the Whole Number of Votes Cast, The Names of the Persons and Offices Voted For, the Name of the Measure Voted For, The Number of Votes Given at Each Precinct to Each Person and the Measure; and Finding and Declaring Who Received the Highest Number of Votes of the Votes Cast and That Measure G Received a Majority of the Votes Cast", was adopted. (9-0-1. Absent: Oliverio.)

**END OF CONSENT CALENDAR**

**STRATEGIC SUPPORT SERVICES**

**3.1 Report of the City Manager, Edward Shikada (Verbal Report).**

City Manager Edward K. Shikada offered an update on the Story Road Encampment Rehousing Project.

**3.3 As recommended by the Public Safety, Finance, and Strategic Support Committee on November 20, 2014, accept the Audit on Facilities Maintenance: Process Improvements are Possible, but a Large Deferred Maintenance Backlog Remains. (City Auditor)**

Documents Filed: (1) Memorandum from City Clerk Toni J. Taber, CMC, dated November 24, 2014, transmitting the recommendations of the Public Safety, Finance and Strategic Support Committee. (2) Presentation slide from the Office of Mayor Chuck Reed describing the Crushing Burden of Retirement Cost Increases.

City Auditor Sharon W. Erickson offered the report. Director of Public Works David Sykes presented comments.

Mayor Reed offered his presentation slide on the Crushing Burden of Retirement Cost Increases.

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Herrera and carried unanimously, the Audit on Facilities Maintenance: Process Improvements are Possible, but a Large Deferred Maintenance Backlog Remains was accepted. (10-0.)

### **3.4 Accept the 2014 Service Efforts and Accomplishments Report. (City Auditor)**

Documents Filed: (1) Memorandum from Council Member Rocha, dated December 4, 2014, recommending deferring the report to January 2015. (2) Service Efforts and Accomplishments Report 2013-2014 Annual Report on City Government Performance from the Office of the City Auditor dated December 2014. (3) Staff presentation dated December 9, 2014 outlining the Annual Report on City Government Performance.

Mayor Reed acknowledged the memorandum from Council Member Rocha requesting to defer the report to January 2015 and expressed his desire to hear the report.

City Auditor Sharon W. Erickson presented an overview of the 2014 Service Efforts and Accomplishments Report and responded to Council questions and concerns.

Motion: Council Member Khamis moved approval of the Staff Report. Council Member Herrera seconded the motion.

Council Member Liccardo requested to amend the motion to direct Staff to return to Council in February 2015 with the 2014 Service Efforts and Accomplishments Report for discussion and for the benefit of the new Council Members. Council Members Khamis and Herrera accepted the amendment.

Action: On a call for the question, the motion carried unanimously, the 2014 Service Efforts and Accomplishments Report was accepted, with Staff directed to return to Council in February 2015 with the 2014 Service Efforts and Accomplishments Report for discussion and for the benefit of the new Council Members. (8-0-2. Absent: Campos, Kalra.)

### **3.5 Interview applicants and consider appointments to fill the following positions on the Civil Service Commission:**

**(a) One Attorney-at-Law representative.**

**(b) One Member-at-Large.**

**(City Clerk)**

**(Deferred from 11/7/14 – Item 5)**

Documents Filed: (1) Memorandum from City Clerk Toni J. Taber, CMC, dated October 24, 2014, recommending interviewing applicants and consider appointments to fill the positions on the Civil Service Commission. (2) Supplemental memorandum from City Clerk Toni J. Taber, CMC, dated December 5, 2014, transiting updated information regarding the number of interviews, interview order and applications received from additional recruitment. (3) Memorandum from City Attorney Richard Doyle, dated October 24, 2014, regarding the Civil Service Commission applications (4) Supplemental memorandum from City Attorney Richard Doyle, dated December 5, 2014, transmitting two additional applications received as the result of the Council's extension of the application period. (5) Ballot Results dated December 9, 2014.

### 3.5 (Cont'd.)

Mayor Reed presented opening comments.

Ilan Spieler, Margaret Akdeniz, Michael Wilcoxon and Erik Khoobyarian were interviewed by Mayor Reed and the Council Members.

City Manager Edward K. Shikada provided comments.

Public Comments: Bill Brill expressed support to the current Commissioners serving on the Civil Service Commission and responded to questions from the Council Members.

Council Member Liccardo moved approval to vote for two of the applicants and then choose the Presiding Attorney. Council Member Oliverio seconded the motion. (9-1. Noes: Campos.)

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

The Mayor and Council Members voted by paper ballot and City Clerk Toni J. Taber, CMC announced who each Council Member voted for and the number of votes each applicant received.

With seven votes each, Erik Khoobyarian was appointed as the Attorney-at-Law Representative and Michael Wilcoxon, Incumbent, was appointed as the Member-at-Large.

## COMMUNITY & ECONOMIC DEVELOPMENT

- 4.1 Conduct a Public Hearing and consider the adoption of a resolution on the reorganization/annexation to the City of San José of an approximately 299.2 gross acre portion of County territory consisting of seventeen (17) lots generally bounded by the Union Pacific Railroad tracks to the north, Old Hillsdale Avenue to the east, Hillsdale Avenue, Casselino Drive, Adeline Avenue, Altino Boulevard and Carol Drive to the south, and the Millpond Mobile Home Park to the west; and the detachment of the same from the appropriate special districts including Central Fire Protection, and Area No. 01 (Library Services) County Service (Multiple Property Owners). CEQA: Communications Hill 2 Subsequent EIR, Resolution No. 77172. Council Districts 6 & 7. (Planning, Building and Code Enforcement)**

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Harry Freitas, dated November 17, 2014, recommending adoption of a resolution. (2) Statement and Declaration of Conflict of Interest Form from Council Member Khamis, dated December 9, 2014, disclosing that he owns real property located at Communications Hill.

#### 4.1 (Cont'd.)

Council Member Khamis recused himself from participating in the discussion and voting and disclosed he owns real property located at Communications Hill.

Mayor Reed opened the Public Hearing.

Public Comments: There was no testimony from the floor.

Mayor Reed closed the Public Hearing.

Motion: Vice Mayor Nguyen moved approval of the Staff recommendations. Council Member Herrera seconded the motion.

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

Action: On a call for the question, the motion carried unanimously, Resolution No. 77236, entitled: "A Resolution of the Council of the City of San José Making Determinations and Ordering the Reorganization of Certain Uninhabited, Unincorporated Island Territory Designated as Communications Hill No. 1, Subject to Liability for General Indebtedness of the City and Direction by City Council", was adopted. (9-0-0-1. Abstain: Khamis.)

#### 4.2 **As recommended by the Rules and Open Government Committee on November 19, 2014, discussion and direction to staff regarding proposed revisions to the Sign Ordinance (Title 23) pending CEQA clearance. (Planning, Building and Code Enforcement)**

Documents Filed: (1) Memorandum from Mayor Reed, dated December 2, 2014, recommending direction to Staff to do the environmental clearance and to return to Council on February 24, 2015 with revisions to the sign code as described in "Action". (2) Memorandum from Council Member Khamis, dated December 4, 2014, recommending acceptance of the memorandum from Mayor Reed, dated December 2, 2014 with further direction to Staff. (3) Memorandum from City Clerk Toni J. Taber, CMC, dated November 25, 2014, transmitting the recommendations of the Rules and Open Government Committee.

Mayor Reed pointed out that he had requested the sign ordinance return to Council for discussion and to provide Staff with direction regarding proposed revisions.

Director of Planning, Building and Code Enforcement Harry Freitas presented clarifications and recommended that Staff return in March 2015 with the quarterly update to the sign ordinance.

Mayor Reed opened the floor for public testimony to allow the two property owners to step up to the podium to speak.

## 4.2 (Cont'd.)

Dean Rubinson, Ellis Partners and Jacob Keller, M West Properties expressed support to sign ordinance revisions.

Extensive Council discussion ensued.

Motion: Council Member Khamis moved approval of his memorandum, dated December 4, 2014, with direction and the memorandum from Mayor Reed, dated December 2, 2014, with revisions. See “Action” for details. Council Member Constant seconded the motion.

Council discussion ensued.

Council Member Constant cautioned that the City does not want the signs to become blight.

Public Comments: Ross Signorino suggested keeping the parking strips free of signs which can be potential hazards and can also promote blight.

Action: On a call for the question, the motion carried unanimously, the memorandum from Mayor Reed, dated December 2, 2014 was approved, with direction to Staff to perform the environmental clearance, with revisions to the sign code as underlined: (1) *23.04.0345 Freeway Signs*. A. Quantity. 1. One freeway sign may be allowed on any shopping center site that is fifteen acres or more in size or on any office /R&D site that is twelve acres or more with over 1,000 linear feet of freeway frontage and located not more than two hundred fifty feet from a freeway travel lane. *23.04.120 Types of Signs*. C. Flat-Mounted Signs. 3. Flat-mounted signs on buildings containing wholly non-residential uses and which buildings are one hundred forty feet or greater in height above grade may be located up to a height of ~~sixty~~ one hundred and ten feet above grade. 4. Flat-mounted signs (except for permitted skyline signs, flat roof-top signs and banner signs) shall be displayed no higher than ~~eighty~~ one hundred and ten feet above grade when the building meets all of the following criteria: (a) The building is eighty feet or greater in height above grade. (b) The building has a building footprint of one hundred fifty thousand square feet or greater. *23.04.320 Signs on Residential Parcels*. C. Height. 3. For residential developments consisting of at least one building with one hundred units or more: c. Free-standing signs shall be allowed up to five feet in height for each fifty units located on the subject site, up to maximum height of ~~fifteen~~ twenty feet. Staff was directed to return to Council in *March 2015 (per Director of Planning, Building and Code Enforcement)*. The memorandum from Council Member Khamis, dated December 4, 2014, was approved, with direction to Staff to: (1) return to Council in *March 2015* with revisions to the sign code to allow for the placement of small, temporary signs, such as those described in Part 8 of the Sign Code, on privately-owned park strips within the public right-of-way. (2) Update Section 23.04.710, Section A, Item 2 of the “Definition of Election Signs” to reflect current materials used in the production of such temporary signage, such as corrugated plastic and similar materials. (10-0.)

## NEIGHBORHOOD SERVICES

*Item 5.1 was heard in the evening immediately following Item 11.4.*

- 5.1 (a) **Adopt a resolution authorizing the City Manager or his designee to negotiate and execute a Purchase and Sale Agreement with the Arcadia Development Co., in the amount not-to-exceed \$500,000 for the purchase of approximately 14.54 gross acres of land together with all improvements, bordered by Quimby Road on the north, Capitol Expressway on the east and Chopin Avenue on the west in San José (a portion of Assessor's Parcel Numbers 670-29-020 and 670-29-017) and all other documents necessary to conclude the transaction for the development of a proposed softball facility funded by the Measure P Bond program.**
- (b) **Adopt the following Appropriation Ordinance amendments in the Parks and Recreation Bond Projects Fund:**
- (1) **Decrease the Softball Complex Reserve by \$515,000.**
  - (2) **Establish the Arcadia Softball Complex project to the Parks, Recreation and Neighborhood Services Department in the amount of \$515,000.**

**CEQA: Addendum to the Final Program Environmental Impact Report ("FEIR") for the Evergreen East Hills Vision Strategy (SCH # 2005102007)," which was certified by the City Council on December 12, 2006, by Resolution No. 73570, and the Supplemental Environmental Impact Report ("SEIR") for the Revision of the Evergreen-East Hills Development Policy, certified with findings adopted by the City Council on December 16, 2008, by Resolution No. 74742 (Parks, Recreation and Neighborhood Services/City Manager)**

Documents Filed: (1) Memorandum from Council Member Herrera, dated December 5, 2014, recommending approval of the Staff recommendations. (2) Memorandum from Council Member Rocha, dated December 8, 2014, recommending approval of the Staff recommendations with additions. (3) Memorandum from Director of Parks, Recreation and Neighborhood Services Julie Edmonds-Mares and Deputy City Manager/Budget Director Jennifer A. Maguire, dated November 19, 2014, recommending adoption of a resolution and appropriation ordinance amendments. (4) Staff presentation dated December 9, 2014 summarizing the Bond Funded Softball Facility Arcadia Land Acquisition.

Motion: Council Member Herrera moved approval of her memorandum dated December 5, 2014 and the memorandum from Council Member Rocha, dated December 8, 2014. Council Member Rocha seconded the motion.

Council discussion ensued.

## 5.1 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, the memorandum from Council Member Herrera, Mayor Reed, Vice Mayor Nguyen, dated December 5, 2014, was approved, approving the Staff recommendations. The memorandum from Council Member Rocha, dated December 8, 2014, was approved, with the following additions: (1) State the Council's position that this facility is intended to be a citywide softball complex that accommodates league and tournament play, not a home field for little league baseball nor one specific little league program. (2) As part of the discussion of the operational model that will return to Council next year, direct Staff to reach out to all San José Softball Leagues, adult and youth, for the purpose of gauging their interest in using the facility for daily play, seasonal play, tournament play or any other type of play. Resolution No. 77238, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager or His Designee to Negotiate and Execute a Purchase and Sale Agreement With Arcadia Development Company for the Purchase of Approximately 14.54 Gross Acres of Land in An Amount Not To Exceed \$500,000 for the Development of a Proposed Softball Facility" and Ordinance No. 29520, entitled: "An Ordinance of the Council of the City of San José Amending Ordinance No. 29431 to Appropriate Monies in the Parks and Recreation Bond Projects Fund for the Arcadia Softball Complex; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption", were adopted. (10-0.)

## TRANSPORTATION & AVIATION SERVICES

- 6.1 (a) **Accept update and provide direction on a potential agreement with Philips regarding an unsolicited proposal for the installation of up to 50 streetlights known as SmartPoles.**
- (b) **Adopt a resolution authorizing the City Manager or his designee to negotiate and execute an agreement with Philips for a term of up to 30 years consistent with the direction provided by the City Council on the agreement's terms concerning compensation to the City and payment of City's standard fees and charges.**

**CEQA: Exempt, File No. PP14-046, Streetlight Management Plan. (Transportation/Economic Development/City Manager)**

Documents Filed: (1) Memorandum from Council Member Liccardo, dated December 8, 2014, recommending approving the Staff recommendations with modifications. (2) Memorandum from Council Member Herrera, dated December 8, 2014, recommending acceptance the Staff and the memorandum from Council Member Liccardo, and one additional recommendation. (3) Memorandum from Director of Transportation Hans Larsen, Deputy City Manager/Director of Economic Development Kim Welsh and Assistant to the City Manager Teri Killgore, dated November 21, 2014, recommending acceptance of the update, provide direction and adoption of a resolution. (4) Staff presentation dated December 9, 2014 summarizing the Philips Smart Pole Proposal. (5) Letter from Bill McShane, Director of Business Development, Philips, regarding the Philips Smartpole Public Private Partnership Proposal.



## 6.1 (Cont'd.)

Director of Transportation Hans Larsen offered the report on the Philips Smart Pole Proposal and responded to Council questions and concerns.

City Manager Edward K. Shikada provided comments.

Extensive Council discussion followed.

Mayor Reed opened the floor for public testimony

Public Comments: Bill McShane and Clive Drew, Philips, expressed support to the Staff recommendations.

Motion: Council Member Liccardo moved approval of his memorandum dated December 8, 2014, with modifications as described in “Action” on Page 16. Council Member Herrera seconded the motion.

Action: On a call for the question, the motion carried unanimously, the amended memorandum from Council Member Liccardo, dated December 8, 2014, was approved, with the following modifications: (1) Negotiate to increase the number of authorized SmartPoles to 100 or more and in exchange, negotiate a higher “price” for the City, i.e. to require that Philips convert a greater number of LED streetlights than the current 15 per SmartPole. (2) Staff requested to consider a Request for Proposal to obtain the best deal and incorporate. If Staff chooses the SmartPole approach, Staff was directed to provide a public process, including a community meeting to discuss design aesthetic issues and to bring all issues back to Council. (10-0.)

## REDEVELOPMENT – SUCCESSOR AGENCY

### 9.1 Adopt Resolutions by the Successor Agency Board:

- (a) **Approving the Administrative Budget for January 1 through June 30, 2015.**
- (b) **Approving the Recognized Obligation Payment Schedule 14-15B and authorizing payment of expenditures for items on ROPS 14-15B, which details the obligations of the Successor Agency for the period of January 1, 2015 through June 30, 2015.**

**CEQA: Not a Project, File No. PP10-067(b), Appropriation Ordinance. (Successor Agency)**

Documents Filed: Memorandum from Director of Finance Julia H. Cooper and Managing Director Richard A. Keit, dated November 21, 2014, recommending adoption of resolutions.

## 9.1 (Cont'd.)

Action: Upon motion by Council Member Oliverio, seconded by Council Member Liccardo and carried unanimously, SARA Resolution No. 7035, entitled: “A Resolution of the Successor Agency to the Redevelopment Agency of the City of San José Approving the Administrative Budget for January 1, 2015 through June 30, 2015” and SARA Resolution No. 7036, entitled: “A Resolution of the Successor Agency to the Redevelopment Agency of the City of San José Approving the Recognized Obligation Payment Schedule 14-15B and Authorizing Payment of Expenditures for Items on ROPS 14-15B, Which Details the Obligations of the Successor Agency for the Period of January 1, 2015 through June 30, 2015”, were adopted. (9-0-1. Absent: Constant.)

## ADJOURNMENT

The Council of City of San José adjourned the afternoon session at 6:13 p.m.

## RECESS/RECONVENE

The City Council recessed at 6:13 p.m. from the afternoon Council Session and reconvened at 7:01 p.m. in the Council Chambers, City Hall.

Present: Council Members - Campos, Constant, Herrera, Kalra, Khamis, Liccardo, Nguyen, Oliverio (7:18 p.m.), Rocha; Reed.

Absent: Council Members - All Present.

Vacant: - District 4.

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

## CEREMONIAL ITEMS

### **1.1 Presentation of a commendation to recognize Harker School as the 2014 recipient of the Business Recycling Award. (Constant)**

Mayor Reed and Council Member Constant recognized and commended Harker School.

### **1.2 Presentation of a commendation to Sakthi Ponnuswamy for her dedication as a Junior Volunteer Teacher to students at AJ Dorsa Elementary School. (Herrera/Campos/Oliverio)**

Mayor Reed, Council Member Herrera and Council Member Campos recognized and commended Sakthi Ponnuswamy. Council Member Oliverio was not present.

### **1.5 Presentation of a commendation to MOUSE Squad members for their exemplary hard work and innovative learning. (Rocha)**

Mayor Reed, Council Member Rocha and Council Member Liccardo recognized and commended the MOUSE Squad members.

## GENERAL PLAN PUBLIC HEARINGS

- 10.2 Tentative approval of a General Plan Text Amendment to modify Goal H-2 - Affordable Housing, to state that the City’s goal is that 15% or more of the new housing developed in San José be affordable to low, very low and extremely low income households and to add new policies including the Housing - Social Equity and Diversity Policy that states that the City will facilitate housing affordable to those who are employed in serving industries, and other related amendments. CEQA: Envision San José 2040 General Plan EIR, Resolution No. 76041 and addenda thereto. Planning Commission recommends approval (6-1-0). (Planning, Building and Code Enforcement)  
GPT14-007 - Citywide  
(Deferred from 11/18/14 – Item 10.2)**

Mayor Reed opened the Public Hearing. There was no testimony from the floor.

Mayor Reed provided comments about his memorandum dated December 8, 2014 and recommended that the City should increase, preserve and improve the City of San José’s housing stock.

Mayor Reed continued the Public Hearing to December 16, 2014.

Action: The General Plan Text Amendment to Modify Goal H-2 Affordable Housing was continued to December 16, 2014 for discussion and final adoption.

## PUBLIC HEARINGS ON CONSENT CALENDAR

*11.1 was heard immediately following the Evening Ceremonials.*

- 11.1 (a) Consideration of a Conditional Use Permit to allow after-midnight use until 2:00 a.m. for a public eating establishment, drinking establishment (for more than 250 people), and banquet facility, The Glass House, on 0.46 gross acre site in the DC Downtown Primary Commercial Zoning District, located at 84 West Santa Clara Street and 2 South Market Street (84 West LLC, Owner), and adopt a resolution setting forth the Council’s decision. CEQA: Exempt, File No. CP14-051. (Planning, Building and Code Enforcement)  
CP14-051 – District 3**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. CP14-051 dated November 12, 2014. (2) Memorandum from Planning Commission Secretary Harry Freitas, dated November 21, 2014, transmitting the recommendation of the Planning Commission. (3) Proof of Publication of Notice of Public Hearing executed on October 31, 2014, submitted by the City Clerk.

11.1 (a) (Cont'd.)

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 Khamis and carried unanimously, the recommendation of the Planning Commission was approved, Resolution No. 77237 was adopted, approving the Conditional Use Permit to allow after-midnight use until 2:00 a.m. for a public eating establishment, drinking establishment (for more than 250 people), and banquet facility. (9-0-1. Absent: Oliverio.)

- (b) **Consideration of an ordinance rezoning the real property located on the north side of Broadway Avenue, approximately 240 feet east of Ramona Avenue (1067 Broadway Avenue) from the R-1-8 Single Family Residence Zoning District to the A(PD) Planned Development Zoning District to subdivide one parcel into two lots with reduced side setbacks for single-family residences on a 0.38 gross acre site (Chen, Hongtao and Emily, Owner). CEQA: Exempt. (Planning, Building and Code Enforcement) PDC07-008 – District 6**

Documents Filed: Proof of Publication of Notice of Public Hearing executed on October 31, 2014, submitted by the City Clerk.

Action: Dropped by Applicant.

- (c) **Consideration of an ordinance rezoning the real property located at the southwest corner of West San Carlos Street and Sunol Street (860 West San Carlos Street) from the A(PD) Planned Development Zoning District to the A(PD) Planned Development Zoning District to allow for specific changes to previously approved Development Standards, most notably: eliminating the minimum building height, lowering the minimum amount of commercial square footage from 24,000 to 14,000, and requiring standard conformance with the City's parkland dedication requirements, for the subject 8.0 gross acre site (Santa Clara County Transit Dist, Owner). CEQA: Ohlone Mixed Use EIR Resolution No. 09064, File No. PDC08-061. (Planning, Building and Code Enforcement) PDC13-004 – District 6**

Documents Filed: Proof of Publication of Notice of Public Hearing executed on October 31, 2014, submitted by the City Clerk.

Action: Dropped.

**END OF PUBLIC HEARING CONSENT CALENDAR**

## 11. PUBLIC HEARINGS

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- 11.2 Consideration of an ordinance rezoning the real property located on the west side of San Felipe Road, approximately 90 feet north of Fowler Road from the A Agriculture Zoning District to the R-1-5 Single-Family Residence Zoning District of an approximately 0.24 gross acre property (APN 676-33-013) and the northern portion of a contiguous property to the east (APN 676-33-014) of approximately 0.17 acres. CEQA: Envision San José 2040 General Plan EIR, Resolution No. 76041 and addenda thereto. (Planning, Building and Code Enforcement)**

**C14-034- District 8**

**[Continued from 10/21/14 – Item 11.4 and 10/28/14 – Item 4.3]**

Documents Filed: (1) Memorandum from Council Member Herrera, dated December 8, 2014, recommending dropping the rezoning and renote, and to direct Staff to work with the Applicant to identify rezoning to respect the unique characteristics of the site which is very close to Thompson Creek. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C14-034 dated September 30, 2014. (3) Proof of Publication of Notice of Public Hearing executed on October 3, 2014, submitted by the City Clerk.

Action: Council Member Herrera moved approval of her memorandum, dated December 8, 2014, as described below in “Action”. Council Member Oliverio seconded the motion.

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

Mayor Reed opened the Public Hearing.

Public Comments: Hitesh Patel, Architect representing the Applicant, expressed support to the decision by Council to drop the item and renote, and noted that he will do his best to address the concerns. Alice Kaufman, Committee for Green Foothills, suggested that Council direct Staff to look for environmental impacts at the early stages. Shani Kleinhaus, Santa Clara Valley Audubon Society, pointed out that development should be considered cautiously because of issues concerning birds, wildlife, flood control, and impacts of development on the creek sites.

Mayor Reed closed the Public Hearing.

Council Member Herrera thanked the speakers for providing input

Action: On a call for the question, the motion carried unanimously, the memorandum from Council Member Herrera, dated December 8, 2014, was approved: (1) The rezoning was dropped, to be renoted. (2) Staff was directed to work with the applicant to identify an appropriate rezoning to respect the unique characteristics of the site which is very close to Thompson Creek. (10-0.)

- 11.3 Consideration of an ordinance to amend a Development Agreement with New Century Towers, LLC to develop up to 378 multi-family attached residential units and approximately 5,115 square feet of ground floor commercial space consistent with a previously approved Planned Development Rezoning (File No. PDC13-055), which allows up to 460 residential units and up to 20,000 square feet of ground floor commercial space on a 2.4 gross acre site located at the southwest corner of North First Street and Century Center Court (1729 N. First Street) in the North San José Area Development Policy area, subject to performance by the developer for payment of contributions, commencement of construction and subsequent occupancy per deadlines of performance included in the previously approved Development Agreement (File No. DA13-001). The purpose of this Development Agreement amendment is to modify the findings to recognize that the extraordinary benefit to be provided by the project includes a contribution of \$2,600,000 to be used either for affordable housing or transportation infrastructure improvements (James F. Schmidt, owner), acknowledge that New Century Towers, LLC is the successor in interest, and to make other technical or non-substantive changes. CEQA: North San José Area Development Policies Update Environmental Impact Report, Resolution No. 72768 and addenda thereto. (Planning, Building and Code Enforcement) DA14-001 – District 3 (Deferred from 10/21/14 – Item 11.7)**

Documents Filed: (1) Memorandum from Council Member Rocha, dated December 8, 2014, recommending not approving an amendment to the Century Towers Development Agreement. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. DA14-001, dated October 28, 2014. (3) Memorandum from Planning Commission Secretary Harry Freitas, dated November 20, 2014, transmitting the recommendation of the Planning Commission. (4) Proof of Publication of Notice of Public Hearing executed on September 19, 2014, submitted by the City Clerk.

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

Mayor Reed opened the Public Hearing.

Public Comments: Speaking in opposition and in favor of the memorandum from Council Member Rocha were Poncho Guevara, Sacred Heart; Phil Olmstead, Kyra Kazantzis, Law Foundation of Silicon Valley; Bob Brownstein, Robert Aguirre, Anthony King, Yolanda Gutierrez, Duy Mac Tu, Elena Rivera, Tracey Sanchez, Heather Henry and Sandy Perry, Affordable Housing Network.

Mayor Reed closed the Public Hearing.

Action: Council Member Rocha moved approval of his memorandum dated December 8, 2014, recommending not approving an amendment to the Century Towers Development Agreement. Council Member Campos seconded the motion.

### 11.3 (Cont'd.)

Vice Mayor Nguyen and Council Member Kalra expressed support for the motion on the floor.

Council Member Oliverio expressed opposition to the memorandum from Council Member Rocha citing that the money is needed for transportation uses.

Mayor Reed pointed out that one of the problems in San José is that there are not enough jobs and there is an imbalance between jobs and housing and emphasized again that the City needs to build its transportation infrastructure.

Action: On a call for the question, the motion carried, the memorandum from Council Member Rocha, dated December 8, 2014, was approved, denying an amendment to the Century Towers Development Agreement. (7-3. Noes: Constant, Oliverio; Reed.)

### 11.4 **Consideration of an ordinance rezoning the real property located on the south side of Quimby Road, approximately 1,200 feet westerly of Capitol Expressway (2218 Quimby Road) from the R-1-8 Single-Family Residence and CO Commercial Office Zoning Districts to the A(PD) Planned Development Zoning District to allow up to 344,000 square feet of commercial/retail; 250 residential dwelling units; and 17.2 acres of public parkland on an approximately 81.0 gross acre site (Arcadia Development Co., Owner). CEQA: Addendum to the Final Program Environmental Impact Report ("FEIR") for the Evergreen East Hills Vision Strategy (SCH # 2005102007),” which was certified by the City Council on December 12, 2006, by Resolution No. 73570, and the Supplemental Environmental Impact Report ("SEIR") for the Revision of the Evergreen-East Hills Development Policy, certified with findings adopted by the City Council on December 16, 2008, by Resolution No. 74742. (Planning, Building and Code Enforcement) PDC10-022 – District 8**

*Item 11.4 was heard immediately following Item 11.1.*

Documents Filed: (1) Memorandum from Mayor Reed, Vice Mayor Nguyen, Council Members Herrera and Rocha, dated December 5, 2014, recommending approval of the Staff/Planning Commission recommendations. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC10-022, dated November 10, 2014. (3) Memorandum from Planning Commission Secretary Harry Freitas, dated November 24, 2014, transmitting the recommendation of the Planning Commission. (4) Proof of Publication of Notice of Public Hearing executed on October 31, 2014, submitted by the City Clerk.

Action: Council Member Herrera moved approval of the memorandum she cosigned with Mayor Reed, Vice Mayor Nguyen and Council Member Rocha. Vice Mayor Nguyen seconded the motion.

Council Member Herrera provided background and history about the project.



#### 11.4 (Cont'd.)

Director of Planning, Building and Code Enforcement Harry Freitas presented background information.

Director of Parks, Recreation and Neighborhood Services Julie Edmonds-Mares offered introductory remarks. Division Manager Marybeth Harasz presented the report.

Mayor Reed opened the Public Hearing.

Brad Durga, Vice President, Arcadia Development Company, spoke to the merits of the project.

Public Comments: Speaking in support to the Staff recommendations were Kathy Gomez, Sylvia Alvarez, Evergreen School District; Bonnie Mace, Evergreen School Board; Nichole Edraos, Chris Allingham, Reverend Deacon Sal Alvarez, La Raza Roundtable; Gracie Garcia-Ramos and Diana Crumedy, Meadowfair Neighborhood Association.

Brad Durga, Vice President, Arcadia Development Company, presented closing comments.

Mayor Reed closed the Public Hearing.

Brief Council discussion ensued.

Action: On a call for the question, the motion carried unanimously, the memorandum from Council Member Herrera, Mayor Reed, Vice Mayor Nguyen and Council Member Rocha, dated December 5, 2014, was approved, the Staff recommendations were approved and Ordinance No. 29519, entitled: "An Ordinance of the Council of the City of San José Rezoning Certain Real Property of Approximately 81.0 Gross Acres Situated on the South Side of Quimby Road, Approximately 20 Feet West of Capitol Expressway, From the R-1-8 Single Family Residence and CO Commercial Office Zoning Districts to the A(PD) Planned Development Zoning District", was passed for publication. (10-0.)

- 11.5 (a) **Certify the Heritage Oaks Memorial Park Environmental Impact Report, and adopt a resolution making 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 south side of Bailey Avenue, approximately 1,200 feet easterly of McKean Road, from the R-1-1(PD) Zoning District and A Agricultural Zoning Districts to the A(PD) Planned Development Zoning District, to allow a cemetery with ancillary uses (Heritage Oaks Memorial Park) on approximately 102 acres and private open space on approximately 173 acres of a 275 gross acre site (Martin Weinberg & Et Al, Owner).**

**11.5 CEQA: Heritage Oaks Memorial Park Project Environmental Impact Report (EIR) Resolution to be considered for certification and adoption. (Planning, Building and Code Enforcement)**

**PDC13-016 – District 2**

Documents Filed: (1) Memorandum from Mayor Reed and Council Members Kalra and Khamis, dated December 5, 2014, recommending approving the Staff/Planning recommendations with modifications as described in “Action”. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC13-016, dated November 10, 2014. (3) Memorandum from Planning Commission Secretary Harry Freitas, dated November 21, 2014, transmitting the recommendation of the Planning Commission. (4) Proof of Publication of Notice of Public Hearing executed on October 31, 2014, submitted by the City Clerk. (5) Letter from David W. Poeschel, Sierra Club, dated November 25, 2014, regarding the Heritage Oaks Memorial Park Project. (6) Letter from Lawrence F. Sloane, President, L.F. Sloane Consulting Group, dated December 3, 2014, regarding the Heritage Oaks and the 200 year duration for the cemetery.

Mayor Reed opened the floor for Public Testimony.

Erik Schoennauer, representing the Applicant Brandenburg Properties, spoke to the merits of the project.

Public Comments: The following speakers expressed support, opposition and suggestions, Rachel Santos, Santa Clara County Open Space Authority; Jenniel Lee, David Poeschel, Sierra Club; Greg Galasso, Diocese of San José; Brian Boyer, Cinnabar Hills Golf Club; Joe Lima, Lima Campagna Mortuaries; Tammy Chen, De Anza College; Cristapher Xavier Torres, John McMillan, San José Fire Museum; Alice Kaufman, Committee for Green Foothills; Shani Kleinhaus, Santa Clara Valley Audubon Society and Jordan Brown.

Motion: Council Member Kalra moved approval the memorandum he consigned with Mayor Reed and Council Member Khamis, with modifications as described in “Action”. Council Member Khamis seconded the motion.

Council Member Herrera requested to amend the motion to direct Staff to continue to check in periodically with the Environmental Community and the Cemetery. The amendment was accepted by Council Members Kalra and Khamis.

## 11.5 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, the memorandum from Mayor Reed and Council Members Kalra and Khamis, dated December 5, 2014, was approved, approving the Staff/Planning recommendations, with the following modifications: (1) Conduct preconstruction burrowing owl surveys. (2) Build “wildlife friendly” fencing, as needed. (3) Include “natural” burial as an option in the information provided to customers. (4) Provide “natural” burial options within the project. (5) Consult local experts when replacing native vegetation on the property. Staff was directed to continue to check in periodically with the Environmental Community and the Cemetery. Resolution No. 77239 was adopted and Ordinance No. 29521, entitled: “An Ordinance of the Council of the City of San José Rezoning Certain Real Property Situated on the South Side of Bailey Avenue, Approximately 1,200 Feet Easterly of McKean Road, From the R-1-1(PD) Planned Development Zoning District and A Agricultural Zoning Districts to the A(PD) Planned Development Zoning District”, was passed for publication. (10-0.)

- 11.6 (a) **Adopt a resolution adopting a Negative Declaration for the Cottle Road Chick-fil-A Project.**
- (b) **Consideration of an ordinance rezoning the real property located on the northeast corner of Cottle Road and Great Oaks Parkway from the A(PD) Planned Development Zoning District to the A(PD) Planned Development Zoning District to allow a drive-through at a public eating establishment.**
- (c) **Consideration of a Planned Development Permit to allow the construction of a 4,529 square foot public eating establishment with drive-through use. Conduct the public hearing and continue this subsection (c) to the December 16, 2014 Council meeting for action after final adoption of the rezoning ordinance.**

**CEQA: Negative Declaration resolution to be considered for adoption. Planning Commission recommends approval (7-0-0). (Planning, Building and Code Enforcement)**

**PDC14-024/PD14-021 – District 2**

Documents Filed: (1) Memorandum from Council Member Kalra, dated December 8, 2014, recommending approving the recommendation with the current Planned Development Rezoning and CP Commercial Pedestrian designation to disallow drive through use. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC14-024/PD14-021, dated October 28, 2014. (3) Memorandum from Planning Commission Secretary Harry Freitas, dated November 21, 2014, transmitting the recommendation of the Planning Commission. (4) Supplemental memorandum from Director of Planning, Building and Code Enforcement Harry Freitas, dated December 4, 2014, transmitting the proposed revised draft resolution which incorporates standard permit conditions identified in the Negative Declaration (conditions 31 through 34). (5) Proof of Publication of Notice of Public Hearing executed on October 17, 2014, submitted by the City Clerk.

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

## 11.6 (Cont'd.)

Mayor Reed opened the Public Hearing.

Deborah Kerr, Consulting Project Manager, representing Chick-fil-A, the Applicant, pointed out that Chick-fil-A encourages customers to come in as the restaurant is customer-oriented, flowers on the table, a play area and other amenities however a drive-through is critical to the business.

Public Comments: Jeffrey Cardenas and Wiggy Sivertson, BAYMEC expressed opposition to the drive through. Jennifer Daw, Chick-fil-A expressed support to the drive-through.

Mayor Reed closed the Public Hearing.

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

Extensive Council discussion ensued.

Substitute Motion: Council Member Kalra moved approval of his memorandum dated December 8, 2014, approving the recommendation with the current Planned Development Rezoning and CP Commercial Pedestrian designation to disallow drive-through use. Council Member Rocha seconded the motion.

City Attorney Richard Doyle clarified that in spite of political comments, it is a land use decision.

Action: On a call for the question, the substitute motion carried, the memorandum from Council Member Kalra, dated December 8, 2014, was approved, approving the recommendations with the current Planned Development Zoning and CP Commercial Pedestrian Zoning Designation to disallow the drive-through use, Resolution No. 77240, entitled: "A Resolution of the Council of the City of San José Adopting the Cottle Road Chick-fil-A Project Negative Declaration, For Which an Initial Study Was Prepared, All in Accordance With the California Environmental Quality Act, As Amended" and Resolution No. 77241 were adopted. Ordinance No. 29522, entitled: "An Ordinance of the Council of the City of San José Rezoning Certain Real Property of Approximately 1.21 Gross Acres Within a 17.4 Gross Acre Site Situated on the Northeast Corner of Cottle Road and Great Oaks Parkway, From the A(PD) Planned Development Zoning District to the A(PD) Planned Development Zoning District" was passed for publication, as amended. (6-4. Noes: Constant, Herrera, Khamis; Reed.)

- 11.7 (a) Consider adoption of a resolution approving the Mitigated Negative Declaration for the PD Rezoning File No. PDC14-026.
- (b) Consideration of an ordinance rezoning the real property located on at 1280, 1284 and 1288 North Capitol Avenue from the R-1-8 Zoning District to A(PD) Planned Development Zoning District to allow the construction of nine single family detached homes on a 1.3 gross acre site (Scimeca, Gerald R. Trustee & Et Al, Owner).

**CEQA: Mitigated Negative Declaration resolution to be considered for adoption. Planning Commission recommends denial (6-1-0). (Planning, Building and Code Enforcement)**

**PDC14-026 – District 4**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC14-026, dated October 28, 2014. (2) Memorandum from Planning Commission Secretary Harry Freitas, dated November 20, 2014, transmitting the recommendation of the Planning Commission to deny. (3) Proof of Publication of Notice of Public Hearing executed on October 17, 2014, submitted by the City Clerk.

Action: Dropped by Applicant.

- 11.8 (a) Approve an ordinance amending Sections 20.30.110 of Chapter 20.30, 20.60.030 of Chapter 20.60 and 20.200.470 of Chapter 20.200, adding new Sections 20.40.115 of Chapter 20.40, 20.70.130 of Chapter 20.70 and 20.75.230 of Chapter 20.75, amending Part 2 of Chapter 20.80, and adding a new Part 2.5 to Chapter 20.80, all of Title 20 of the San José Municipal Code, to allow and regulate transient occupancy as an incidental use of residences, to modify permitting requirements and occupancy limitations for Bed and Breakfast Inns, to amend and add long term room rental limitations and to make other technical, nonsubstantive, or formatting changes within those sections of Title 20. CEQA: Final Program Environmental Impact Report (EIR) for the Envision San José 2040 General Plan, EIR Resolution No. 76041 and addenda thereto (File No. PP14-084). (Planning, Building and Code Enforcement)
- (b) Adopt a resolution authorizing the City Manager to negotiate and execute a Tax Collection Agreement with Airbnb, Inc., at no cost to the City, for the collection of the City's Transient Occupancy Tax on short term rentals, where the host (owner or primary tenant) uses a hosting platform provided by Airbnb. (Economic Development/Finance)

**CEQA: Envision San José 2040 General Plan EIR, Resolution No. 76041 and addenda thereto (File No. PP14-084)**

**PP14-084/Title 20 – Citywide**

## 11.8 (Cont'd.)

Documents Filed: (1) Memorandum from Council Member Constant, dated December 8, 2014, recommending approval of the ordinance with modifications as recommended by the Planning Commission. (2) Memorandum from Council Member Rocha, dated December 8, 2014, recommending approval of the agreement with AirBnB but defer action on amending Title 20 with direction to Staff to do additional analysis on policy considerations. (3) Memorandum from Planning Commission Secretary Harry Freitas, dated November 21, 2014, transmitting the recommendation of the Planning Commission. (4) Memorandum from Deputy City Manager/Director of Economic Development Kim Walesh and Director of Finance Julia H. Cooper, dated November 24, 2014, recommending adoption of a resolution. (5) Proof of Publication of Notice of Public Hearing, executed on October 31, 2014, submitted by the City Clerk. (6) Letter from Michael Mulcahy and Karolyn Kirchgesler, Team San José, dated December 9, 2014, expressing support to the Staff recommendations. (7) Email from a member of the public, dated December 9, 2014, expressing opposition to the Staff recommendations.

Deputy City Manager/Director of Economic Development Kim Walesh provided background information.

Motion: Council Member Constant moved approval of his memorandum dated December 8, 2014, recommending approval of the ordinance with modifications as recommended by the Planning Commission. Council Member Oliverio seconded the motion.

Council Member Constant expressed comments.

Reed opened the public hearing.

Public Comments: The following speakers expressed support, opposition and comments, Karolyn Kirchgesler, Team San José; Dina Dy and David Owen, AirBnB; Sandra Rodriguez, Elia Navarro, Ben W., Anna Diaz, Sarah Julian, Russell Gilbert, Rebecca Morgan, Justin Kuykendall, Paula Brennan, Judie Cieslea, Poncho Guevara, Bob Brownstein, Kyra Kazantzis, Law Foundation of Silicon Valley; Julie Engelbrecht, Robert Aguirre, Anthony King, Pamela Frey and Sarah McDermott.

Mayor Reed closed the Public Hearing.

Council Member Rocha expressed opposition to the memorandum from Council Member Constant and the motion on the floor.

City Attorney Richard Doyle, Deputy City Manager/Director of Economic Development Kim Walesh and Assistant to the City Manager/Downtown Manager Lee Wilcox responded to Council questions and concerns.

## 11.8 (Cont'd.)

Action: On a call for the question, the motion carried, the memorandum from Council Member Constant, dated December 8, 2014, was approved, approving the proposed ordinance, including the following changes with modifications as recommended by the Planning Commission: (1) Revise the limitation for the use from 90 days to 365 days per calendar year with a host (property owner or primary tenant) present and from 90 days to 180 days per calendar year with no host present. (2) Do not add a provision to require hosts to join a registry. (3) Provide a status report to the Council on the effectiveness of the ordinance 18 months after the ordinance is implemented. Ordinance No. 29523, entitled: “An Ordinance of the City of San José Amending Sections 20.30.110 of Chapter 20.30, 20.60.030 of Chapter 20.60 and 20.200.470 of Chapter 20.200, Adding New Sections 20.40.115 of Chapter 20.40, 20.70.130 of Chapter 20.70 and 20.75.230 of Chapter 20.75, Amending Part 2 of Chapter 20.80, and Adding a New Part 2.5 to Chapter 20.80, All of Title 20 of the San José Municipal Code, To Allow and Regulate Transient Occupancy As An Incidental Use of Residences and To Modify Permitting Requirements and Occupancy Limitations for Bed and Breakfast Inns, To Amend and Add Long Term Room Rental Limitations and To Make Other Non Substantive or Formatting Changes Within These Sections of Title 20”, was passed for publication, as amended. Resolution No. 77242, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Tax Collection Agreement with AirBnB, Inc. for the Collection of the City’s Transient Occupancy Tax on Short Term Rentals Using a Hosting Platform Provided by AirBnB, Inc.”, was adopted. (7-3. Noes: Campos, Kalra, Rocha.)

## 11.9 **Adopt a resolution to rename Atmel Way to Orchard Place. CEQA: Exempt, CEQA Guidelines Section 15301. (Planning, Building and Code Enforcement)** **ST14-004 – District 4**

Documents Filed: (1) City Council Action Request from Director of Planning, Building and Code Enforcement Harry Freitas, dated November 25, 2014, recommending adoption of a resolution. (2) Proof of Publication of Notice of Public Hearing, executed on November 14, 2014, submitted by the City Clerk.

Action: Upon motion by Council Member Constant, seconded by Council Member Oliverio and carried unanimously, Resolution No. 77243, entitled: “A Resolution of the Council of the City of San José Renaming Atmel Way, Located on the West Side of Orchard Parkway, Between Component Drive and Charcot Avenue To Orchard Place, was adopted. (10-0.)

**NOTICE OF CITY ENGINEER’S PENDING DECISION ON FINAL MAPS**

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

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/Units</u>	<u>Type</u>	<u>Proposed Decision</u>
10233	Almaden Road 200’ north of Fleetwood Drive.	10	Vui M. Ly	7 Lots/ 6 Units	SFD	Approve

**ADJOURNMENT**

The Council of the City of San José was adjourned at 11:02 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Toni J. Taber, CMC  
City Clerk

smd/12-09-14 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.