

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, FEBRUARY 26, 2013

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

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

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

STRATEGIC SUPPORT SERVICES

3.2 Accept Labor Negotiations Update.

Documents Filed: (1) Three Proposals, one dated February 19, 2013 and two February 21, 2013 from the Association of Legal Professionals. (2) Handout submitted by Jon Max Reger dated February 26, 2013.

Deputy Director Jennifer Schembri stated that the Office of Employee Relations received three proposals.

Public Comments: Jon Max Reger expressed concern about the attrition rate with environmental inspectors due to not receiving qualifying promotions.

CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:07 a.m. to a Closed Session in Room W133 (A) to confer with Legal Counsel with respect to Public Employment/Public Employee Evaluation pursuant to Government Code Section 54957: (1) City Manager; Name: Debra Figone. (B) to confer with Legal Counsel with respect to Public Employment/Public Employee Evaluation pursuant to Government Code Section 54957: (1) City Auditor's Office; Title: City Auditor. (C) to confer with Legal Counsel pursuant to Government Code Section 54956.9, Subsection (a) with respect to existing litigation: (1) Kerkeles v. City of San José, et al. Names of Parties Involved: Michael Kerkeles,

CLOSED SESSION (Cont'd.)

a.k.a. Michael Kerk, City of San José, Matthew Christian and Does 1-25; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV103523; Amount of Money or Other Relief Sought: Damages according to proof. (2) Aguirre v. City of San José, et al. Names of Parties Involved: Rebeca Aguirre, Hui Gao, City of San José and Does 1-100; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV237474; Amount of Money or Other Relief Sought: Damages according to proof. (3) Salerno v. City of San José, et al. Names of Parties Involved: Dawn Salerno, Wendell Goesling, Deborah Goesling, City of San José and Does 1-20; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV234006; Amount of Money or Other Relief Sought: Damages according to proof. (4) San José Construction, Inc. v. City of San José, et al; Names of Parties Involved: San José Construction, Inc., City of San José, Office of Equality Assurance, The Redevelopment Agency of the City of San José, Nina Grayson, Teresa La Vrar and Does 1-20; Court: Superior Court of California, County of Santa Clara; Amount of Money or Other Relief Sought: Claim for equitable indemnity. (5) Deisenroth v. City; Names of Parties Involved: Lorie Deisenroth, City of San José; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-224197; Amount of Money or Other Relief Sought: Damages according to proof. (D) to confer 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

CLOSED SESSION (Cont'd.)

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: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association. (11) Association of Legal Professionals of San José (ALP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc. Web: <http://www.sanjoseca.gov/employeerelations/moa.asp>; Telephone for Employee Relations: 408-535-8150. (E) to confer with Legal Counsel pertaining to the Successor Agency to the Redevelopment Agency of the City of San José with respect to initiation of litigation pursuant to subsection (c) of Section 54956.9 of the Government Code in two (2) matters to be discussed.

By unanimous consent, Council recessed from the Closed Session at 11:30 a.m. and reconvened to Regular Session at 1:33 p.m. in the Council Chambers.

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

Absent: Council Members - All Present.

INVOCATION (DISTRICT 2)

Demone Carter, Director of Future Arts Now, presented the Invocation.

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Herrera, seconded by Vice Mayor Nguyen and carried unanimously, the Orders of Day and the Amended Agenda were approved, and Ceremonial Item 1.5 was added to the afternoon Agenda. (8-0-3. Absent: Constant, Liccardo, Oliverio.)

CLOSED SESSION REPORT

Mayor Reed disclosed the following Closed Session actions of February 26, 2013:

- A. Public Employment/Public Employee Appointment Pursuant to Government Code Section 54957:

Title City Auditor
Name: Sharon W. Erickson

CEREMONIAL ITEMS

- 1.2 Presentation of a commendation to Times Media, Inc., Silicon Valley's largest independent newspaper group including the Almaden Times, the Evergreen Times, and the Willow Glen Times, in celebration of their 30 years of dedicated and comprehensive community news coverage. (Herrera)**

Mayor Reed and Council Member Herrera recognized and commended Times Media, Inc., Silicon Valley's largest independent newspaper group.

- 1.5 Presentation of a commendation recognizing the San José Earthquakes for their success. (Mayor)
(Orders of the Day)**

Mayor Reed recognized and commended the San José Earthquakes for their great success on the field, their representation of the City of San José and setting a Guinness World Record for the largest groundbreaking ceremony on October 21, 2012.

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. (10-0-1. Absent: Liccardo.)

- 2.1 Approval of Minutes.**

There were none.

- 2.2 Final adoption of ordinances.**

- (a) **ORD. NO. 29206 – Granting a Commercial Solid Waste and Recyclables Collection Franchise to Think Truong DBA AWR Dumpsters.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29206 executed on February 8, 2013, submitted by the City Clerk.

Action: Ordinance No. 29206 was adopted. (10-0-1. Absent: Liccardo.)

2.2 (b) ORD. NO. 29207 – Granting a Commercial Solid Waste and Recyclables Collection Franchise to Bernardini Enterprises, Inc., DBA Chip It Recycling.

Documents Filed: Proof of Publication of the Title of Ordinance No. 29207 executed on February 8, 2013, submitted by the City Clerk.

Action: Ordinance No. 29207 was adopted. (10-0-1. Absent: Liccardo.)

(c) ORD. NO. 29209 – Rezoning certain real property situated on the southeast corner of West San Carlos Street and South Bascom Avenue on a 0.65 gross-acre site (1990 West San Carlos Street) to the CG Commercial General Zoning District. C13-001

Documents Filed: Proof of Publication of the Title of Ordinance No. 29209 executed on February 15, 2013, submitted by the City Clerk.

Action: Ordinance No. 29209 was adopted. (10-0-1. Absent: Liccardo.)

2.3 Approval of Council Committee Reports.

- (a) **Rules and Open Government Committee Report of June 6, 2012.**
- (b) **Rules and Open Government Committee Report of June 13, 2012.**
- (c) **Rules and Open Government Committee Report of September 5, 2012.**
- (d) **Rules and Open Government Committee Report of September 12, 2012.**
- (e) **Rules and Open Government Committee Report of September 19, 2012.**
- (f) **Rules and Open Government Committee Report of September 26, 2012.**
(Mayor)
- (g) **Community and Economic Development Committee Report of January 28, 2013. (Herrera).**
- (h) **Transportation and Environment Committee Report of February 4, 2013. (Liccardo)**

Action: Deferred to March 05, 2013 per Mayor Reed.

2.4 Mayor and Council Excused Absence Requests.

There were none.

2.5 City Council Travel Reports.

Council Member Constant presented a report about a brief trip to Los Angeles on February 22, 2013 and the opportunity to tour four local card clubs, specifically to view the alternate floor gaming available in two of the clubs.

2.6 Report from the Council Liaison to the Retirement Boards.

There were none.

- 2.7 Adopt a resolution authorizing the City Manager to execute a lease with Our City Forest for space in real property located at 1590 Las Plumas Avenue at a below market rental pursuant to Council Policy 7-1. CEQA: Not a Project, File No. PP12-096. Operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structure, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. CEQA: Exempt, File No. PP12-096. (Economic Development)**

Documents Filed: Memorandum from Director of Economic Development/Chief Strategist Kim Welsh, dated February 7, 2013, recommending adoption of a resolution.

Action: Resolution No. 76553, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute a Lease with Our City Forest for Space in Real Property Located at 1590 Las Plumas Avenue at a Below Market Rental Pursuant to Council Policy 7-1", was adopted. (10-0-1. Absent: Liccardo.)

- 2.8 (a) Report on bids and award the construction contract for the Dissolved Air Flotation Dissolution Improvements Project to the low bidder, Monterey Mechanical Co., Oakland, CA in the amount of \$535,000.**
(b) Approve a 15% contingency in the amount of \$80,000.
CEQA: Exempt, File No. PP11-020. (Environmental Services)

Documents Filed: City Council Action Request from Assistant Director of Environmental Services Ashwini Katak, dated January 24, 2013, recommending award of the contract with related contingency.

Action: The report on bids and award the construction contract for the Dissolved Air Flotation Dissolution Improvements Project to the low bidder, Monterey Mechanical Co., Oakland, CA in the amount of \$535,000, with related contingency was approved. (10-0-1. Absent: Liccardo.)

- 2.9 Approve the first amendments to the Capital Improvement Program (CIP) master agreements with AECOM and Brown & Caldwell, the first amendments to the Electrical master agreements with Black & Veatch, CDM Smith, and GHD, and the second amendments to the CIP master agreements with Black & Veatch, Carollo Engineers, and CH2M HILL, extending the terms from June 30, 2013 to June 30, 2015, for a continuation of ongoing engineering consultant services supporting the San José/Santa Clara Water Pollution Control Plant Capital Improvement Program, at no additional cost to the City. CEQA: Not a Project, File No. PP10-066(d), Consultant Services. (Environmental Services)**

Documents Filed: City Council Action Request from Assistant Director of Environmental Services Ashwini Katak, dated January 24, 2013, recommending approval of the first amendments to the CIP Master Agreements.

2.9 (Cont'd.)

Action: The first amendments to the Capital Improvement Program (CIP) master agreements with AECOM and Brown & Caldwell, the first amendments to the Electrical master agreements with Black & Veatch, CDM Smith, and GHD, and the second amendments to the CIP master agreements with Black & Veatch, Carollo Engineers, and CH2M HILL, extending the terms from June 30, 2013 to June 30, 2015, for a continuation of ongoing engineering consultant services supporting the San José/Santa Clara Water Pollution Control Plant Capital Improvement Program, at no additional cost to the City, was approved. (10-0-1. Absent: Liccardo.)

2.10 Authorize the City Manager to:

- (a) **Issue Open Purchase Orders for the third of four one-year options with Ray Scheidts Electric Inc. (San José, CA) and Cupertino Electric Inc. (San Jose, CA) to provide electrical maintenance and repair services citywide, in an amount not to exceed \$500,000 each for the period beginning February 1, 2013 through January 31, 2014.**
- (b) **Transfer available funds between the purchase orders for Ray Scheidts Electric Inc. and Cupertino Electric Inc. as may be required based on requirements and vendor capacity.**
- (c) **Exercise the remaining one-year option, subject to the appropriation of funds.**

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

Documents Filed: City Council Action Request from Director of Finance Julia H. Cooper, dated February 12, 2013, recommending authorization for the City Manager as indicated above in Item 2.10.

Action: The City Manager was authorized to issue Open Purchase Orders for the third of four one-year options with Ray Scheidts Electric Inc. (San José, CA) and Cupertino Electric Inc. (San Jose, CA) to provide electrical maintenance and repair services citywide, in an amount not to exceed \$500,000 each for the period beginning February 1, 2013 through January 31, 2014, transfer available funds between the purchase orders for Ray Scheidts Electric Inc. and Cupertino Electric Inc. as may be required based on requirements and vendor capacity and exercise the remaining one-year option, subject to the appropriation of funds. (10-0-1. Absent: Liccardo.)

2.11 Authorize the City Manager to:

- (a) **Amend Open Purchase Order 46963 with Long's Custom Discing Inc. (San José, CA) to increase compensation by an additional \$120,000, for a revised total amount not-to-exceed \$370,000 for the initial term ending February 28, 2014.**
- (b) **Increase the compensation for the initial term, and exercise three one-year options to extend the term of the services through February 28, 2017, subject to the appropriation of funds.**

CEQA: Exempt, File No. PP08-245, Agreements and Contracts. (Finance)

2.11 (Cont'd.)

Documents Filed: City Council Action Request from Director of Finance Julia H. Cooper, dated February 12, 2013, recommending authorization for the City Manager as indicated in Item 2.11.

Action: The City Manager was authorized Amend Open Purchase Order 46963 with Long's Custom Discing Inc. (San José, CA) to increase compensation by an additional \$120,000, for a revised total amount not-to-exceed \$370,000 for the initial term ending February 28, 2014 and increase the compensation for the initial term, and exercise three one-year options to extend the term of the services through February 28, 2017, subject to the appropriation of funds. (10-0-1. Absent: Liccardo.)

- 2.12 (a) **Approve the extension of the Public Services contracts to Community Development Block Grant grantees for two additional years, through Fiscal Year 2014-15.**
- (b) **Approve the extension of the contracts for Place Based Neighborhoods for two additional years, through Fiscal Year 2014-15.**
- (c) **Approve the extension of the contracts for Emergency Solutions Grant and Housing Opportunity for Persons with AIDS program funding for two additional years, through Fiscal Year 2014-15.**
- (d) **Adopt a resolution authorizing the Director of Housing to negotiate and execute any amendments to the Community Development Block Grant, Place Based Neighborhoods, ESG & HOPWA agreements to extend the terms through Fiscal Year 2014-15.**
- (e) **Direct the Administration to bring back recommendations for the allocation of remaining Community Development Block Grant funding during the Fiscal Year 2013-14 Consolidated Plan process.**

CEQA: Not a Project, File No. PP10-0768, General Procedure and Policy Making. (Housing)

Action: Renumbered to Item 4.8. See Item 4.8 for action.

- 2.13 **Approve the name "Vista Montaña" for the turnkey community park at the intersection of Vista Montana and North First Street. CEQA: Not a Project, File No. PP10-068(b), Council Policy on naming City facilities. Council District: 4. (Parks, Recreation and Neighborhood Services)**

Documents Filed: Memorandum from Acting Director of Parks, Recreation and Neighborhood Services Julie Edmonds-Mares, dated February 4, 2013, recommending approval of the name "Vista Montaña".

Action: The name "Vista Montaña" for the turnkey community park at the intersection of Vista Montana and North First Street was approved. (10-0-1. Absent: Liccardo.)

- 2.14 Approve the fourth amendment to the agreement with MRF Geosystems Corporation of Calgary, Alberta, Canada, for GIS consultant services for the Storm GIS Data Improvement Project to extend the term of the agreement to March 31, 2015, at no cost to the City. CEQA: Not a Project, File No. PP10-066(d), Consultant Services. (Public Works)**

Documents Filed: City Council Action Request from Director of Public Works David Sykes, dated February 12, 2013, recommending approval of the fourth amendment to the agreement.

Action: The fourth amendment to the agreement with MRF Geosystems Corporation of Calgary, Alberta, Canada, for GIS consultant services for the Storm GIS Data Improvement Project to extend the term of the agreement to March 31, 2015, at no cost to the City, was approved. (10-0-1. Absent: Liccardo.)

- 2.15 Adopt a resolution authorizing the City Manager or designee to:**

- (a) Execute and submit a grant application to the State of California Department of Forestry and Fire Protection (CAL FIRE) for an Urban Forestry Grant entitled “An Urban Forest for Every City,” in the amount not to exceed \$150,000, with a local match not to exceed \$50,000 for the completion of an inventory of the City’s street trees.**
- (b) Certify that the City of San José has sufficient funds available to begin the project, and that the City of San José will expend the grant funds prior to March 30, 2015; and other assurances and certifications required by CAL FIRE.**
- (c) Conduct all negotiations, execute and submit all documents including, but not limited to, applications, agreements, and payment requests and so on, which may be necessary for the completion of the grant project.**

CEQA: Not a Project, File No. PP10-066, Feasibility and Planning Studies. (Transportation)

Documents Filed: Memorandum from Director of Transportation Hans F. Larsen, dated February 4, 2013, recommending adoption of a resolution.

Action: Resolution No. 76554, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager or Designee to Execute and Submit an Application to the State of California Department of Forestry and Fire Protection for an Urban Forestry Grant In An Amount Not To Exceed \$150,000, With a Local Match Not To Exceed \$50,000 and to Administer the Grant As Required By the State”, was adopted. (10-0-1. Absent: Liccardo.)

- 2.16 (a) Approve travel by Council Member Constant to Washington, D.C. on March 9 - 13, 2013 to attend the 2013 National League of Cities Congressional Cities Conference in Washington, D.C. representing San José at seminars and workshops and preside as chair of the NLC Public Safety & Crime Prevention Committee. Source of Funds: Mayor & Council Travel Fund.**

- 2.16 (b) Request for excused absences for Council Member Constant from the Closed Session and Regular Session of the City Council Meeting on March 12, 2013, and the Regular Meeting of the Rules and Open Government Committee on March 13, 2013 due to Authorized City Business: attending the 2013 National League of Cities Congressional Cities Conference in Washington, D.C. representing San José at seminars and workshops and presiding as chair of the NLC Public Safety & Crime Prevention Committee.**
(Constant)

Documents Filed: Memoranda from Council Member Constant, both dated February 7, 2013, requesting approval of travel and excused absences due to authorized City Business.

Action: The travel for Council Member Constant was approved and the absences were excused. (10-0-1. Absent: Liccardo.)

- 2.17 As recommended by the Rules and Open Government Committee on February 13, 2013:**
- (a) Approve the Westfield Oakridge Winter Walk as a City Council Sponsored Event.**
 - (b) Approve and accept donations from various individuals, businesses and community groups to support this event.**
- CEQA: Not a Project. (City Clerk)**

Documents Filed: Memorandum from Acting City Clerk Toni Taber, CMC, dated February 14, 2013, transmitting the recommendations of the Rules and Open Government Committee.

Action: The Westfield Oakridge Winter Walk as a City Council Sponsored Event was approved and acceptance of donations from various individuals, businesses and community groups to support this event was authorized. (10-0-1. Absent: Liccardo.)

- 2.18 As recommended by the Rules and Open Government Committee on February 13, 2013:**
- (a) Approve the West Valley Senior Walk as a City Council Sponsored Special Event.**
 - (b) Approve and accept donations from various individuals, businesses and community groups to support this event.**
- CEQA: Not a Project. (City Clerk)**

Documents Filed: Memorandum from Acting City Clerk Toni Taber, CMC, dated February 14, 2013, transmitting the recommendations of the Rules and Open Government Committee.

Action: The West Valley Senior Walk as a City Council Sponsored Special Event was approved and acceptance of donations from various individuals, businesses and community groups to support this event was authorized. (10-0-1. Absent: Liccardo.)

2.19 As recommended by the Rules and Open Government Committee on February 13, 2013:

- (a) Approve the Great American Litter Pick-up on April 20, 2013, the 3rd Annual District 4 Family Day on April 27, 2013, the 3rd Annual District 4 Photography Contest, and the District 4 Community Shred Day and Resource Fair on March 23, 2013 as City sponsored Special Events.**
- (b) Approve and accept donations from various individuals, businesses and community groups to support the events.**

CEQA: Not a Project. (City Clerk)

[Rules Committee referral 02/13/13 – Item G(6)]

Documents Filed: Memorandum from Acting City Clerk Toni Taber, CMC, dated February 14, 2013, transmitting the recommendations of the Rules and Open Government Committee.

Action: The Great American Litter Pick-up on April 20, 2013, the 3rd Annual District 4 Family Day on April 27, 2013, the 3rd Annual District 4 Photography Contest, and the District 4 Community Shred Day and Resource Fair on March 23, 2013 as City sponsored Special Events were approved and acceptance of donations from various individuals, businesses and community groups to support this event was authorized. (10-0-1. Absent: Liccardo.)

2.20 As recommended by the Rules and Open Government Committee on February 13, 2013:

- (a) Approve the Future Roots Cultural Festival sponsored by District 2 as a City Council Sponsored Special Event.**
- (b) Approve expending funds and accept donations from various individuals, businesses and community groups to support this event.**

CEQA: Not a Project. (City Clerk)

[Rules Committee referral 02/13/13 – Item G(7)]

Documents Filed: Memorandum from Acting City Clerk Toni Taber, CMC, dated February 14, 2013, transmitting the recommendations of the Rules and Open Government Committee.

Action: The Future Roots Cultural Festival sponsored by District 2 as a City Council Sponsored Special Event was approved and acceptance of donations from various individuals, businesses and community groups to support this event was authorized. (10-0-1. Absent: Liccardo.)

- 2.21 (a) Adopt a resolution accepting the Office of Juvenile Justice and Delinquency Prevention (OJJDP) Community-Based Violence Prevention Demonstration Program Grant in the amount of \$499,712 and authorize the Director of Parks, Recreation and Neighborhood Services to execute the Grant Agreement and all related documents.**

- 2.21 (b) Adopt the following Appropriation Ordinance and Funding Sources Resolution Amendments in the General Fund:**
- (1) Establish a city-wide expense appropriation to the Parks, Recreation and Neighborhood Services Department for the OJJDP Community-Based Violence Prevention Demonstration Program Grant in the amount of \$400,000.**
 - (2) Increase the Earned Revenue Estimate from the Federal Government by \$400,000.**
- (c) Adopt a resolution authorizing the City Manager to execute the agreement with Resource Development Associates in the amount not to exceed \$344,983 contingent upon approval of the actions in 1 and 2 above.**
- CEQA: Not a Project, File No. PP10-067(b), Appropriation Ordinance. (Parks, Recreation and Neighborhood Services/City Manager's Office)**

Renumbered from Item 5.1.

Documents Filed: Memorandum from Acting Director of Parks, Recreation and Neighborhood Services Julie Edmonds-Mares and Budget Director Jennifer A. Maguire, dated February 13, 2013, recommending adoption of resolutions and appropriation ordinance and resolution amendments.

Council Member Herrera expressed her appreciation to Staff for receiving the award of the grant. Acting Assistant Director of Parks, Recreation and Neighborhood Services Angel Rios provided information about the process.

Action: Upon motion by Council Member Herrera, seconded by Council Member Campos and carried unanimously, Resolution No. 76555, entitled: "A Resolution of the Council of the City of San José Accepting a Community Based Violence Prevention Demonstration Program Grant from the Office of Juvenile Justice and Delinquency Prevention and Authorizing the Director of Parks, Recreation and Neighborhood Services to Execute the Grant Agreement and All Other Related Documents", Ordinance No. 29210, entitled: "An Ordinance of the City of San José Amending Ordinance No. 29102 to Appropriate Monies in the General Fund – Citywide – Neighborhood Services for the Office of Juvenile Justice and Delinquency Prevention Community Based Violence Prevention Demonstration Program Grant; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption", Resolution No. 76556, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 76302 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2012-2013 To Adjust Revenues in the General Fund" and Resolution No. 76557, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manger to Execute an Agreement with Resource Development Associates in the Amount Not To Exceed \$344,982.04 Contingent Upon Approval of the Acceptance of the Office of Juvenile Justice and Delinquency Community Based Violence Prevention Demonstration Program Grant and the Appropriation of Funds", were adopted. (9-0-2. Absent: Constant, Liccardo.)

- 2.22 (a) **Report on bids and award of contract for the 5938-Backesto Park Tennis Court Improvements Project Re-Bid to the low bidder, Redwood Engineering Construction, for the base bid and Add Alternate No. 1 in the total amount of \$668,500, and approval of a contingency in the amount of \$33,425.**
- (b) **Adoption of the following Appropriation Ordinance Amendments in the Subdivision Park Trust Fund:**
- (1) **Increase the appropriation to the Parks, Recreation and Neighborhood Services Department for the Backesto Park Improvements Project in the amount of \$136,000.**
 - (2) **Decrease the Reserve: Future PDO/PIO Projects in the amount of \$136,000.**

CEQA: Exempt, File No. PP10-170. Council District: 3. (Public Works/Parks, Recreation and Neighborhood Services/City Manager's Office)

Renumbered from Item 5.2.

Documents Filed: (1) Replacement memorandum from Council Member Liccardo, dated February 25, 2013, recommending approval of the Staff recommendations with conditions as outlined below in "Action". (2) Memorandum from Director of Public Works David Sykes, Acting Director of Parks, Recreation and Neighborhood Services Julie Edmonds-Mares and Budget Director Jennifer A. Maguire, dated February 4, 2013, recommending award of the contract and adoption of an ordinance.

Motion: Council Member Liccardo moved approval of his replacement memorandum dated February 25, 2013, with conditions, as outlined below in "Action". Council Member Herrera seconded the motion.

City Manager Debra Figone pointed out that Staff has enough direction to evaluate Item (3) of the replacement memorandum from Council Member Liccardo.

Action: On a call for the question, the motion carried unanimously, the replacement memorandum from Council Member Liccardo, dated February 25, 2013, was approved, the Staff recommendations described previously were accepted, with the following conditions: (1) Staff was directed to return to Council during the 2013-2014 budget process for approval of the future appropriation of \$600,000 from PDO/PIO contributions from the next housing development within 3/4 of a mile of the park, including but not limited to the 10th Street/Taylor (CORE Project) or 7th and Taylor (ROEM Project) developments, to be allocated for future capital replacement and improvements at Backesto Park unrelated to tennis courts. (2) Require Staff to ensure that usage of the Backesto Park tennis courts be subject to the same citywide system, with monitoring and enforcement, as our citywide soccer, softball and other athletic fields, such that: (a) Any persons or organization wishing to reserve blocks of courts for a substantial duration, such as for team practices, tournaments or other special events, be required to pay a predetermined, standard set of fees for that privilege. (b) Ensure that no reservations for

2.22 (Cont'd.)

the use of the Backesto Park tennis courts entirely preclude walk-on public use, i.e. by requiring that two or some other minimum number of courts remain free from reservation any given time. (3) Create a mechanism by which Backesto Park tennis court user fees can support maintenance of the same courts. (4) Condition that operation of the lights will not continue beyond 9:00 p.m. (5) Design and implement the lighting, to the maximum extent feasible, to minimize spillage into nearby homes. Mitigate via any light shade or similar such device, extra landscaping, earlier shut off times for the lights, cutoff fixture, or any other feasible techniques. (6) Work with the District 3 Office to minimize night time parking impacts on adjacent residents, such as by red striping areas where tennis court users frequently block residential driveways. Ordinance No. 29211, entitled: "An Ordinance of the City of San José Amending Ordinance No. 29102 to Appropriate Monies in the Subdivision Park Trust Fund for the Backesto Park Improvements Project; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption", was adopted, as amended. (11-0.)

2.23 As recommended by the Rules and Open Government Committee on February 20, 2013:

- (1) Approve the Celebrate Cambrian Festival as a City Council Sponsored Event.**
- (2) Approve expending funds and accepting donations from various individuals, businesses and community groups to support this event.**

(District 9)

Documents Filed: Memorandum from Acting City Clerk Toni Taber, CMC, dated February 21, 2013, transmitting the recommendations of the Rules and Open Government Committee.

Action: The Celebrate Cambrian Festival as a City Council Sponsored Event was approved and acceptance of donations from various individuals, businesses and community groups to support this event was authorized. (10-0-1. Absent: Liccardo.)

2.24 As recommended by the Rules and Open Government Committee on February 20, 2013: Adopt a resolution authorizing the City Clerk to execute a grant of \$1,000 to the Kiwanis Club of Almaden to be paid from the budgeted District 10 HP Pavilion at San José allocation, which is funded by the Arena Community Fund Citywide appropriation. (District 10)

Documents Filed: Memorandum from Acting City Clerk Toni Taber, CMC, dated February 21, 2013, transmitting the recommendations of the Rules and Open Government Committee.

2.24 (Cont'd.)

Council Member Khamis disclosed that he is a member of the Kiwanis Club of Almaden.

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Herrera and carried unanimously, Resolution No. 76558, entitled: "A Resolution of the Council of the City of San José Authorizing the City Clerk to Execute a Grant Agreement for a Grant in the Amount of \$1,000 to the Kiwanis Club of Almaden To Be Paid from the Budgeted District 10 HP Pavilion at San José Allocation, Which is Funded by the Arena Community Fund Citywide Appropriation", was adopted. (10-0-1. Absent: Liccardo.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

3.1 Report of the City Manager, Debra Figone (Verbal Report)

City Manager Debra Figone highlighted the potential impacts related to sequestration on the City of San José on March 1, 2013.

City Manager Debra Figone pointed out that Director of Economic Development/ Chief Strategist Kim Walesh and Acting Director of Information Technology Vijay Sammeta represented the City of San José and participated in the International Technology Conference, Cisco's "Internet of Everything" World Forum Steering Committee.

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.2 Adopt a resolution authorizing the City Manager to execute the following agreements:**
- (a) An Incentive Agreement between the City of San José and Samsung Semiconductor, Inc. outlining the City and State incentives to be provided to Samsung in coordination with the development of the proposed Research and Development (R&D) Center in North San José;**
 - (b) A Capital Equipment and Assistance Agreement with Samsung Semiconductor, Inc., in which the City will provide an amount not to exceed \$500,000 for the acquisition of production and assembly equipment to be installed at Samsung Semiconductor's new R&D facility in San José; and**
 - (c) Utility Users Tax Reimbursement Agreement with Samsung Semiconductor, Inc., that will provide funding in an amount equal to 50% of the City's 5% of net new utility user taxes received from Samsung Semiconductor for 10 consecutive years in an amount not to exceed \$500,000.**

CEQA: Statutorily Exempt, File No. PP10-066(a), Equipment Acquisition. (Economic Development)

Action: Deferred to March 05, 2013 per Rules and Open Government Committee.

4.3 Conduct a public hearing and adopt a resolution:

- (a) **Accepting the Summary Report prepared pursuant to the California Health and Safety Code Section 33433 for the ground leasing and development of the 0.55-acre City-owned property located at 675 N. Sixth Street (“Site”) for the Japantown Senior Apartments (“Project”), under the terms and conditions of the proposed Disposition and Development Agreement (“DDA”).**
 - (b) **Approving a DDA for the Project between the City of San José and Japantown Apartments LP, a limited partnership formed by First Community Housing, including an up to 75-year ground lease of the Site, and authorizing the Director of Housing to negotiate and execute the DDA, the ground lease, and any other documents regarding the leasehold disposition of the Site.**
 - (c) **Approving a funding commitment to Japantown Apartments LP for up to \$4,900,000 in HOME funds for a Project construction/permanent loan.**
- CEQA: Resolution No. 74384, File No. GP07-03-04/PDC08-010. Council District: 3. (Housing)**

Documents Filed: (1) Memorandum from Director of Housing Leslye Corsiglia, dated February 7, 2013, recommending holding a public hearing and adoption of a resolution. (2) Supplemental memorandum from Director of Housing Leslye Corsiglia, dated February 25, 2013, correcting a proposed business term that, upon further analysis, is unadvisable from both the City’s and the borrower’s perspective.

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

Action: Upon motion by Council Member Liccardo, seconded by Vice Mayor Nguyen and carried, Resolution No. 76559, entitled: “A Resolution of the Council of the City of San José Approving a Disposition and Development Agreement for the Ground Leasing of City Owned Property to Japantown Apartments, L.P. and Approving a Construction and Permanent Funding Commitment for the Japantown Senior Apartments”, was adopted. (10-1. Noes: Oliverio.)

4.4 Adopt a resolution approving a funding commitment to MidPen Donner Associates, L.P. for a construction/permanent loan up to \$4,900,000 for the planned 102-unit Donner Lofts Apartments, a rental project to be located at 156 E. St. John Street, to be made available to extremely low-income and very low-income households, and allowing a Loan to Value ratio greater than 100%. CEQA: Addendum to the Downtown Strategy 2000 EIR, File No. H09-004, EIR Resolution No. 72767. Council District 3. (Housing)

Documents Filed: (1) Memorandum from Director of Housing Leslye Corsiglia, dated February 11, 2013, recommending adoption of a resolution. (2) Supplemental memorandum from Director of Housing Leslye Corsiglia, dated February 25, 2013, correcting a proposed business term that, upon further analysis, were unadvisable from both the City’s and the borrower’s perspective.

4.4 (Cont'd.)

Action: Upon motion by Council Member Liccardo, seconded by Vice Mayor Nguyen and carried, Resolution No. 76560, entitled: “A Resolution of the Council of the City of San José (1) Approving a Construction/Permanent Loan of Up To \$4,900,000 for Development of the 102 Unit Donner Lofts Apartment Project Located at 156 E. St. John Street, and Made Available to Extremely Low Income and Very Low Income Households, (2) Allowing the Project to Exceed the City Council Policy Limiting Combined Loan to Value Ratios to 100%”, was adopted. (10-1. Noes: Oliverio.)

4.5 Adopt a resolution:

- (a) **Authorizing the issuance of a tax-exempt multifamily housing revenue note designated as “City of San José Multifamily Housing Revenue Note (Third Street Residential Development), Series 2013A” in an aggregate principal amount not to exceed \$7,000,000.**
- (b) **Approving a loan of Series 2013A Note proceeds to San José Third Street Associates, L.P., a California limited partnership to finance the construction of the Third Street Residential Development located at 1010 South Third Street in San José.**
- (c) **Approving in substantially final form the Borrower Loan Agreement, Funding Loan Agreement, Assignment of Deed of Trust, and Regulatory Agreement and Declaration of Restrictive Covenants.**
- (d) **Authorizing and directing the City Manager, Director of Finance, Assistant Director of Finance, Treasury Division Manager, Debt Administrator, and Director of Housing, or their designees, to execute and deliver the Series 2013A Documents and other related Series 2013A Note documents as necessary.**

CEQA: Not a Project, File No. PP10-069, City Organizational and Administrative Activities. Council District 3. (Finance/Housing)

Documents Filed: (1) Memorandum from Director of Housing Leslye Corsiglia, dated February 4, 2013, recommending adoption of a resolution. (2) Supplemental memorandum from Director of Housing Leslye Corsiglia and Director of Finance Julia H. Cooper, dated February 22, 2013, correcting a factual error regarding the unit mix for the 37 unit rental apartment project.

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

Public Comments: Aurelia Sanchez urged the Council to include more green space in her deprived neighborhood and throughout the City of San José.

Council Member Liccardo asked if the developer was responsible for paying park fees. Director of Housing Leslye Corsiglia replied that the developer will be paying 50% of the park fees per Council Policy.

4.5 (Cont'd.)

Action: On a call for the question, the motion carried, Resolution No. 76561, entitled: “A Resolution of the Council of the City of San José Authorizing the Execution and Delivery of Loan Documents Relating to Financing for the 3rd Street Residential Development and Approving Other Related Documents and Actions”, was adopted. (10-1. Noes: Oliverio.)

- 4.6 (a) Accept the Annual Status Report on the Citywide Capital Improvement Program.**
(b) Accept each of the reports submitted by the Parks Bond Citizen Oversight Committee, Library Bond Citizen Oversight Committee, and Public Safety Bond Oversight Committee.

CEQA: Not a Project, File No. PP10-069(a), Annual Reports. (Public Works)

Documents Filed: (1) Memorandum from Director of Public Works David Sykes, dated February 4, 2013, recommending acceptance of the reports. (2) Staff presentation dated February 26, 2013 summarizing the Annual Status Report on the Capital Improvement Program.

Director of Public Works David Sykes offered the Annual Status Report on the Citywide Capital Improvement Program and responded to Council questions and concerns.

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Herrera and carried unanimously, the Annual Status Report on the Citywide Capital Improvement Program and the reports submitted by the Parks Bond Citizen Oversight Committee, Library Bond Citizen Oversight Committee, and Public Safety Bond Oversight Committee were accepted. (11-0.)

- 4.7 As recommended by the Rules and Open Government Committee on February 6, 2013, approve an ordinance amending Section 4.46.036 of Chapter 4.46 and Section 4.47.089 of Chapter 4.47 of Title 4 of the San Jose Municipal Code to expand and extend the Downtown High Rise Development Incentive program by suspending the collection of fifty percent (50%) of the construction taxes for qualified downtown high rise developments that meet the following criteria:**

- (a) Filed a completed application for a development permit by October 31, 2013.**
(b) Filed a completed application for a demolition permit by December 31, 2013 or filed a completed application for a building permit for the high rise building by June 30, 2014.
(c) Obtained a building permit for the high rise building by December 31, 2014.
(d) Obtained a certificate of occupancy for the high rise building by August 31, 2016.

(Mayor/Liccardo)

[Rules Committee referral 2/6/13 – Item G(6)]

4.7 (Cont'd.)

Documents Filed: (1) Memorandum from Mayor Reed and Council Member Liccardo, dated January 31, 2013, recommending as indicated on Page 18, Item 4.7. (2) Memorandum from Acting City Clerk Toni Taber, CMC, dated February 14, 2013, transmitting the recommendations of the Rules and Open Government Committee. (3) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated February 26, 2013, offering two policy options for the Council to consider in their deliberations on the incentive as outlined in the memorandum. (4) Letter from Leah Toeniskoetter, Director, SPUR, dated February 25, 2013, expressing support to extend the high rise incentive program. (5) Letter from Patricia Sausedo, NAIOP Silicon Valley, dated February 25, 2013, expressing support to extend the high rise incentive program. (6) Letter from Neil Struthers, CEO, Building Trades, dated February 25, 2013, expressing support to extend the high rise incentive program. (7) Email from Mike Kim, Chief Investment Officer, dated February 22, 2013, expressing support to extend the high rise incentive program.

Director of Planning, Building and Code Enforcement Joseph Horwedel described the two options in the supplemental memorandum that was distributed this afternoon and pointed out that Staff was recommending Option 1.

Motion: Council Member Liccardo moved approval of the Staff supplemental memorandum, and Option 1 to extend the current December 31, 2013 deadline to allow an extra 12 months or 18 months and not redefine permit to include demolition activities. Council Member Herrera seconded the motion.

Director of Planning, Building and Code Enforcement Joseph Horwedel responded to Council questions and concerns.

Amendment to the Motion: Council Member Chu moved to expand the incentive to the North San José core development area alongside North First Street and for the developer to allocate at least 30% space for sufficient electrical outlet. Council Member Campos seconded the motion.

On a call for the question, the amendment to the motion failed. (2-9. Noes: Constant, Herrera, Kalra, Khamis, Liccardo, Nguyen, Oliverio, Rocha; Reed.)

Action: On a call for the question, the original motion carried, the Staff recommendations and the supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated February 26, 2013, were approved, including Option 1, extending the deadline 12 months to December 31, 2014. Ordinance No. 29212, entitled: "An Ordinance of the City of San José Amending Section 4.46.036 of Chapter 4.46 and Section 4.47.089 of Chapter 4.47 of Title 4 of the San José Municipal Code to Expand the Suspension Program for the Collection of a Portion of Construction Taxes on Downtown High Rise Developments", was passed for publication. (10-1. Noes: Kalra.)

PUBLIC SAFETY SERVICES

8.1 Approve the following actions:

- (a) Approve the proposed 2012-2014 Spending Plan for the Supplemental Law Enforcement Services (SLES) Grant for \$1,561,998, and authorize the Chief of Police to amend the Spending Plan in conformity to the budget priorities set out in this Memorandum in the event State SLES Grant payments are less than expected.**
- (b) Adopt the following Appropriation Ordinance and Funding Sources Resolution Amendments in the Supplemental Law Enforcement Services Fund (Fund 414):**
 - (1) Increase the Earned Revenue by \$617,433.**
 - (2) Establish an appropriation for the Police Department for the SLES Grant 2012-2014 for \$617,433.**

CEQA: Not a Project, File No.PP10-066(a). (Police/City Manager's Office)

Documents Filed: Memorandum from Acting Chief of Police Larry Esquivel and Budget Director Jennifer A. Maguire, dated February 4, 2013, recommending approval of the SLES Grant and authorization for the Chief of Police to amend the spending plan and adoption of appropriation ordinance and resolution amendments.

Action: Upon motion by Council Member Liccardo, seconded by Vice Mayor Nguyen and carried unanimously, the proposed 2012-2014 Spending Plan for the Supplemental Law Enforcement Services (SLES) Grant for \$1,561,998, and authorize the Chief of Police to amend the Spending Plan in conformity to the budget priorities set out in this memorandum in the event State SLES Grant payments are less than expected was approved, Ordinance No. 29213, entitled: "An Ordinance of the City of San José Amending Ordinance No. 29102 to Appropriate Monies in the Supplemental Law Enforcement Services (SLES) Fund for the SLES Grant 2012-2014; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption" and Resolution No. 76562, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 76302 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2012-2013 To Adjust Revenues in the in the Supplemental Law Enforcement Services (SLES) Fund", were adopted. (11-0.)

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.8 (a) Approve the extension of the Public Services contracts to Community Development Block Grant grantees for two additional years, through Fiscal Year 2014-15.**
- (b) Approve the extension of the contracts for Place Based Neighborhoods for two additional years, through Fiscal Year 2014-15.**
- (c) Approve the extension of the contracts for Emergency Solutions Grant and Housing Opportunity for Persons with AIDS program funding for two additional years, through Fiscal Year 2014-15.**

- 4.8 (d) **Adopt a resolution authorizing the Director of Housing to negotiate and execute any amendments to the Community Development Block Grant, Place Based Neighborhoods, ESG & HOPWA agreements to extend the terms through Fiscal Year 2014-15.**
- (e) **Direct the Administration to bring back recommendations for the allocation of remaining Community Development Block Grant funding during the Fiscal Year 2013-14 Consolidated Plan process.**

CEQA: Not a Project, File No. PP10-0768, General Procedure and Policy Making. (Housing)

Renumbered from Item 2.12.

Documents Filed: Memorandum from Director of Housing Leslye Corsiglia, dated February 5, 2013, recommending several actions for the Council to approve as described in Item 4.8.

Motion: Ross Signorino expressed support to the Staff recommendations.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, the extension of the Public Services contracts to Community Development Block Grant grantees for two additional years, through Fiscal Year 2014-15 was approved, Resolution No. 76563, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Housing to Negotiate and Execute Amendments to Community Development Block Grant, Place Based Neighborhood, Emergency Solutions Grant and Housing Opportunity for Persons with AIDS Agreements to Extend the Term Through Fiscal Year 2014-2015", was adopted and the Administration was directed to bring back recommendations for the allocation of remaining Community Development Block Grant funding during the Fiscal Year 2013-14 Consolidated Plan process. (11-0.)

NEIGHBORHOOD SERVICES

- 5.1 (a) **Adopt a resolution accepting the Office of Juvenile Justice and Delinquency Prevention (OJJDP) Community-Based Violence Prevention Demonstration Program Grant in the amount of \$499,712 and authorize the Director of Parks, Recreation and Neighborhood Services to execute the Grant Agreement and all related documents;**
- (b) **Adopt the following Appropriation Ordinance and Funding Sources Resolution Amendments in the General Fund:**
- (1) **Establish a city-wide expense appropriation to the Parks, Recreation and Neighborhood Services Department for the OJJDP Community-Based Violence Prevention Demonstration Program Grant in the amount of \$400,000.**

- 5.1 (b) (2) **Increase the Earned Revenue Estimate from the Federal Government by \$400,000.**
- (c) **Adopt a resolution authorizing the City Manager to execute the agreement with Resource Development Associates in the amount not to exceed \$344,983 contingent upon approval of the actions in 1 and 2 above.**
- CEQA: Not a Project, File No. PP10-067(b), Appropriation Ordinance. (Parks, Recreation and Neighborhood Services/City Manager's Office)**

Action: Renumbered to Item 2.21. See Item 2.21 for action.

- 5.2 (a) **Report on bids and award of contract for the 5938-Backesto Park Tennis Court Improvements Project Re-Bid to the low bidder, Redwood Engineering Construction, for the base bid and Add Alternate No. 1 in the total amount of \$668,500, and approval of a contingency in the amount of \$33,425.**
- (b) **Adoption of the following Appropriation Ordinance Amendments in the Subdivision Park Trust Fund:**
- (1) **Increase the appropriation to the Parks, Recreation and Neighborhood Services Department for the Backesto Park Improvements Project in the amount of \$136,000.**
- (2) **Decrease the Reserve: Future PDO/PIO Projects in the amount of \$136,000.**

CEQA: Exempt, File No. PP10-170. Council District: 3. (Public Works/Parks, Recreation and Neighborhood Services/City Manager's Office)

Action: Renumbered to Item 2.22. See Item 2.22 for action.

TRANSPORTATION & AVIATION SERVICES

- 6.1 **As recommended by the Transportation and Environment Committee on February 4, 2013, accept the staff report and presentation on proposed funding strategy to fully address the City's pavement maintenance needs consisting of the following concurrent elements:**
- (a) **Coordinate with the Santa Clara Valley Transportation Authority ("VTA") to pursue a potential ballot measure to "extend and amend" the VTA's countywide transportation sales tax program to include major street sealing and rehabilitation.**
- (b) **Pursue City funding from new General Fund revenues raised through a potential City ballot measure.**
- (c) **Pursue City funding from a potential ballot measure for a street repair bond program.**
- (d) **Support State legislation allowing ballot measures to increase tax revenues for local transportation purposes to be approved 55% voter approval instead of the current two-thirds threshold.**

(Transportation)

Action: Deferred to March 05, 2013 per Rules and Open Government Committee.

ENVIRONMENTAL & UTILITY SERVICES

- 7.1 (a) **Accept the staff report providing additional information and analysis on actions to reduce expanded polystyrene foam food ware in San José; and**
(b) **Direct staff to schedule a Public Hearing this summer to approve and adopt the Phase-Out of Expanded Polystyrene Foam Food Ware Ordinance.**

CEQA: Not a Project, File No. PP 10-069(a), Staff Reports. (Environmental Services)

Documents Filed: (1) Memorandum from Council Member Liccardo, dated February 22, 2013, recommending taking the necessary steps recommended in the Staff report to move forward with phasing out the use of Expanded Polystyrene (EPS) food ware and further authorize the completion of an environmental review to address a Countywide phase out of EPS, to enable neighboring jurisdictions to benefit from environmental clearance provided by the City of San José's Countywide environmental review. (2) Memorandum from Council Member Rocha, dated February 25, 2013, recommending approval of Council Member Chu's memorandum with amendments, as described in "Action". (3) Memorandum from Council Member Chu, dated February 22, 2013, recommending approving the Staff recommendations with changes and additions as described in "Action". (4) Memorandum from Council Members Campos and Constant, dated February 22, 2013, recommending deferring action until September 2014 with considerations. (5) Memorandum from Director of Environmental Services Kerrie Romanow, dated February 4, 2013, recommending acceptance of the Staff report and direction to Staff to schedule a public hearing this summer to approve and adopt the phase out of EPS food ware. (6) Staff presentation dated February 26, 2013 summarizing the Restaurant Phase Out of Expanded Polystyrene Foam Food Ware. (7) Letter from Daniel P. Brunton, Latham & Watkins LLP, dated February 25, 2013, regarding the Phase out of Expanded Polystyrene Food Ware. (8) Letter from Friends of the Sea Otter, dated February 25, 2013, in support to the ban. (9) Letter from Department of the Environment, City and County of San Francisco, dated February 26, 2013, in support to the ban. (10) Letter from Guadalupe River Park Conservancy, dated February 22, 2013, in support to the ban. (11) Letter from County of Santa Clara, dated February 25, 2013, in support to the ban. (12) Letter from Committee for Green Foothills, dated February 25, 2013, in support to the ban. (13) Letter from Santa Clara Valley Water District, dated February 20, 2013, in support to the ban. (14) Four emails from the public all dated February 26, 2013 in support to the ban. (15) Letter from Dart Container Corporation of California, dated February 22, 2013, addressing the proposed ban. (16) Approximately 300 signatures in opposition to the ban submitted for the record dated February 26, 2013.

Director of Environmental Services Kerrie Romanow presented the report on the Restaurant Phase Out of Expanded Polystyrene Foam Food Ware in San José.

Motion: Council Member Liccardo moved approval of the memoranda from Council Members Rocha and Chu. Council Member Rocha seconded the motion.

Mayor Reed opened the floor for public testimony.

7.1 (Cont'd.)

Public Comments: The following speakers expressed opposition to the Expanded Polystyrene (EPS) food ware ban: Aaron Resendez, Story Road Business Association; Tommy Kim, Apex Recycling; Tae Huang, NEPCO; Kevin Orme, Matrix Manufacturing; Paul Singarella, Michael Westerfield, Dart Container; Chandler Hadraba, Marcelino Beteran, Viva Michoacan Restaurant; Nhat Vo, An Nam Restaurant; Arnold Anh Huynh, Santa Teresa BBQ and Grill; Douglas Nguyen, Dilac Cuisine Restaurant; Dan Thy Nguyen, Pho Y Noodle House; Andres Valencia, Mexico Lindo; Jade Vo, Nuoc Mia Bach Dang; Annie Ton, Jimmy Orozco, Iguanas Burritozilla; Steve Chui, Pearl River Inc.; Paul Lau, Hong Kong Garden Chinese Restaurant; Phuok Yam, Manley's Donuts, Will Wong, Ron Pentz, Michael Garrison, Chick-Fil-A; Claudia Benitez, La Media Cancha Restaurant; Javier Gonzalez, California Restaurant Association; Giap Nguyen, Huong Que Food To Go and Frank Araujo, Araujo's Mexican Grill.

Expressing support to the Expanded Polystyrene (EPS) food ware ban: Corina Pham, Anya Harkness, Sakshi Hegde, Isabella Clark, University Preparatory Academy Green Team; Susan Marsland, Allison Chan, Save the Bay; Gean Huisenberg, CWS; Alex Ontiveros, San José Clean Community Coalition; Paul Orozco, Pauly's Famous Frank 'N Fries; Richard Gertman, Californians Against Waste; Mairiam Gordon, Clean Water Action; Laura Kasa, Marina Maze, Rachel Kipper, Brad Hunt, Save Our Shores; Matthew Spiegl, SECF, Sophia Braunstein, Mohini Narasimhan, Teen Interfaith Council; Carolyn Rudolph, Michael Gross, Green Waste/Z-Best Composting; Ross Signorino, Marco Goitia, Denny Doan, Loma Prieta Sierra Club and Bruce H. Wolfe, San Francisco Bay Regional Water Board. Gil Chesno, Republic Services, provided neutral comments.

Council Member Oliverio requested to amend the motion to direct Staff to return for Council to decide on implementing the highest fine on littering that the State allows. The amendment was accepted by Council Members Liccardo and Rocha.

Director of Environmental Services Kerrie Romanow, Deputy Director of Environmental Services Napp Fukuda and Assistant City Attorney Ed Moran responded to Council questions and concerns.

Substitute Motion: Council Member Constant moved approval of the memorandum he cosigned with Council Member Campos, dated February 22, 2013, recommending deferring action until September 2014 on the Phase Out of the Expanded Polystyrene (EPS) food ware ban in order for Staff to effectively provide Council with information for consideration as part of the report and to add direct Staff to specifically seek out examples for Los Angeles to analyze and research what is working and what is not working. Council Member Campos seconded the motion.

Extensive Council discussion ensued.

Mayor Reed and Council Members Liccardo and Kalra expressed opposition to the substitute motion on the floor.

7.1 (Cont'd.)

Council Member Khamis expressed support to the substitute motion and added that a further study on recycling was needed.

On a call for the question, the substitute motion failed. (3-8. Noes: Chu, Herrera, Kalra, Liccardo, Nguyen, Oliverio, Rocha; Reed.)

Discussion returned to the original motion.

Vice Mayor Nguyen requested to amend the motion to include an across the board ban until next year. Council Member Liccardo respectfully declined to accept the amendment.

Council Member Herrera requested to amend the motion to request that Staff return with a hardship exemption that encompasses restaurants whose net income is impacted by a certain percentage using an objective measure and to incorporate suitability within the criteria and use for deciding whether the affordable options impact their net income. The amendment was accepted by Council Members Liccardo and Rocha.

Council Member Kalra requested to amend the motion to request that Staff work with the City's current commercial and residential waste collectors and industry on the viability of reducing all forms of EPS material that are now ending up in San José landfills and to include a full discussion on recycling the material to prevent it from entering the landfills. The amendment was accepted by Council Members Liccardo and Rocha.

Council Member Khamis requested to amend the motion to direct Staff to conduct a study to consider the viability of the ban for the smaller businesses. Council Member Liccardo respectfully declined to accept the amendment.

Action: On a call for the question, the original motion carried, the Staff recommendations were approved with the following changes and additions from the memorandum from Council Member Rocha, which incorporates items from the memorandum from Council Member Chu, and the memorandum from Council Members Campos and Constant: (a) Direct Staff to return to Council in 2015 for an update on City trash reduction percentage. (b) Maintain the implementation timeline recommended by Staff for the phase-out approach to begin in 2014 for large businesses and 2015 for small businesses. (c) Assign enforcement responsibility and ensure sufficient funds for enforcement is allocated. (d) Direct Staff to aggressively outreach to ethnic and hard to reach restaurants through announcements, community meetings, events, bilingual web postings, fliers and mailers. (e) Continue to support legislation that would implement a County wide program that would significantly reduce the use of EPS Foam and food ware. (f) Direct Staff to review the potential impacts of banning EPS Foam packing citywide and provide an update to the City Council in August 2013. (g) Incorporate the completion of an environmental review to address a County wide phase out of EPS, to enable neighboring jurisdictions to benefit from environmental clearance provided by the City of San José's County wide environmental review. (h) Direct Staff to continue to work with the community, key

7.1 (Cont'd.)

stakeholders and interested parties on litter reduction efforts and educational strategies to meet the goals of City stormwater permit requirements and provide the Transportation and Environment Committee with semi-annual updates on these efforts. Staff was further directed to: (1) Return with a hardship exemption that encompasses restaurants whose net income is impacted by a certain percentage using an objective measure. Incorporate suitability within the criteria and use for deciding whether the affordable options impact their net income. (2) Inquire with the City's current commercial and residential waste collectors and industry on the viability of reducing all forms of EPS material that are now ending up in San José landfills. This should include a full discussion on recycling the material to prevent it from entering the landfills. (3) Return to City Council for vote and decision to implement the highest fine on littering that the State will allow. (9-2. Noes: Constant, Khamis.)

7.2 Adopt a resolution:

- (a) **Authorizing the City Manager to execute a master agreement with HKA Enterprises, Inc., to provide temporary staffing of Plant Operators and Plant Mechanics for the San José/Santa Clara Water Pollution Control Plant, for the term beginning March 1, 2013 through March 1, 2014, for an amount not to exceed \$1,200,000, subject to the appropriation of funds.**
- (b) **Authorizing the City Manager to exercise up to four additional one-year options to extend the term of the Agreement through March 1, 2018, subject to the appropriation of funds.**

CEQA: Not a Project, File No. PP10-066(d), Consultant Services. (Environmental Services)

Action: Deferred to March 05, 2013 per Administration.

REDEVELOPMENT – SUCCESSOR AGENCY

9.1 Adopt resolutions:

- (a) **Approving the Administrative Budget for July 1 through December 31, 2013.**
- (b) **Approving the Recognized Obligation Payment Schedule 13-14A (ROPS4) and authorizing payment of expenditures for items on ROPS 13-14A, which details the obligations of the Successor Agency for the period July 1, 2013 through December 31, 2013.**

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

Documents Filed: (1) Memorandum from Managing Director Richard A. Keit, dated February 15, 2013, recommending adoption of resolutions. (2) Supplemental memorandum from Managing Director Richard A. Keit, dated February 25, 2013, transmitting the final proposed administrative budget and recognized obligation payment schedule.

9.1 (Cont'd.)

Action: Upon motion by Council Member Oliverio, seconded by Council Member Herrera and carried unanimously, Successor Agency Resolution No. 7018, entitled: “A Resolution of the Successor Agency to the Redevelopment Agency of the City of San José Approving the Administrative Budget for July 1 Through December 31, 2013” and Successor Agency Resolution No. 7019, entitled: “A Resolution of the Successor Agency to the Redevelopment Agency of the City of San José Approving the Recognized Obligation Payment Schedule 13-14A (ROPS 4) and Authorizing Payment of Expenditures for Items on ROPS 13-14A, Which Details the Obligations of the Successor Agency for the Period of July 1, 2013 Through December 31, 2013”, were adopted. (11-0.)

9.2 **Approve a Termination Agreement with the Gallo Family Real Estate Partnership to terminate that certain Parking Lease Agreement dated August 5, 2009, of the surface parking lot located at 173 North Morrison Avenue for a final payment by the Successor Agency of \$29,900. CEQA: Not a Project, File No. PP10-066, Agreements and Contracts. (Successor Agency)**

Documents Filed: Memorandum from Managing Director Richard A. Keit, dated February 14, 2013, recommending approval of a termination agreement.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Constant and carried unanimously, a Termination Agreement with the Gallo Family Real Estate Partnership to terminate that certain Parking Lease Agreement dated August 5, 2009, of the surface parking lot located at 173 North Morrison Avenue for a final payment by the Successor Agency of \$29,900 was approved. (11-0.)

9.3 **Approve amendments to the Promissory Note with Urban Markets LLC to effectuate a settlement regarding the release of retention. CEQA: Not a Project, File No. PP10-066, Agreements and Contracts. (Successor Agency)**

Documents Filed: (1) Memorandum from Managing Director Richard A. Keit, dated February 14, 2013, recommending approval of an amendment to the promissory note. (2) Supplemental memorandum from Managing Director Richard A. Keit, dated February 22, 2013, transmitting a letter received from the California Department of Finance stating its approval of the Oversight Board’s February 14, 2013 action regarding the approval of the proposed amendment to the promissory note with Urban Markets.

Managing Director Richard A. Keit responded to Council questions and concerns.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried, the amendments to the Promissory Note with Urban Markets LLC to effectuate a settlement regarding the release of retention, was approved. (10-1. Noes: Campos.)

OPEN FORUM

- (1) Ross Signorino congratulated the Police Department for recently rescuing a 16 year old runaway girl in a human trafficking sting.
- (2) Jeff Bedolla expressed opposition to the Proposition 8 Council support resolution.
- (3) Andy Lucero complained that there are not enough supermarkets and fresh produce in the Alum Rock area where he resides.

ADJOURNMENT

The Council of the City of San José adjourned the afternoon session at 5:54 p.m.

RECESS/RECONVENE

The City Council recessed at 5:54 p.m. from the afternoon Council Session and reconvened at 6:59 p.m. in the Council Chambers, City Hall.

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

Absent: Council Members - All Present.

Acting City Clerk Toni J. Taber, CMC read the requests for continuance of the applications. Upon motion by Council Member Liccardo, seconded Vice Mayor Nguyen, and carried unanimously, the below noted continuances and actions were taken as indicated. (11-0.)

CEREMONIAL ITEMS

1.1 Presentation of a commendation to Nu Alpha Kappa fraternity in celebration of their 25th Anniversary. (Campos)

Mayor Reed and Council Member Campos recognized and commended Nu Alpha Kappa fraternity.

1.3 Presentation of commendations to the Mt. Pleasant, Overfelt, and Silver Creek High Schools Junior Reserve Officers' Training Corps programs for their service to the Evergreen community during the annual Day in the Park celebration and throughout the year. (Herrera)

Mayor Reed and Council Member Herrera recognized and commended Mt. Pleasant, Overfelt, and Silver Creek High Schools Junior Reserve Officers' Training Corps programs.

1.4 Presentation of a commendation honoring Asian Americans for Community Involvement (AACI) for 40 years of service to the community. (Nguyen)

Mayor Reed and Vice Mayor Nguyen recognized and commended Asian Americans for Community Involvement.

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.1 Adopt a resolution to approve the parameters of a non-binding Term Sheet presented by Williams/Dame Associates for the purchase of the City's former Corporation Yard, and direct staff to continue non-binding and non-exclusive discussions with the developer for the purposes of preparing a Purchase and Sale Agreement for City Council's consideration. CEQA: Japantown Corporation Yard Redevelopment Project, EIR Resolution No. 74384. (Economic Development)**

Documents Filed: (1) Memorandum from Council Member Liccardo, dated February 25, 2013, recommending adoption of a resolution with an additional condition as described in "Action". (2) Memorandum from Director of Economic Development/Chief Strategist Kim Walesh, dated February 12, 2013, recommending adoption of a resolution. (3) Staff presentation dated February 26, 2013 summarizing the Proposed Japantown Development. (4) Proofs of Publications of Notices of Public Hearings, executed on February 13, 2013 and February 19, 2013, submitted by the City Clerk. (5) Letter from William/Dame & Associates, Inc., dated February 13, 2013, regarding the Term Sheet for Japantown.

Assistant City Manager Edward K. Shikada provided opening remarks. Matt Brown, Williams/Dame & Associates presented the report on Building Neighborhoods from the Ground Up. Roy Hirabayashi, Japantown Community Congress offered comments about the Creative Center for the Arts. Deputy Director of Economic Development Nanci Klein presented closing comments.

Motion: Council Member Liccardo moved approval of his memorandum dated February 25, 2013, recommending approval of the Staff recommendations, with an additional condition as described below in "Action". Vice Mayor Nguyen seconded the motion.

Council discussion ensued.

Public Comments: The following speakers expressed support to the Staff recommendations: Wisa Uemura, Jeremy Nishihara, San José Taiko; Amy Halcrow, Darcie Kiyon, Kathy Sakamoto, Japantown Business Association; Suzanne St. John Crane, Creatv San José; Tamon Norimoto, Rich Saito, Japantown Community Congress; David Brody, Connie Martinez, First Act; Russ Gatschet, Brendan Rawson and Victoria Taketa, Japantown Neighborhood Association.

Mark Boyd expressed concern about the congestion on First and Taylor Streets and suggested a bike lane from 18th Street to Taylor to First Street and a feasibility study on reopening Mission Street. Lisa Back expressed support but would like to see some of the units converted for sale. Jacqueline Bates, Prayer Garden Church, expressed concern about the parking and traffic issues and pointed out that all business owners on 6th Street would like to have input in the process.

4.1 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, the memorandum from Council Member Liccardo, dated February 25, 2013, was approved and accepted the parameter of a non-binding Term Sheet, but with the additional condition to require the Developer to work with Staff and the community to adopt measures necessary to mitigate parking and traffic impacts, including but not limited to, provision of EcoPasses, car sharing spaces and memberships, a bike share station, secure bike parking, expanding auto parking on 7th Street and similar. Resolution No. 76564, entitled: “A Resolution of the Council of the City of San José Approving the Parameters of a Non Binding Term Sheet with Williams/Dame Associates for the Purchase of the City’s Former Corporation Yard and Directing Staff to Continue Non Binding and Non Exclusive Discussions with the Developer for the Purposes of Preparing a Purchase and Sale Agreement for City Council’s Consideration”, was adopted. (11-0.)

PUBLIC HEARINGS

- 11.2 Consideration of an ordinance rezoning the real property located at the southwest corner of William Street and S. 8th Street (346 E. William Street) to allow for the development of a four-story, mixed-use project with (1) up to 28 attached residential units, (2) 1,780 feet of ground floor commercial space, (3) two levels of parking, and (4) the conversion of one single-family residence to a private community center on a 0.57 gross acre site (Ho Year LLC, Owner; JPH Consulting Paulo Hernandez, Developer). Planning Commission recommends approval (5-0-1-1; Commissioner Bit-Badal abstain and Commissioner Cahán absent). SNI: University. CEQA: Mitigated Negative Declaration to be adopted.**
PDC09-019 – District 3

Documents Filed: (1) Memorandum from Council Member Liccardo, dated February 25, 2013, recommending adopting the Staff supplemental recommendations with revised Development Standards, with conditions as described in “Action”. (2) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated January 2, 2013 transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC09-019, dated December 19, 2012, on the subject rezoning. (3) Memorandum from Planning Commission Secretary Joseph Horwedel, dated January 29, 2013, transmitting the Planning Commission recommendation. (4) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated February 22, 2013, transmitting the revised Development Standards for the proposed rezoning to allow for the development of a four story, mixed use project with (1) Up to 28 attached residential units, (2) Up to 1,780 square feet of ground floor commercial space, (3) Two levels of parking and (4) The conversion of a single family residence to a private community center on a 0.57 gross acre site. (5) Proof of Publication of Notice of Public Hearing, executed on November 30, 2012, submitted by the City Clerk. (6) Current proposal conflicts with original Planning Department and City Council directives, submitted by speaker Mark Williams dated February 26, 2013.

11.2 (Cont'd.)

Motion: Council Member Liccardo moved approval of his memorandum, dated February 25, 2013, recommending the adoption of the Staff supplemental recommendations with revised Development Standards, with conditions as described in “Action”. Council Member Herrera seconded the motion.

Mayor Reed opened the Public Hearing.

Public Comments: Speaking in opposition to the proposed development were: Marcus Salomon, Neighborhood Victorian Preservation Association; Walter Seollner, Clarice Shephard, Michael Schmidt, Mark Williams, South University Neighborhood; Larry Elcenko and David Dvdek. Sandra Seollner stated that she was not opposed to the development, but was opposed to the removal of two homes.

Mayor Reed closed the Public Hearing.

Director of Planning, Building and Code Enforcement Joseph Horwedel responded to Council questions and concerns.

Action: On a call for the question, the motion carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, the memorandum from Council Member Liccardo, dated February 25, 2013, was approved, adopting the Staff supplemental recommendations with revised Development Standards, including the following required conditions: (1) The Applicant to restore and rehabilitate the Cooper House and to seek historic designation for the structure, concurrent with the construction of the remainder of the development. (2) That an exclusively residential use be maintained in the Cooper House. (a) Applicant may incorporate up to two residential units within the Cooper House. (b) Applicant shall obtain required private recreational credits through other means other than by citing recreational uses within the Cooper House. (3) That the Cooper house parcel remain unencumbered by other residential units. (a) Applicant may relocate the Cooper House within the parcel to facilitate adjacent construction and thereby seek a lot line readjustment. (b) Applicant may redistribute up to two units from the rear of the Cooper House parcel to other portions of the adjacent site as deemed appropriate by the Planning Director at the Planned Development stage, so long as the units do not cause the project to exceed its standard 50 foot height limits. (c) Upon rehabilitation of the Cooper House, Applicant or successor owners may sell or lease Cooper House parcel for residential uses separate from the remaining parcels. (4) Sufficient visible access to this project’s underground parking by users of the two adjacent commercial parcels along Williams Street. (a) At the Planned Development Permit stage, Staff shall work with Applicant to ensure that the building design does not “orphan” or hinder redevelopment of the two adjacent commercial parcels along William Street. (b) Easements or other legal entitlements shall be granted to owner(s) of the two adjacent properties on Williams Street as a condition of development necessary to effectuate shared parking of the spaces identified by Staff. (5) A limit of South University Neighborhood parking permits of one permit per residential unit. (6) That to reduce parking burden in the neighborhood, Applicant shall be subject to any City of San José

11.2 (Cont'd.)

requirements regarding provision of alternative transportation to the project's residents, including such options as EcoPass, car sharing services, etc. that are in effect as of the date on which a building permit is granted; Ordinance No. 29214, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated at the Southwest Corner of William Street and South 8th Street from the CN Commercial Neighborhood and RM Multiple Residence Zoning Districts to the A(PD) Planned Development Zoning District", was passed for publication and CEQA Resolution No. 76565, entitled: "A Resolution of the Council of the City of San José Making Certain Findings Regarding Environmental Impacts and Mitigation Measures, Approval of Mitigation Measures, Adopting a Mitigation Monitoring and Reporting Program, In Accordance With the California Environmental Quality Act for the Planned Development Rezoning for the 8th and William Street Mixed Use Development Project For Which a Mitigated Negative Declaration Has Been Prepared", was adopted. (11-0.)

11.3 **Consideration of an ordinance rezoning the real property located at the northwest corner of Margaret Street and South 13th Street (681 South 13th Street) from the R-1-8 to the R-1-8(PD) Planned Development Zoning District to allow up to two single-family residential units on a 0.21 gross acre site (Firoz Pradhan & Mohammad Ibrahim, Owners). Planning Commission recommends approval (7-0-0). CEQA: Exempt.**

PDC13-002 – District 3

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated February 6, 2013 transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC13-002, dated February 5, 2013, on the subject rezoning. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated February 14, 2013, transmitting the Planning Commission recommendation. (3) Proof of Publication of Notice of Public Hearing, executed on January 25, 2013, submitted by the City Clerk.

Motion: Council Member Liccardo moved approval of the Staff recommendations. Council Member Campos seconded the motion.

Mayor Reed opened the Public Hearing.

Public Comments: Speaking in support to the rezoning were Dennis Cunningham, Linda Gil, Gerald Burnette, Monty Lucas, Created Space and Glenn Ellingson. Mike McCormick pointed out that parking was a problem, one single family home is adequate and that the rezoning should be denied.

Mayor Reed closed the Public Hearing.

Director of Planning, Building and Code Enforcement Joseph Horwedel responded to Council questions.

11.3 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, the recommendation of the Planning Commission was approved, Ordinance No. 29215, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated at the Northwest Corner of Margaret Street and South 13th Street (681 South 13th Street, APN 472-22-087) to the R-1-8(PD) Planned Development Zoning District”, was passed for publication. (11-0.)

11.4 **Consideration of a Planned Development Permit and Consideration of Public Convenience or Necessity to allow construction of an approximately 32,900 square foot grocery store (Whole Foods) with off-site sales of alcohol (full range of alcoholic beverages) and an on-site brewery on a 2.19 gross acre site, located on the northwest corner of The Alameda and Stockton Avenue (155 Stockton Avenue) (Alameda/Stockton LLC, Owner). Planning Commission recommends approval (7-0-0). CEQA: Re-use of Mitigated Negative Declaration, File No. PDC06-064. PD12-017/ABC13-001 – District 6**

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated February 6, 2013 transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PD12-017/ABC13-001, dated February 6, 2013, on the subject rezoning. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated February 14, 2013, transmitting the Planning Commission recommendation. (3) Proof of Publication of Notice of Public Hearing, executed on January 25, 2013, submitted by the City Clerk.

Director of Planning, Building and Code Enforcement Joseph Horwedel provided introductory remarks and recommended approval of the Planned Development Permit and Determination of Public Convenience or Necessity.

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

Mayor Reed opened the Public Hearing.

Public Comments: Jeff Tepper, On Lok Lifeways, spoke in support to the Staff recommendations.

Mayor Reed closed the Public Hearing.

11.4 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, the recommendation of the Planning Commission was approved, Resolution No. 76566, entitled: “A Resolution of the Council of the City of San José Approving a Request for a Planned Development Permit and Granting a Determination of Public Convenience or Necessity to Allow the Construction of an Approximately 32,900 Square Foot Grocery Store (Whole Foods) With Off-Sale of Alcohol (Beer and Wine) and On-Sale of Alcohol Associated With an On-Site Brewery On A 2.19 Gross Acre Site Located on the Northwest Corner of Stockton Avenue and The Alameda”, was adopted. (11-0.)

11.5 **Consideration of an ordinance rezoning the real property located on the east side of San Felipe Road and the west side of Livery Lane, approximately 650 feet southerly of Running Springs Road, from the A(PD) Planned Development Zoning District to the A(PD) Planned Development Zoning District to allow for up to seven (7) new single-family detached dwellings and preservation of an existing historic house/complex and ranch buildings on approximately 7.48 gross acres (E.N. Richmond Trust, Owner). Planning Commission recommends approval (7-0-0). CEQA: Mitigated Negative Declaration.** **PDC11-021 – District 8**

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated February 6, 2013 transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC11-021, dated February 1, 2013, on the subject rezoning. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated February 14, 2013, transmitting the Planning Commission recommendation. (3) Proof of Publication of Notice of Public Hearing, executed on January 11, 2013, submitted by the City Clerk.

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

Action: Upon motion by Council Member Herrera, seconded by Council Member Constant and carried unanimously, the recommendation of the Planning Commission was approved, Ordinance No. 29216, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the East Side of San Felipe Road and West Side of Livery Lane, Approximately 650 Feet Southerly of Running Springs Road, From the A(PD) Planned Development Zoning District to the A(PD) Planned Development Zoning District”, was passed for publication and Resolution No. 76567, entitled: “A Resolution of the Council of the City of San José Approving the Environmental Clearance Prepared for the Chaboya Ranch Rezoning Project, File Number PDC11-021, Which Clearance Is An Initial Study/Mitigated Negative Declaration That Was Prepared in Accordance With the California Environmental Quality Act and Adopting a Related Mitigation Monitoring and Reporting Program”, was adopted. (11-0.)

- 11.6 (a) **Consideration of an Ordinance of the City of San José amending Title 20 of the San José Municipal Code (the Zoning Ordinance) to amend: Section 20.70.330 of Chapter 20.70 (Downtown Zoning Regulations); numerous sections of Chapter 20.90 (Parking and Loading); Sections 20.100.1300 and 20.100.1320 of Chapter 20.100 (Administration and Permits); and to add new sections to Chapter 20.200 (Definitions) to add definitions for “Area Development Policy,” “Car-Share,” “Charge or Charging Station,” and “Urban Village,” all to modify parking requirements for certain enumerated uses to further implement the Economic Development, Land Use, and Transportation Policies set forth within the Envision San José 2040 General Plan, and to make other technical, formatting or other nonsubstantive changes within those Chapters of Title 20 (File No. PP13-007). Planning Commission recommends approval (7-0-0).**
- (b) **Consideration of an Ordinance of the City of San José amending Title 20 of the San José Municipal Code (the Zoning Ordinance) to amend: Section 20.10.060 of Chapter 20. 10 (General Provisions and Zoning Districts) to add the CIC-Combined Industrial Commercial and the TEC-Transit Employment Center. Zoning Districts; Section 20.20.100 of Chapter 20.20 (Open Space & Agricultural Zoning Districts) to allow Certified Farmers’ Markets in the A-Agriculture and OS-Open Space Zoning Districts; Sections 20.40.100, 20.40.200, 20.40.230 and 20.40.400 of Chapter 20.40 (Commercial Zoning Districts) to allow Wholesale Auto Dealers with no on-site storage as a Permitted Use in Commercial Zoning Districts, to reduce minimum required setbacks for Commercial Zoning Districts, and to clarify Incidental Auto-Repair uses; Section 20.50.010 of Chapter 20.50 to create the TEC-Transit Employment Center Zoning District category, Sections 20.50.100 and 20.50.200 of Chapter 20.50 to add more flexibility for the development of specific Commercial and Industrial uses in the Industrial Zoning Districts including, but not limited to creating the TEC-Transit Employment Center Zoning District enumerated uses and development standards, adding Off-site Sale of Alcohol as a Conditional Use incidental to a Winery/Brewery or Distillery and clarifying Incidental Auto-Repair uses; Sections 20.80.710 and 20.80.720 of Chapter 20.80 to allow Cottage Food Operations as Home Occupations within Residential Zoning Districts and Section 20.80.1400 of Chapter 20.80 to amend provisions for outdoor private property special events; Section 20.120.110 of Chapter 20.120 (Zoning Changes and Amendments) to add the TEC Zoning District as a Conforming District; Chapter 20.150 by deleting Section 20.150.330 (Amortization – Incidental Dancing and Music); and Chapter 20.200 to add new sections to add definitions of “Banquet Facility” and “Cottage Food Operation,” and Section 20.200.700 of Chapter 20.200 to amend the definition of “Lot Line”; all to further implement the Economic Development, Land Use, and Transportation Policies set forth within the Envision San José 2040 General Plan and to make other technical, formatting or other nonsubstantive changes within those sections of Title 20 (File No. PP13-008). Planning Commission recommends approval (7-0-0).**

- 11.6 CEQA: Final Program Environmental Impact Report (EIR) for the Envision San José 2040 General Plan, EIR Resolution No. 76041 (File Nos. PP13-007 and PP13-008).** Pursuant to Section 15168 of the CEQA Guidelines, the City of San José has determined that this activity is within the scope of the Envision San José 2040 General Plan Program approved previously. The Final Program Environmental Impact Report (EIR) for the Envision San José 2040 General Plan entitled, “Envision San José 2040 General Plan,” for which findings were adopted by City Council Resolution No. 76041 on November 1, 2011, adequately describes the activity for the purposes of CEQA. The project does not involve new significant effects beyond those analyzed in this Final EIR. Therefore, the City of San José may take action on the project as being within the scope of the Final EIR, File Nos. PP13-007 and PP13-008.

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated February 6, 2013 transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File Nos. PP13-007 and PP13-008, dated February 6, 2013. (2) Memoranda from Planning Commission Secretary Joseph Horwedel, both dated February 15, 2013, transmitting the Planning Commission recommendation. (3) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated February 20, 2013, transmitting discussions from the Transportation and Environment Committee February Meeting and the Housing and Community Development Advisory Commission prior to the ordinance coming to Council. In addition, this memorandum also discusses unbundled parking in response to the comments from the Transportation and Environment Committee. (4) Proof of Publication of Notice of Public Hearing, executed on January 25, 2013, submitted by the City Clerk.

Director of Planning, Building and Code Enforcement Joseph Horwedel provided introductory remarks.

Motion: Council Member Constant moved approval of the Staff/Planning recommendations. Council Member Campos seconded the motion.

Director of Planning, Building and Code Enforcement Joseph Horwedel responded to Council questions and concerns.

Action: On a call for the question, the motion carried unanimously, the recommendation of the Planning Commission was approved, Ordinance No. 29217, entitled: “An Ordinance of the City of San José Amending Title 20 Of The San José Municipal Code (The Zoning Ordinance) To Amend: Section 20.70.330 Of Chapter 20.70 (Downtown Zoning Regulations); Numerous Sections Of Chapter 20.90 (Parking And Loading); Sections 20.100.1300 And 20.100.1320 Of Chapter 20.100 (Administration And Permits); And To Add New Sections To Chapter 20.200 (Definitions) To Add Definitions For ‘Area Development Policy’, ‘Car-Share’, ‘Charge Or Charging Station’, And ‘Urban Village’, All To Modify Parking Requirements For Certain Enumerated Uses To Further Implement The Economic Development, Land Use, And Transportation Policies Set Forth Within The Envision San José 2040 General Plan, And To Make Other

11.6 (Cont'd.)

Technical, Formatting Or Other Nonsubstantive Changes Within Those Chapters Of Said Title 20” and Ordinance No. 29218, entitled: “An Ordinance of the City of San José Amending Title 20 Of The San Jose Municipal Code (The Zoning Ordinance) To Amend: Section 20.10.060 Of Chapter 20. 10 (General Provisions And Zoning Districts) To Add The Cic-Combined Industrial Commercial And The Tec-Transit Employment Center Zoning Districts; Section 20.20.100 Of Chapter 20.20 (Open Space & Agricultural Zoning Districts) To Allow Certified Farmers’ Markets In The A-Agriculture And Os-Open Space Zoning Districts; Sections 20.40.100, 20.40.200, 20.40.230 And 20.40.400 Of Chapter 20.40 (Commercial Zoning Districts) To Allow Wholesale Auto Dealers With No On-Site Storage As A Permitted Use In Commercial Zoning Districts, To Reduce Minimum Required Setbacks For Commercial Zoning Districts, And To Clarify Incidental Auto-Repair Uses; Section 20.50.010 Of Chapter 20.50 To Create The Tec-Transit Employment Center Zoning District Category, Sections 20.50.100 And 20.50.200 Of Chapter 20.50 To Add More Flexibility For The Development Of Specific Commercial And Industrial Uses In The Industrial Zoning Districts Including, But Not Limited To Creating The Tec-Transit Employment Center Zoning District Enumerated Uses And Development Standards, Adding Off-Site Sale Of Alcoholic Beverages As A Conditional Use Incidental To A Winery/Brewery Or Distillery And Clarifying Incidental Auto-Repair Uses; Sections 20.80.710 And 20.80.720 Of Part 9 Of Chapter 20.80 (Home Occupations) To Allow Cottage Food Operations As Home Occupations Within Residential Zoning Districts And Section 20.80.1400 Of Chapter 20.80 To Amend Provisions For Outdoor Private Property Special Events; Section 20.120.110 Of Chapter 20.120 (Zoning Changes And Amendments) To Add The Tec Zoning District As A Conforming District; Chapter 20.150 (Nonconforming Uses) By Deleting Section 20.150.330 (Amortization – Incidental Dancing And Music); And Chapter 20.200 (Definitions) To Add New Sections To Add Definitions Of “Banquet Facility,” And “Cottage Food Operation,” And To Amend Section 20.200.700 Of Chapter 20.200 To Amend The Definition Of “Lot Line”; All To Further Implement The Economic Development, Land Use, And Transportation Policies Set Forth Within The Envision San Jose 2040 General Plan And To Make Other Technical, Formatting Or Other Nonsubstantive Changes Within Those Sections Of Title 20”, were passed for publication. (11-0.)

NOTICE OF CITY ENGINEER’S PENDING DECISION ON FINAL MAPS

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

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/Units</u>	<u>Type</u>
10173	W/S of Masonic Dr, approx. 520’ S/O Canoas Garden Avenue	6	Vitoil Scottish LLC	2 lots/86 Units	MFA

ADJOURNMENT

The Council of the City of San José was adjourned at 9:18 p.m. in memory of Ed Harris, who passed away January 27, 2012. His life's passion was his devotion to his family, friends, and serving the Lord. He always had a smile on his face and made everyone, including strangers, feel special. He truly had the fruit of the Spirit: love, joy, peace, patience, kindness, goodness, faithfulness and self-control. (Rocha)

Minutes Recorded, Prepared and Respectfully Submitted by,

Toni J. Taber, CMC
Acting City Clerk

smd/02-26-13 MIN

Access the video, the agenda and related reports for this meeting by visiting the City's website at <http://www.sanJoseca.gov/city> or <http://www.sanJoseca.gov/civiccenter/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.