

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, MAY 21, 2013

The Council of the City of San José convened in Regular Session at 9:04 a.m. in the Council Chambers at City Hall.

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

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

STRATEGIC SUPPORT SERVICES

3.2 Accept Labor Negotiations Update.

Documents Filed: (1) CAMP Proposal #2 and #9 (Counter to City 1 and 2) dated May 21, 2013. (2) AMSP CAMP Proposal #2 and #9 (Counter to City 1 and 2) dated May 21, 2013. (3) Letter from Carroll, Burdick & McDonough LLP, dated May 20, 2013, regarding San José POA's Counter Proposal File No. 039073.

Deputy Director of Employee Relations Jennifer Schembri presented a brief report on labor negotiations.

CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:04 a.m. to a Closed Session in Room W133 (A) to confer with Legal Counsel pursuant to Government Code Section 54956.9(d)1) with respect to existing litigation: (1) In re claim of Arujo; Amount of Money or Other Relief Sought: Administration Appeal. (2) In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation; Names of Parties Involved: City of San José as one of class action members; Court: United States District Court for the Eastern District of New York; Amount of Money or Other Relief Sought: Damages according to proof. (3) Koen v. City of San José; Names of Parties Involved: Philip Koen, Peggy Koen, City of San José, a municipal corporation, Frit San José Town and County Village LLC, a California limited liability company and Does 1-10; Court: Superior Court of California, County of Santa Clara; (B) Public Employment/Public Employee

CLOSED SESSION (Cont'd.)

Recruitment/Appointment Pursuant to Government Code Section 54957: (1) Department: Parks, Recreation and Neighborhood Services; Title: Director; (2) Department: Information Technology; Title: Director. (C) to confer with Legal Counsel pursuant to Government Code Section 54956.9, Subsection (b) with respect to significant exposure to litigation: Claimants: In re Claim of Ghenis; City Department: Parks, Recreation and Neighborhood Services. (D) to confer with Legal Counsel pursuant to Government Code Section 54956.9(d)1) with respect to existing litigation: (1) Citizens Against Airport Pollution v. City, et al; Names of Parties Involved: Citizens Against Airport Pollution, an unincorporated association, Does 1-5, City of San José, City Council of the City of San José and Does 6-10, Does 10-30, Real Parties in Interest; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV- 177290; Amount of Money or Other Relief Sought: City to set aside and void approvals relating to 8th addendum to Airport Master Plan. (2) Carillo, Alexandra v. City; Names of Parties Involved: Alexandra Carrillo, City of San José and Does 1-10; Court: Superior Court of California, County of Santa Clara; Case No: 1-13-CV-242864; Amount of Money or Other Relief Sought: Damages according to proof. (3) City v. International Association of Firefighters, et al; Names of Parties Involved: International Association of Firefighters, Local 230; Court: Superior Court of California, County of Santa Clara; Case No: 1-06-CV-075858; Amount of Money or Other Relief Sought: Motion to compel arbitration. (4) City v. International Association of Firefighters, et al; Names of Parties Involved: International Association of Firefighters, Local 230; Court: Superior Court of California, County of Santa Clara; Case No: 1-09-CV-133786; Amount of Money or Other Relief Sought: Arbitration of Firefighters Bill of Rights Issue. (5) Parker, et al. v. City of San José, et al; Names of Parties Involved: David Parker, James Williams, Jason Bivens, Debra Ward and Shannon Blean, City of San José and Does 1-20; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV-176055; Amount of Money or Other Relief Sought: Damages according to proof. (6) American Federation of State, County and Municipal Employees, City of San José; Court: State of CA Public Employment Relations Board; Case No: SF-CE-837-M; Amount of Money or Other Relief Sought: Damages according to proof. (7) IAFF Local 230 v. City; Names of Parties Involved: International Association of Firefighters Local 230, City of San José; Court: State California Public Employees Relations Board; Case No: SF-CE-941-M; Amount of Money or Other Relief Sought: Damages according to proof. (8) American Federation of State, County and Municipal Employees, et al. v. City; Names of Parties Involved: American Federation of State, County and Municipal Employees, City of San José; Court: State California Public Employees Relations Board; Case No: SF-CE-924-M; Amount of Money or Other Relief Sought: Damages according to proof. (9) IAFF Local 230 v. City; Names of Parties Involved: International Association of Firefighters Local 230, City of San José; Court: State California Public Employees Relations Board; Case No: SF-CE-969-M; Amount of Money or Other Relief Sought: Damages according to proof. (10) OE#3 v. City of San José; Names of Parties Involved: Operating Engineers Local Union No. 3, City of San José; Case No: SF-CE-900-M. Amount of Money or Other Relief Sought: Damages according to proof. (11) IFPTE Local 21, AFL-CIO v. City of San José; Names of Parties Involved: International Federation of Professional and

CLOSED SESSION (Cont'd.)

Technical Engineers, City of San José; Court: State California Public Employees Relations Board; Case No: SF-CE-966-M. Amount of Money or Other Relief Sought: Damages according to proof. (12) American Federation of State, County and Municipal Employees, et al. v. City; Names of Parties Involved: American Federation of State, County and Municipal Employees, City of San José, Court: State California Public Employees Relations Board; Case No: SF-CE-945-M; Amount of Money or Other Relief Sought: Damages according to proof. (13) IAFF Local 230 v. City; Names of Parties Involved: International Association of Firefighters Local 230, City of San José; Court: State California Public Employees Relations Board; Case No: SF-CE-970-M; Amount of Money or Other Relief Sought: Damages according to proof. (14) American Federation of State, County and Municipal Employees, et al. v. City; Names of Parties Involved: American Federation of State, County and Municipal Employees, City of San José, Court: State California Public Employees Relations Board; Case No: SF-CE-972-M; Amount of Money or Other Relief Sought: Damages according to proof. (15) City of San José v. SJPOA; Names of Parties Involved: City of San José, San José Police Officers' Association; Case No: CSMCS ARB 11-0477. (16) City of San José v. SJPOA; Names of Parties Involved: City of San José, San José Police Officers' Association; Case No: CSMCS ARB 12-0171. (17) City of San José v. SJPOA; Names of Parties Involved: City of San José, San José Police Officers' Association; Case No: CSMCS ARB 11-0136. (18) City of San José v. SJPOA; Names of Parties Involved: City of San José, San José Police Officers' Association; Case No: CSMCS ARB 11-0142. (19) Great Oaks Water, Inc. v. City, et al. Names of Parties Involved: Great Oaks Water, Inc., John W.S. Roeder, Betty B. Roeder, Betty B. Roeder Trust A and William C. Miller, Jr. and Betty B. Roeder, Trustees of the Walter S. Roeder Trust B, The City of San José, The San José Redevelopment Agency, Southbay Water Recycling, Does 1 – 100; Court: Superior Court of California, County of Santa Clara; Case No: 1-04-CV012008; Amount of Money or Other Relief Sought: Damages according to proof. (20) County of Alameda, et al. v. AMBAC Financial, et al; Names of Parties Involved: County of Alameda, City and County of San Francisco, City of Los Angeles, Los Angeles Department of Water and Power, Los Angeles World Airports, City of Oakland, City of Richmond, Redwood City, East Bay Municipal Utility District, City of Sacramento, Sacramento Suburban Water District, Sacramento Suburban Water District, Sacramento Municipal Utility District, City of San José, City of Stockton, The Redevelopment Agency of the City of Stockton, County of Tulare, The Regents of the University of California, The Redevelopment Agency of the City of San José, AMBAC Financial Group, Inc., AMBAC Assurance Corporation, MBIA, Inc., MBIA Insurance Corporation, MBIA Insurance Corp. of Illinois, aka National Public Finance Guarantee Corporation, Syncora Guarantee, Inc., fka XL Capital Assurance Inc., Financial Guaranty Insurance Company, Financial Security Assurance, Inc., CIFG Assurance North America, Inc., Assured Guaranty Corp., Jason Kissane, Does 1-50; Court: Superior Court of California, In and for the City and County of San Francisco; Amount of Money or Other Relief Sought: Damages according to proof. (21) RDA/City vs. Bank of America, N.A., et al; Names of Parties Involved: City of San José, The San José Redevelopment Agency, Bank of America, N.A., Merrill Lynch and Co., Inc., UBS AG, UBS Financial Services, Inc., UBS Securities, LLC,

CLOSED SESSION (Cont'd.)

MBIA, Inc., Citibank, N.A., Citigroup Financial Products Inc., Citigroup Global Markets Holdings Inc., Morgan Stanley, Rabobank Group, Bayerische, Landesbank Gironzentrale, Piper Jaffray & Co., Societe Generale SA, Financial Security Assurance, Inc., Assured Guaranty US Holdings Inc., Dexia S.A., National Westminster Bank, PLC, Natixis Funding Corp., Natixis S.A., The Goldman Sachs Group, Inc., Goldman Sachs Mitsui Marine Derivative Products, L.P., Goldman Sachs Bank USA, CDR Financial Products, Winters & Co., Advisors, LLC, George K. Baum & Co., Sound Capital Management, Inc., Investment Management Advisory Group, Inc., First Southwest Company, PFM Investment, LLC, PFM Asset Management LLC. Court: United States District Court, Northern District of California, San José Division; Case No: CV10 2199; Amount of Money or Other Relief Sought: Damages according to proof. (22) Sipple, et al. v. City of Alameda, et al; Names of Parties Involved: Donald Sipple, John Simon, Karl Simonsen, Christopher Jacobs, Settlement Class Representatives, New Cingular Wireless PCS LLC, City of Alameda, County of Alameda, City of Albany, City of Alhambra, City of Arcadia, City of Baldwin Park, City of Beaumont, City of Bell, City of Bellflower, City of Benecia, City of Berkeley, City of Burbank, City of Calabasas, City of Cathedral, City of Ceres, City of Chico, City of Chico, City of Chula Vista, City of Citrus Heights, City of Claremont, City of Colton, City of Compton, City of Covina, City of Cudahy, City of Culver City, City of Cupertino, City of Daly City, City of Desert Hot Springs, City of Dinuba, City of Downey, City of East Palo Alto, City of El Cerrito, City of El Monte, City of El Segundo, City of Emeryville, City of Eureka, City of Exeter, City of Fairfax, City of Fairfield, City of Gardena, City of Gilroy, City of Glendale, City of Gonzales, City of Greenfield, City of Grover Beach, City of Guadalupe, City of Gustine, City of Hawthorne, City of Hayward, City of Hercules, City of Hermosa Beach, City of Holtville, City of Huntington Beach, City of Huron, City of Indio, City of Inglewood, City of Irwindale, City of La Habra, City of Lakewood, City of La Palma, City of La Verne, City of Lawndale, City of Lindsey, City of Long Beach, City of Los Alamitos, City of Los Altos, City of Los Angeles, Los Angeles County, City of Lynwood, City of Malibu, City of Mammoth Lakes, City of Maywood, City of Menlo Park, City of Modesto, City of Montclair, City of Monterey, City of Monterey Park, City of Moreno Valley, City of Mountain View, City of Norwalk, City of Oakland, City of Orange Cove, City of Oroville, City of Pacific Grove, City of Palm Springs, City of Palo Alto, City of Paramount, City of Pasadena, City of Pico Rivera, City of Piedmont, City of Pinole, City of Placentia, City of Pleasant Hill, City of Pomona, City of Port Hueneme, City of Porterville, City of Rancho Palos Verde, City of Redondo Beach, City of Redwood City, City of Rialto, City of Richmond, City of Riverside, City of Sacramento, City of Salinas, City of San Bernardino, City of Buena Ventura (Ventura), City of San Francisco, City of San Gabriel, City of San Jose, City of San Leandro, City of San Luis Obispo, City of San Marino, City of San Pablo, City of Sanger, City of Santa Ana, City of Santa Barbara, City of Santa Cruz, City of Santa Monica, City of Seal Beach, City of Seaside, City of Sierra Madre, City of Soledad, City of South Pasadena, City Stanton, City of Stockton, City of Sunnyvale, City of Torrance, City of Tulare, City of Waterford, City of Watsonville, City of Westminster, City of Whittier, City of Winters, City of Woodlake, Does 1-50; Court: Superior Court of California, County of Santa Clara; Case No: BC462270; Amount of

CLOSED SESSION (Cont'd.)

Money or Other Relief Sought: Damages according to proof. (23) Konnick v. Kaiser, et al; Names of Parties Involved: Michi Konnick, by her Gaurdian Ad Litem, Mircea G. Dragomir, CLPF and George Konnick, Kaiser Foundation Healthplan, Inc., Kaiser Foundation Hospitals, The Permanente Medical Group, Inc., Chandu A. Karadi, Johnson D. Chan, American Medical Response, Inc., Bonnie McPherson, Carlos Garcia, Thomas Cooper, the City of San José dba San José Fire, Rocco Francisco and Does 1-200; Court: Superior Court of California, County of Santa Clara; Case No: 1-11-CV-200068; Amount of Money or Other Relief Sought: Damages according to proof. (24) Seibert v. City of San José; Names of Parties Involved: Grant Seibert, City of San José, San José Civil Service Commission, Debra Figone as San José City Manager, Alex Gurza as San José Director of Employee Relations, William McDonald as Fire Chief for San José Fire Department, Does 1-10; Court: Superior Court of California, County of Santa Clara; Case No: 1-11CV2040986; Amount of Money or Other Relief Sought: Damages according to proof. (25) California Building Industry Association v. City, et al; Names of Parties Involved: California Building Industry Association, A California Nonprofit Corporation, City of San José, A California Municipal Corporation, City Council and Mayor of the City of San José, Does 1-200; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV-167289; Amount of Money or Other Relief Sought: Declaratory and Injunctive Relief. (26) Bernal, et al. v. City, et al. Names of Parties Involved: Mike C. Bernal, Susan R. Bernal, Nanetta Bernal, Lilian Bernal Auvinen, Katherine Lira, Diana Bernal-Tuyor, Mike A. Bernal, Gary James Bernal, Domenico Loverde, Tomas J. Martinez, Authur Paul Lira, Jr., Jerimiah Lira, Sommer Kai Espinosa, Lucia A. Bernal, Guillermo Espinosa, City of San José and Does 1-25; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV-116141; Amount of Money or Other Relief Sought: Damages according to proof. (27) Andy's BP, Inc. et al, v. City of San José, et al. Names of Parties Involved: Andy's BP, Inc., a California Corporation, Sabek, Inc., a California Corporation and Andy Saberi, an Individual, the City of San José, Joseph Horwedel, individually and Amir Shirazi, individually and dba Moe's Stop and Amir Shirazi, as Trustee for the Mohammad M. Shirazi Living Trust and Does 1-25; Court: United States District Court, Northern District of California, San José Division; Case No: 12-CV-01631 LHK; Amount of Money or Other Relief Sought: Damages according to proof. (28) Berg & Berg Enterprises, LLC v. City, et al; Names of Parties Involved: Berg & Berg Enterprises, LLC, City of San José, San José City Council and Does 1-50; Court: Superior Court of California, County of Santa Clara; Case No: 1-07-CV-091955; Amount of Money or Other Relief Sought: Damages according to proof. (29) California Clean Energy Committee v. City, et al; Names of Parties Involved: California Clean Energy Committee, City of San José, Does 1-50, FWSH Partners II, LLC, Edward D. Storm and Does 51-100; Court: Superior Court of California, County of Santa Clara; Case No: 1-11-CV-212623; Amount of Money or Other Relief Sought: Injunctive Relief; (30) City of Milpitas v. City, et al; Names of Parties Involved: City of Milpitas, a public entity, City of San José, public entity and Does 1-10; Court: Superior Court of California, County of Santa Clara; case No: 1-12-CV-233069; Amount of Money or Other Relief Sought: Petition for writ of mandate. (31) People/City v. Bevan, Warren; Names of Parties Involved: People of the State of California, ex rel., City

CLOSED SESSION (Cont'd.)

Attorney of the City of San José, Wanda M. Bevan, an individual, Warren Bevan, aka Warren A. Bevan, an individual, Warren A. Bevan and Lynn E. Winnett-Bevan, Trustees of the Bevan Trust, created on 8/16/06 and Does 1-10; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV118193; Amount of Money or Other Relief Sought: Injunctive relief. (32) City v. Marquez, Rita and Avalos, Luzmarie; Names of Parties Involved: City of San José, Rita Marquez, Luzmarie Avalos, Court: Superior Court of California, County of Santa Clara; Case No: C-1354130; Amount of Money or Other Relief Sought: Damages according to proof. (33) People/City v. Rosales; Collins & Constant, Robert Collins, John Seaman, et al; Names of Parties Involved: People of the State of California, ex rel, City Attorney of San José and City of San José, Julian Rosales, an individual, dba Beautiful Temple International, Collins & Constant Investments, LLC, A California limited liability company, Robert Collins, an individual, John Seaman, an individual; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV235487; Amount of Money or Other Relief Sought: Injunctive Relief. (34) Ahluwalia, et al. v. City of San José, et al; Names of Parties Involved: Harsh R. Ahluwalia, individually and as successor-in-interest to Decedent Varun Kumar, Ravinder K. Ahluwalia, individually and as co-successor-in-interest to Decedent Varun Kumar, the Estate of Varun Kumar, City of San José, Chris Moore, in his official capacity as Chief of Police for the San José Police Department, Sergio Carabarin, in his individual and official capacities as an officer of the San José Police Department, Ryan Kimber, in his individual and official capacities as an officer of the San José Police Department, Phil Juan, in his individual and official capacities as an officer of the San José Police Department, and Does 1-50; Court: United States District Court, Northern District of California, San José Division; Case No: C13-0114 PSFG; Amount of Money or Other Relief Sought: Injunctive Relief. (35) Carter v. City of San José, et al; Names of Parties Involved: Jamil Carter, The City of San José, The San José Police Department (SJPD), Michael Sullivan, individually and in his official capacity as Lieutenant, SJPD and Keith Cottrell, individually and in his official capacity as Sergeant, SJPD; Court: United States District Court, Northern District of California; Case No: CV12-01968 HRL; Amount of Money or Other Relief Sought: Damages according to proof. (36) Cicala, et al. v. City, et al; Names of Parties Involved: Paul Cicala, Enrico Sagullo, Erick Sanchez, City of San José, Robert Davis, Officers Ordaz, Higgins, Marfia, Kyono, Siegel and Does; Court: United States District Court, Northern District of California; Case No: C08-04032 PVT; Amount of Money or Other Relief Sought: Damages according to proof. (37) Chahal v. City of San José, Bach Thai Tran; Names of Parties Involved: Lakhbir Singh Chahal, Baljit Chahal, City of San José, Bach Thai Tran, Does 1-20; Court: Superior Court of California, County of Santa Clara; Case No: 1-11-CV-199202; Amount of Money or Other Relief Sought: Damages according to proof. (38) Correa v. City of San José, et al; Names of Parties Involved: Thomas Correa, The City of San José; The San José Police Department (SJPD), Michael Sullivan, individually and in his official capacity as Lieutenant, SJPD, Kimberly Hudson, individually and in his official capacity as Sergeant, SJPD; Court: United States District Court, Northern District of California, San José Division; Case No: CV12-05436 HRL; Amount of Money or Other Relief Sought: Damages according to proof. (39) Fujikawa, Michael v. City, Chief Chris Moore, et al;

CLOSED SESSION (Cont'd.)

Names of Parties Involved: Michael Fujikawa, The City of San José, Police Chief Chris Moore, Officers Payne (Badge No. 3971), Officer Pfiefer (Badge No. 3951), Officer Jeffrey (Badge No. 3926), Officer Akery (Badge No. 3495) and Does 1-50; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-219612; Amount of Money or Other Relief Sought: Damages according to proof. (40) Galindo, Celina et al. v. Tassio, Kilmer, et al; Names of Parties Involved: Celina Galindo, Sabrina Galinda, Valente Galindo, IV, a minor, by and through his Guardian ad Litem, Gina Padilla, Officer Lee Tassio, Officer Anthony Kilmer and City of San José; Court: Superior Court of California, County of Santa Clara; Case No: CV13-0105 HRL; Amount of Money or Other Relief Sought: Damages according to proof. (41) Garden City, Inc. dba Casino M8trix, et al. v. City of San José, et al. Names of Parties Involved: Garden City, Inc., dba Casino M8trix, a California Corporation, Airport Parkway Two, LLC, a California limited liability company and Airport Opportunity Fund, LLC, a Delaware limited liability company, City of San José, a California municipal corporation, San José Police Department, for the City of San José, Richard Teng, individually and as Administrator of the San José Police Department Division of Gaming Control; Court: Superior Court of California, County of Santa Clara; Case No: 1-13-CV-240941; Amount of Money or Other Relief Sought: Damages according to proof. (42) Garden City, Inc. dba Casino M8trix, et al. v. City of San José, et al; Names of Parties Involved: Garden City, Inc., dba Casino M8trix, a California Corporation, Airport Parkway Two, LLC, a California limited liability company and Airport Opportunity Fund, LLC, a Delaware limited liability company, City of San José, a California municipal corporation, San José Police Department, for the City of San José, Richard Teng, individually and as Administrator of the San José Police Department Division of Gaming Control; Court: United States District Court, Northern District of California, San José Division; Case No: CV-13-0577 PSG; Amount of Money or Other Relief Sought: Damages according to proof. (43) Swallow, et al. v. City of San José; Names of Parties Involved: Eric Swallow, Jeanine Lunardi, City of San José; Court: Superior Court of California, County of Santa Clara; case No: 1-13-CV-243151; Amount of Money or Other Relief Sought: Damages according to proof. (44) Gonzales, Mary Lou v. City, et al. Names of Parties Involved: Mary Lou Gonzales, City of San José, as a municipal corporation, San José Police Chief Moore, individually and in his official capacity, SJPD Detective Yvonne Delacruz, in her official and individual capacity, SJPD Sgt. Archer, in his official capacity and individual capacity, SJPD Homicide Detective Jamie (Last Name Unknown), in his official capacity and individual capacity, SJPD Officers Doe 1 to Doe 7 in their individual and official capacities, SJPD Officers and Detectives and employees Doe 8-50; Court: United States District Court, Northern District of California, San José Division; Case No: CV13-0695 PJH; Amount of Money or Other Relief Sought: Damages according to proof. (45) Gonzales-Guerrero, Javier v. City, Brian Johst, Mark Stephens, et al; Names of Parties Involved: Javier Gonzales-Guerrero, City of San José, Brian Johst, Mark Stephens, Gary Petrakovitz and Tim Stephens; Court: United States District Court, Northern District of California, San José Division; Case No: CV12-03541 PSG; Amount of Money or Other Relief Sought: Damages according to proof. (46) Hellams, John, Charles Bernard and Marline Anderson v. City, et al; Names of Parties Involved: John Hellams, Charles

CLOSED SESSION (Cont'd.)

Bernard, Marelene Anderson, City of San José, Does 1-50; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-227586; Amount of Money or Other Relief Sought: Damages according to proof. (47) Hernandez, Luis and Cindy Calderon v. City of San José, et al; Names of Parties Involved: Luis Hernandez, Cindy Calderon, City of San José, Ernie Alcantar, individually and his official capacity as Captain, SJPD and James Werkema, individually and his official capacity as Lieutenant, SJPD; Court: United States District Court, Northern District of California, San José Division; Case No: CV12-02952 HRL; Amount of Money or Other Relief Sought: Damages according to proof. (48) Kerkeles v. City of San José, et al; Names of Parties Involved: Michael Kerkeles, aka Michael Kerk, City of San José, Matthew Christian and Does 1-15; 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. (49) Montiel v. City, et al; Names of Parties Involved: Jermaine Montiel, Officer M. Williams, Officer C. Sheppard, Officer Hernandez, Officer Rodriguez, John Doe and Richard Doe, Robert Davis, City of San José and Does; Court: United States District Court, Northern District of California, San José Division; Case No: C07 05490 PSG; Amount of Money or Other Relief Sought: Damages according to proof. (50) City of San José, et al. v. BKD Investments, LLC, et al. Names of Parties Involved: People of the State of California, ex rel, City Attorney of the City of San José and the City of San José, BKD Investments, LLC, a California Limited Liability Company dba Hotel Elan, Pankaj K. Patel, an individual, Sanjay K. Patel, an individual, April Guzman, an individual and Does 1-100; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-227614; Amount of Money or Other Relief Sought: Permanent Injunction and Final Judgment. (51) People/City v. Stanley A. Fimowicz, et al. Names of Parties Involved: People of the State of California, ex rel, City Attorney of the City of San José, the City of San José, Stanley A. Fimowica, an individual, Stella L. Fimowicz, an individual and Does 1-10; Court: Superior Court of California, County of Santa Clara; Case No: 1-13-CV-243896; Amount of Money or Other Relief Sought: Damages according to proof. (52) People/City v. Chinh Hoang Nguyen dba La Visage Salon, et al. Names of Parties Involved: People of the State of California, ex rel, City Attorney of the City of San José and the City of San José, Chinh Hoang Nguyen aka Nguyen Chinh Hoang, an individual, dba La Visage Salon, Tung Van Vo, aka Andy Hoang Buu Vo aka Vo Tung, an individual, dba La Visage Salon, Sang Van Pham aka Pham Sang Van, an individual; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-226470; Amount of Money or Other Relief Sought: Damages according to proof. (53) Naymark, et al. v. City, et al. Names of Parties Involved: Janice Naymark, Ronald Naymark, City of San José, San José Police Department, Robert Davis, City of Campbell, Campbell Police Department, David Gullo, Town of Los Gatos, City of Monte Sereno, Los Gatos, Monte Sereno Police Department, Scott Seaman, City of Palo Alto, Lynn Johnson, City of Santa Clara, Santa Clara Police Department, Stephen D. Lodge, State of California, California Highway Patrol, Michael L. Brown, County of Santa Clara, Office of the Santa Clara County Sheriff, Laurie Smith and Does 1-25; Court: Superior Court of California, County of Santa Clara; Case No: 1-07-CV080008; Amount of Money or Other Relief Sought: Injunctive relief. (54) Rice, JoAnn, America Savin, et al. v. City, et al. Names of Parties

CLOSED SESSION (Cont'd.)

Involved: JoAnn Rice, America Savin, Perry Nelson and W.N., a minor, by and through his Guardian and Litem, America Savin, City of San José, San José Police Department, Does 1-10; Court: United States District Court, Northern District of California, San José Division; Case No: 2:13-CV-00334-KJM-CKD; Amount of Money or Other Relief Sought: Damages according to proof. (55) Valdez, et al. v. City, et al. Names of Parties Involved: Franciscan Valdez, Ricardo Vasquez, Daniel Martinez, Jamil Stubbs, City of San José, San José Police Chief Robert Davis, Officer R. Agaman (4041), Officer Martin (#3894), Officer Rickert (#3734), Officer Wallace (#3922), Officer Orlando, Does 1-2500; Court: United States District Court, Northern District of California, San José Division; Case No: C09 00176 RMW; Amount of Money or Other Relief Sought: Damages according to proof. (56) Pham/Do v. City, et al. Names of Parties Involved: Vinh Huu Pham and Lan Thi Do, City of San José, a municipality of the State of California, Officer Brian Jeffrey, #3926, individually and his official capacity as a police officer, Officer Matthew Blackerby, #3999, individually and in his official capacity as a police officer and Does 1-100; Court: United States District Court, Northern District of California, San José Division; Case No: CV11-01526 EJD; Amount of Money or Other Relief Sought: Damages according to proof. (57) Pugh v. City, et al. Names of Parties Involved: Dwayne Pugh, City of San José and Does 1-100; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV189429; Amount of Money or Other Relief Sought: Damages according to proof. (58) Salinas, Roberta, George and Frances Salinas, et al. v. City et al. Names of Parties Involved: Roberta Salinas, George Salinas, Frances Salinas, Carlos Salinas, Olivia Salinas, Loretta Salinas, City of San José and Does 1-50; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV-116174; Amount of Money or Other Relief Sought: Damages according to proof. (59) Noreen Salinas v. City, et al. Names of Parties Involved: Noreen Salinas, City of San José, Chief Robert Davis, Taser International, Inc., Does 1-10; Court: United States District Court, Northern District of California, San José Division; Case No: C08-02625 RS (consolidated with C09-04410RS); Amount of Money or Other Relief Sought: Damages according to proof. (60) Vasquez v. City, et al. Names of Parties Involved: Ramon Jose Vasquez, Brian Ferrante, individually and as an Officer of the San José Police Department and Tom Morales, individually and as an Officer of the San José Police Department, Does 1-50; Court: United States District Court, Northern District of California, San José Division; Case No: CV10-00948 LKH; Amount of Money or Other Relief Sought: Damages according to proof. (61) Watson-Stalker, et al. v. City et al. Names of Parties Involved: Tracy Watson, Renee Stalker, Olivia Stalker, Shafer Watson, Riley Watson, County of Santa Clara, County of Santa Clara Department of Family and Children Services, County of Santa Clara Department of County Counsel, County of Santa Clara District Attorney's Office, Santa Clara Medical Center, Evergreen School District, City of San José, San José Police Department, Norma Sparks, Yazima Letona, Sharon Burgan, Jewels Rameriz, Vu Tran, Ann Miller Ravel, Rima Singh, Aaron West, George Kennedy, Clifton Black, Rose Real, Robert Pruitt, Cheryl Harms, Claudia Blodgett, Gary Kishimoto, John Hamilton, Anita Noble, Janet Kahle, Mary Ritter, David Kearns, Rajul Kazi, Rob Davis, William Hoyt, Craig Blank; Court: United States District Court, Northern District of California, San José Division; Case No: C06-04029 RMW;

CLOSED SESSION (Cont'd.)

Amount of Money or Other Relief Sought: Damages according to proof. (62) City v. Western Roofing. Names of Parties Involved: City of San José, Western Roofing; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV123029; Amount of Money or Other Relief Sought: Damages according to proof. (63) City v. Rossdruiscesenbery Architecture, Inc., et al. Names of Parties Involved: City of San José, Rossdruiscesenbery Architecture, Inc., aka Michael Ross Charles Drulis Architects and Planners, a purported California corporation, Does 1-100; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-237767; Amount of Money or Other Relief Sought: Damages according to proof. (64) Shahrivar, Farid v. City, et al. Names of Parties Involved: Farid Shahrivar, City of San José, a municipality, Rodney Rapson, an individual, David Sykes, an individual, Harry Freitas, an individual, Katherine Jensen, an individual, David Printy, an individual, Danny Tso, an individual, Katrina Allen, an individual, Dough Baker, an individual, Alex Gurza, an individual, Sarah Nunes, an individual, Les White, an individual, Allen Demers, an individual, Rajiv Das, an individual, Adam Stempel, an individual, Steve Pagan, an individual, Angela Chen, an individual, Mark Danaj, an individual, Robert Fabela, an individual, Susan Lacy and Does 1-45; Court: United States District Court, Northern District of California, San José Division; Case No: CV1-0-01029 PSG; Amount of Money or Other Relief Sought: Damages according to proof. (65) Vagts, Hale and Patty Vagts v. State of California, et al. Names of Parties Involved: Hale Vagts and patty Vagts, State of California, City of San José and Does 1-40; Court: Superior Court of California, County of Santa Clara; Case No: 1-13-CV-239693; Amount of Money or Other Relief Sought: Damages according to proof. (66) Flores, Valerie v. City of San José, et al. Names of Parties Involved: Valerie Flores, City of San José, Does 1-25; Court: Superior Court of California, County of Santa Clara; Case No: 1-11-CV-212090; Amount of Money or Other Relief Sought: Damages according to proof. (67) Leath, Vicky Kim v. City, County of Santa Clara, et al. Names of Parties Involved: Vicky Kim Leath, City of San José, County of Santa Clara, Huyen Nguyen; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-227600; Amount of Money or Other Relief Sought: Damages according to proof. (68) McLaughlin, Shirli v. City of San José; Names of Parties Involved: Shirli McLaughlin, City of San José; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-236396; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-236396; Amount of Money or Other Relief Sought: Damages according to proof. (69) Ortiz v. City, et al. Names of Parties Involved: Esmeralda Galan and Jose Ortiz, Husband and Wife, Individually and as Parents and Successors in Interest of their Deceased Minor Son Mateo Ortiz, City of San José, a Charter City, David Alvernaz, Alycia Saaveda-Alvernaz and Does 1-20; Court: Superior Court of California, County of Santa Clara; Case No: 1-11-CV199150; Amount of Money or Other Relief Sought: Damages according to proof. (70) Perez, Cynthia v. City of San José; Names of Parties Involved: Cynthia Perez, City of San José and Does 1-25; Court: Superior Court of California, County of Santa Clara; Case No: 1-11-CV-209825; Amount of Money or Other Relief Sought: Damages according to proof. (71) Stand for San José, et al. v. City, et al. Names of Parties Involved: Stand for San José and Eileen Hannan, City of San José, City Council of the City of San José,

CLOSED SESSION (Cont'd.)

Redevelopment Agency of the City of San José, Diridon Development Authority; Court: Superior Court of California, County of Santa Clara; Case No: 1-11-CV-214196; Amount of Money or Other Relief Sought: Injunctive Relief. (72) City of San José v. County of Santa Clara; Names of Parties Involved: City of San José, a municipal corporation, as Successor Agency to the Redevelopment Agency of the City of San José, Vinod K. Sharma, individually and in official capacity as Santa Clara County Director of Finance, County of Santa Clara; Court: Superior Court of California, County of Sacramento; Case No: 34-2012-80001190; Amount of Money or Other Relief Sought: Damages according to proof. (73) Ted Smith v. City, et al. Names of Parties Involved: Ted Smith, City of San José, a municipal entity, San José Redevelopment Agency, a municipal entity, Harry Mavrogenes, in his official capacity as Executive Director of the San José Redevelopment Agency, Mayor Chuck Reed, in his official capacity as Mayor of the City of San José, Pete Constant, in his official capacity as Council Member of the City of San José, Ash Kalra, in his official capacity as Council Member of the City of San José, Sam Liccardo, in his official capacity as Council Member of the City of San José, Pierluigi Oliverio, in his official capacity as Council Member of the City of San José, Madison Nguyen, in her official capacity as Council Member of the City of San José, Rose Herrera, in her official capacity as Council Member of the City of San José, Judy Chirco, in her official capacity as Council Member of the City of San José, Kansen Chu, in his official capacity as Council Member of the City of San José, Nora Campos, in her official capacity as Council Member of the City of San José, Nancy Pyle, in her official capacity as Council Member of the City of San José and Does 1-20; Court: Superior Court of California, County of Santa Clara; Case No: 1-09-CV-150427; Amount of Money or Other Relief Sought: Damages according to proof. (74) Vietnamese-American Community of Northern California v. City, et al. Names of Parties Involved: Vietnamese-American Community of Northern California, City of San José, City Council of San José; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV-107082; Amount of Money or Other Relief Sought: For declaratory and injunctive relief according to proof. (E) 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

CLOSED SESSION (Cont'd.)

Agreement between City of San José and CEO. (6) International Association of Firefighters, Local 230 (IAFF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Association of Firefighters. (7) International Brotherhood of Electrical Workers (IBEW); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and IBEW. (8) Municipal Employees' Federation, AFSCME Local 101, AFL-CIO (MEF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and MEF; (9) International Union of Operating Engineers, Local No. 3 (OE#3); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Union of Operating Engineers, Local No. 3. (10) San José Police Officers' Association (SJPOA); Nature of Negotiations: Salaries, Hours, Working Conditions, etc; Name of Existing Wages Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association. (11) Association of Legal Professionals of San José (ALP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc. Web: <http://www.sanjoseca.gov/employeerelations/moa.asp>; Telephone for Employee Relations: 408-535-8150. (F) To confer with Legal Counsel pursuant to Government Code Section 54956.9, Subsection (c) with respect to anticipated litigation in one (1) matter.

By unanimous consent, Council recessed from the Closed Session at 11:55 a.m. and reconvened to Regular Session at 1:34 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 5)

Ben Ferguson, Adopt-a-Chaplain, presented the Invocation.

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Oliverio, seconded by Council Member Kalra and carried unanimously, the Orders of the Day and the Amended Agenda were approved, and Item 11.4 was heard after the Ceremonial Items in the Evening. (11-0.)

CLOSED SESSION REPORT

City Attorney Richard Doyle disclosed the following Closed Session actions of May 21, 2013:

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

- (1) Title: Director of Information Technology
Name: Vijay Sammeta

Council Vote:

Ayes: Campos, Chu, Constant, Herrera, Khamis, Liccardo, Nguyen, Oliverio; Reed.
Noes: Kalra, Rocha.
Abstain: None.
Not Present: None.

B. Public Employee Appointment Pursuant to Government Code Section 54957:

- (2) Title: Director of Parks, Recreation and Neighborhood Services
Name: Julie Edmonds-Mares

Council Vote:

Ayes: Campos, Chu, Constant, Herrera, Khamis, Liccardo, Nguyen, Oliverio; Reed.
Noes: Kalra, Rocha.
Abstain: None.
Not Present: None.

CEREMONIAL ITEMS

1.1 Presentation of a proclamation declaring May 31, 2013 a “World Tobacco Free Day” in the City of San José. (Chu)

Mayor Reed and Council Members Chu, Campos and Kalra recognized May 31, 2013 as “World Tobacco Free Day” in San José.

1.2 Presentation of a proclamation declaring the month of May as “Stroke Awareness Month” in the City of San José. (Mayor)

Mayor Reed and Council Member Kalra recognized the month of May as “Stroke Awareness Month” in San José.

1.6 Presentation of a commendation to the organizers of Affordable Housing Week for their efforts to raise awareness about programs that enhance the quality of life of residents in the City of San José and Santa Clara County, and for their assistance in the development of affordable housing, support services, and housing conservation for low-income and special needs populations. (Herrera)

Mayor Reed, Vice Mayor Nguyen and Council Members Herrera, Rocha and Kalra recognized and commended the organizers of Affordable Housing Week.

CONSENT CALENDAR

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

2.1 Final Approval of Minutes.

- (a) **Regular Minutes of May 15, 2012.**
- (b) **Regular Minutes of May 22, 2012.**
- (c) **Special Closed Session Minutes of May 31, 2012.**
- (d) **Regular Minutes of June 5, 2012.**
- (e) **2012-2013 Budget Public Hearing Minutes of June 11, 2012.**
- (f) **Regular Minutes of June 12, 2012.**
- (g) **Regular Minutes of June 19, 2012.**
- (h) **Joint City Council/Diridon Development Authority Minutes of June 19, 2012.**
- (i) **Joint City Council/San José Financing Authority Minutes of June 19, 2012.**
- (j) **Regular Minutes of August 7, 2012.**
- (k) **Joint City Council/San José Financing Authority Minutes of August 7, 2012.**
- (l) **Regular Minutes of August 14, 2012.**
- (m) **Regular Minutes of August 21, 2012.**
- (n) **Regular Minutes of August 28, 2012.**
- (o) **Joint City Council/San José Financing Authority Minutes of August 28, 2012.**

Documents Filed: (1) The Regular Minutes dated May 15, 2012, May 22, 2012, June 5, 2012, June 12, 2012, June 19, 2012, August 7, 2012, August 14, 2012, August 21, 2012 and August 28, 2012. (2) The Special Closed Session Minutes dated May 31, 2012. (3) The 2012-2013 Budget Hearing Minutes dated June 11, 2012. (4) The Joint Council/Diridon Development Authority Minutes dated June 19, 2012, Joint Council/San José Financing Authority Minutes dated June 19, 2012, Joint Council/San José Financing Authority Minutes dated August 7, 2012 and Joint Council/San José Financing Authority Minutes dated August 28, 2012.

Council Member Liccardo and Council Member Herrera thanked and congratulated City Clerk Toni Taber, Deputy City Clerk Susan Davis and her Staff for their efforts to begin bringing the backlog of the Council Minutes up to date.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, the City Council Minutes were approved. (11-0.)

2.2 Final adoption of ordinances.

- (a) **ORD. NO. 29250 – Amending various Sections of Chapter 2.08 of Title 2 of the San José Municipal Code and repealing Section 25.04.610 of Chapter 25.04 of Title 25 related to the consolidation of Boards, Bureaus, and Commissions.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29250 executed on May 10, 2013, submitted by the City Clerk.

Action: Ordinance No. 29250 was adopted. (11-0.) (First Reading: 10-1. Noes: Liccardo.)

2.3 Approval of Council Committee Reports.

- (a) **Rules and Open Government Committee Report of April 3, 2013. (Mayor)**
- (b) **Rules and Open Government Committee Report of April 10, 2013. (Mayor)**
- (c) **Rules and Open Government Committee Report of April 17, 2013. (Mayor)**
- (d) **Rules and Open Government Committee Report of April 24, 2013. (Mayor)**

Documents Filed: The Rules and Open Government Committee Reports dated April 3, 2013, April 10, 2013, April 17, 2013 and April 24, 2013.

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

2.4 Mayor and Council Excused Absence Requests.

There were none.

2.5 City Council Travel Reports.

There were none.

2.6 Report from the Council Liaison to the Retirement Boards.

There were none.

- 2.7 (a) **Adopt a resolution authorizing the City Attorney to negotiate and execute a third amendment to the agreement with Meyers, Nave, Riback, Silver & Wilson for legal services in connection with employment, labor, and pension reform, increasing the contract amount by \$900,000 for a total amount not to exceed \$2,100,000, subject to appropriation of funds as recommended below.**
- (b) **Adopt the following Funding Sources Resolution and Appropriation Ordinance amendments in the General Fund:**

- 2.7 (b) (1) **Increase the city-wide appropriation to the City Attorney’s Office for Fiscal Reform Plan Outside Legal Counsel by the amount of \$1,000,000.**
- (2) **Increase the estimate for Revenue from the State of California in the amount of \$1,000,000.**

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

Documents Filed: (1) Memorandum from City Attorney Richard Doyle and Budget Director Jennifer A. Maguire, dated May 7, 2013, recommending adoption of a resolution and appropriation ordinance and funding sources resolution amendments. (2) Memorandum from City Attorney Richard Doyle, dated May 17, 2013, providing an update on Litigation and Administrative Complaint Matters related to Measure B.

Council Member Campos expressed opposition against putting more resources into this fund in lieu of using the funds towards supporting essential services in the neighborhoods.

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

Brief discussion ensued.

Action: On a call for the question, the motion carried, Resolution No. 76634, entitled: “A Resolution of the Council of the City of San José Authorizing the City Attorney to Negotiate and Execute a Third Amendment to the Agreement With Meyers, Nave, Riback, Silver & Wilson To Provide Legal Services Relating to Employment, Labor and Pension Reform”; Ordinance No. 29255, entitled: “An Ordinance of the City of San José Amending Ordinance No. 29102 to Appropriate Monies in the General Fund Citywide Strategic Support for the Fiscal Reform Plan Outside Legal Counsel; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption” and Resolution No. 76635, entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 76302 Setting Forth the Estimated Sources of Fund for the Fiscal Year 2012-2013 to Adjust Revenues in the General Fund”, were adopted. (8-3. Noes: Campos, Chu, Kalra.)

- 2.8 **Adopt a resolution approving the boundaries of the Targeted Employment Area for the City of San José Enterprise Zone. CEQA: Not a Project, File No. PP10-066(g), Memorandum of Understanding. (Economic Development)**

Documents Filed: Memorandum from Director of Economic Development/Chief Strategist Kim Welsh, dated April 29, 2013, recommending adoption of a resolution.

Action: Resolution No. 76636, entitled: “A Resolution of the Council of the City of San José Identifying the Census Tracts Comprising a Targeted Employment Area (TEA) for the San José Enterprise Zone and Authorizing the City Manager to Submit an Application for TEA Designation”, was adopted. (11-0.)

- 2.9 (a) Award the construction contract for the Influent Magnetic Meter and Valve Replacement for Nitrification Clarifiers A-5 & A-6 Project to the low bidder, JMB Construction, Inc., South San Francisco, CA in the amount of \$270,300.
- (b) Approve a 10% contingency in the amount of \$27,030.
- CEQA: Exempt, File No. PP12-094. (Environmental Services)**

Documents Filed: City Council Action Request from Director of Environmental Services Kerrie Romanow, dated May 3, 2013, recommending award of the construction contract with related contingency.

Action: The construction contract for the Influent Magnetic Meter and Valve Replacement for Nitrification Clarifiers A-5 & A-6 Project to the low bidder, JMB Construction, Inc., South San Francisco, CA in the amount of \$270,300, with related contingency, was approved. (11-0.)

2.10 Adopt a resolution repealing Resolution No. 76330:

- (a) Amending the Administrative Citation Schedule of Fines to change fines for the Solid Waste, Pretreatment, Dental Amalgam, Stormwater Treatment Measures, and Fats, Oils, and Grease enforcement programs. (Environmental Services)
- (b) Amending the Administrative Citation Schedule of Fines to create escalating administrative citation fines for violations of Sections 20.40.520 and 20.40.560 of Chapter 20.40 related to outdoor uses within 150 feet of residentially zoned property and activity in Industrial Zoning Districts, Section 20.50.220 of Chapter 20.50 and Sections 20.75.300, 20.75.320, and 20.75.370 of Chapter 20.75 related to late night use and activity, outdoor uses within 150 feet of residentially zoned property and screening of uses from adjacent properties in Pedestrian-Oriented Zoning Districts, and Sections 20.80.810, 20.80.830, 20.80.840, 20.80.860, 20.80.870, and 20.80.890 related to Outdoor Vending, and Sections 20.80.1100, 20.80.1130, 20.80.1140 and 20.80.1150 related to Recycling Facilities of Chapter 20.80 of Title 20 of the San José Municipal Code. (Planning, Building and Code Enforcement)
- [Deferred from 5/7/13 – Item 4.1(b)]

CEQA: Not a Project, File No. PP10-067(a), Increase or Adjustment to Fees, Rates and Fares

Documents Filed: (1) Memorandum from Director of Environmental Services Kerrie Romanow, dated April 29, 2013, recommending adoption of a resolution. (2) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated April 29, 2013, recommending amending the Administrative Citation Schedule of Fines.

Assistant Director of Planning, Building and Code Enforcement Laurel Prevetti responded to questions from Council Member Khamis.

2.10 (Cont'd.)

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Herrera and carried unanimously, Resolution No. 76637, entitled: “A Resolution of the Council of the City of San José Amending the Administrative Citation Schedule of Fines for Certain Violations of the San José Municipal Code in Order to Modify Fines for the Solid Waste, Pretreatment, Dental Amalgam, Stormwater Treatment Measures and Fats, Oils and Grease Enforcement Programs; and to Modify Fines Related to Outdoor Uses, Late Night Use and Activity, Outdoor Vending and Recycling Facilities and Repealing Resolution No. 76330”, was adopted. (11-0.)

2.11 Authorize the City Manager to:

- (a) Execute a Purchase Order with Euro Style Management, Inc. (North Highlands, CA) for the coating and rehabilitation of five clarifier tanks at the San José-Santa Clara Regional Wastewater Facility for the period May 21, 2013 through May 20, 2014, in an amount not to exceed \$663,375.**
- (b) Approve a 10% contingency for a not-to-exceed amount of \$66,337 to execute change orders for any unforeseen changes or requirements that may arise prior to the completion of services.**

CEQA: Exempt, File No. PP13-039. (Finance)

Documents Filed: City Council Action Request from Director of Finance Julia H. Cooper, dated May 3, 2013, recommending executing a purchase order and approval of related contingency.

Action: The Purchase Order with Euro Style Management, Inc. (North Highlands, CA) for the coating and rehabilitation of five clarifier tanks at the San José-Santa Clara Regional Wastewater Facility for the period May 21, 2013 through May 20, 2014, in an amount not to exceed \$663,375, with relating contingency, was approved. (11-0.)

2.12 Adopt a resolution that:

- (a) Authorizes the City Manager, or designee, to submit a grant application in the amount not to exceed \$200,000 to the Santa Clara Valley Water District (Water District) under the 2013 Comprehensive Stewardship Grant Program for the Coleman Road Under-Crossing project (“Project”) with a local contribution of \$710,000 for a total project cost of \$910,000.**
- (b) Certifies that the City has or will have sufficient funds to operate and maintain the Project for no less than 25 years once completed.**
- (c) Certifies that the City will comply with all applicable federal, State and local laws, ordinances, rules, regulations and guidelines for the Project.**
- (d) Delegates the authority to the City Manager, or designee, to conduct all negotiations, execute and submit all documents, including, but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of the Project.**

- 2.12 (e) **Authorizes the City Manager, or designee, to resubmit the grant application in subsequent years for the same amount and grant requirements described in this memorandum if the City is unsuccessful in receiving an award with the initial grant application and to negotiate and execute any documents to effectuate the grant.**

CEQA: Mitigated Negative Declaration, File No. PP04-051. (Parks, Recreation and Neighborhood Services)

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Julie Edmonds-Mares, dated April 29, 2013, recommending adoption of a resolution.

Action: Resolution No. 76638, entitled: “A Resolution Of The Council Of The City Of San Jose (1) Authorizing The City Manager, Or Designee, To Submit A Grant Application In An Amount Not To Exceed \$200,000 To The Santa Clara Valley Water District (“Water District”) Under The 2013 Comprehensive Stewardship Grant Program For The Coleman Road Under-Crossing Project (“Project”) With A Local Contribution Of \$710,000 For A Total Project Cost Of \$910,000; (2) Certifying That The City Has Or Will Have Sufficient Funds To Operate And Maintain The Project For No Less Than 25 Years Once Completed; (3) Certifying That The City Will Comply With All Applicable Federal, State, And Local Laws, Ordinances, Rules, Regulations, And Guidelines For The Project; (4) Delegating The Authority To The City Manager, Or Designee, To Conduct All Negotiations, Execute And Submit All Documents, Including, But Not Limited To Applications, Agreements, Amendments, And Payment Requests, Which May Be Necessary For The Completion Of The Project; And (5) Authorizing The City Manager, Or Designee, To Resubmit The Grant Application In Subsequent Years For The Same Amount And Grant Requirements If The City Is Unsuccessful In Receiving An Award With The Initial Grant Application And To Negotiate And Execute Any Documents To Effectuate The Grant”, was adopted. (11-0.)

- 2.13 **Approve the proposed Fiscal Year 2012/13- 2017/18 Work Plan for the Rule 20A and Rule 20B (In-Lieu Fee) Underground Utility Program and of the Fiscal Year 2011-2012 Rule 20B (In-Lieu Fee) Undergrounding Master Plan. CEQA: Exempt, File No. PP13-034. (Public Works)**

Documents Filed: Memorandum from Director of Public Works David Sykes, dated May 7, 2013, recommending approving the proposed work plan.

Action: The proposed Fiscal Year 2012/13- 2017/18 Work Plan for the Rule 20A and Rule 20B (In-Lieu Fee) Underground Utility Program and of the Fiscal Year 2011-2012 Rule 20B (In-Lieu Fee) Undergrounding Master Plan, was approved. (11-0.)

- 2.14 **Approve the second amendment to the master agreement with Callander Associates Landscape Architecture, Inc. for consultant services for various City trail projects extending the term of the agreement to December 31, 2015. CEQA: Not a Project, File No. PP10-066(d), Consultant Services. (Public Works)**

2.14 (Cont'd.)

Documents Filed: City Council Action Request from Director of Public Works David Sykes, dated May 8, 2013, recommending approval of a second amendment to the master agreement.

Action: The second amendment to the master agreement with Callander Associates Landscape Architecture, Inc. for consultant services for various City trail projects extending the term of the agreement to December 31, 2015, was approved. (11-0.)

**2.15 As recommended by the Rules and Open Government Committee on May 15, 2013, adopt a position of support for AB 28 (V. Manuel Perez) Economic Development: Enterprise Zones. (Economic Development)
[Rules Committee referral 5/15/13 – Item G(2)]**

Documents Filed: Memorandum from Acting City Clerk Toni Taber, CMC, dated May 15, 2013, transmitting the recommendations of the Rules and Open Government Committee.

Action: A position of support for AB 28 (V. Manuel Perez) Economic Development: Enterprise Zone was adopted. (11-0.)

**2.16 As recommended by the Rules and Open Government Committee on May 15, 2013, adopt an oppose position for SB 434 (Hill) Personal Income and Corporation Taxes: Hiring Credits: Enterprise Zones, Lambras, Manufacturing Enhancement Areas, and Targeted Tax Areas. (Economic Development)
[Rules Committee referral 5/15/13 – Item G(3)]**

Documents Filed: Replacement memorandum from Acting City Clerk Toni Taber, CMC, dated May 15, 2013, transmitting the recommendations of the Rules and Open Government Committee.

Action: An oppose position for SB 434 (Hill) Personal Income and Corporation Taxes: Hiring Credits: Enterprise Zones, Lambras, Manufacturing Enhancement Areas, and Targeted Tax Areas, was adopted. (11-0.)

**2.17 As recommended by the Rules and Open Government Committee on May 15, 2013:
(a) Approve Shakespeare in the Park as a City Council sponsored Special Event.
(b) Approve and accept donations from various individuals, businesses, or community groups to support the event.
CEQA: Not a Project. (Oliverio)
[Rules Committee referral 5/15/13 – Item G(4)]**

Documents Filed: Memorandum from Acting City Clerk Toni Taber, CMC, dated May 16, 2013, transmitting the recommendations of the Rules and Open Government Committee.

2.17 (Cont'd.)

Action: Shakespeare in the Park as a City Council sponsored Special Event was approved and donations from various individuals, businesses, or community groups to support the event were authorized to be accepted. (11-0.)

2.18 Approve the master agreement with ADS Environmental Services, Inc. for consultant services for citywide storm and sanitary sewer flow monitoring from the date of execution to December 31, 2016, in a total amount not to exceed \$4,500,000. CEQA: Exempt, File No. PP10-066(d), Consultant services. (Public Works)

Renumbered from Item 7.3.

Documents Filed: Memorandum from Director of Public Works David Sykes, dated April 29, 2013, recommending approval of the master agreement.

Director of Public Works David Sykes responded to Council questions and concerns.

Action: Upon motion by Council Member Khamis, seconded by Council Member Herrera and carried unanimously, the master agreement with ADS Environmental Services, Inc. for consultant services for citywide storm and sanitary sewer flow monitoring from the date of execution to December 31, 2016, in a total amount not to exceed \$4,500,000, was approved. (11-0.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

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

City Manager Debra Figone reported the County Assessor's Office released residential housing market information that show increased property values in San José.

- 3.3 (a) Approve the revised Team San José performance measures for 2012 – 2013. CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment.
- (b) Adopt the following Appropriation Ordinance and Funding Sources Resolution Amendments in the Convention and Cultural Affairs Fund:
- (1) Increase the estimate for Earned Revenue by \$3,671,173.
 - (2) Increase the appropriation to the Convention Facilities Department for: Convention Facilities Operations in the amount of \$3,375,244.
 - (3) Increase appropriation to the Convention Facilities Department for: Miscellaneous Improvements & Repairs in the amount of \$400,000; .

- 3.3 (b) (4) **Increase the appropriation to the Office of Economic Development for: Convention Center City Free Use in the amount of \$13,000.**
(5) **Decrease the Ending Fund Balance by \$117,071.**
CEQA: Not a Project, File No. PP10-067(b), Appropriation Ordinance.
(Economic Development/City Manager’s Office)

Documents Filed: Memorandum from Director of Economic Development/Chief Strategist Kim Walesh and Budget Director Jennifer A. Maguire, dated May 1, 2013, recommending approval of the revised Team San José performance measures and adoption of appropriation ordinance and funding sources resolution amendments.

City Manager Debra Figone and Assistant to the City Manager/Downtown Manager Lee Wilcox responded to Council questions.

Action: Upon motion by Council Member Constant, seconded by Council Member Herrera and carried unanimously, the revised Team San José performance measures for 2012 – 2013 were approved, Ordinance No. 29256, entitled: “An Ordinance of the City of San José Amending Ordinance No. 29102 to Appropriate Monies in the Convention and Cultural Affairs Fund for the Convention Facilities Operations, for Miscellaneous Improvements and Repairs and for Convention Center City Free Use; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption” and Resolution No. 76639, entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 76302 Setting Forth the Estimated Sources of Fund for the Fiscal Year 2012-2013 to Adjust Revenues in the Convention and Cultural Affairs Fund”, were adopted. (11-0.)

- 3.4 (a) **Consider increasing the Marijuana Business Tax rate from 7% of gross receipts to 10% of gross receipts, as allowed under Measure U.**
(b) **Direct staff to prepare an ordinance to implement the increased Marijuana Business Tax rate, effective July 1, 2013, for Council consideration at a public hearing on June 4, 2013.**
CEQA: Not a Project, File No. PP10-067(a), Increase or adjustment to fees, rates and fares. (Finance)

Documents Filed: (1) Memorandum from Director of Finance Julia H. Cooper, dated May 1, 2013, recommending considering the marijuana business tax rate and direction to Staff. (2) Proof of Publication of Notice of Public Hearings, executed on April 19, 2013, April 26, 2013 and May 3, 2013, submitted by the City Clerk. (3) Petition dated May 21, 2013 from the Golden State Care Collective, urging the enforcement of Measure U.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, Staff was directed to prepare an ordinance to implement the increased Marijuana Business Tax rate, effective July 1, 2013, for Council consideration at a public hearing on June 4, 2013. (11-0.)

- 3.5 Approve an agreement with Athens Insurance Services, Inc. dba Athens Administrators to handle a portion of claims administration and all City bill review, utilization review and medical case management, and provide the use of a Medical Provider Network. The two year agreement for the period June 1, 2013 to June 30, 2015 shall not exceed \$4,600,000, subject to annual appropriation of funds by the City Council. CEQA: Not a Project; File No. PP10-066(e), Services that involve no physical changes to the environment. (Human Resources)**

Documents Filed: (1) Memorandum from Deputy City Manager Alex Gurza, dated May 9, 2013, recommending approval of an agreement with Athens Administrators. (2) Statement and Declaration of Conflict and Interest Form from Council Member Constant dated May 21, 2013 disclosing he has an active Workers' Compensation Claim.

Council Member Constant recused himself from participating in the Council discussion and voting of the agreement with Athens Insurance Services for the reason that he has an active Workers' Compensation Claim.

Deputy City Manager Alex Gurza presented the report and responded to Council questions and concerns.

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Herrera and carried unanimously, an agreement with Athens Insurance Services, Inc. dba Athens Administrators to handle a portion of claims administration and all City bill review, utilization review and medical case management, and provide the use of a Medical Provider Network; and the two year agreement for the period June 1, 2013 to June 30, 2015 shall not exceed \$4,600,000, subject to annual appropriation of funds by the City Council, were approved (7-0-3-1. Absent: Campos, Kalra, Rocha. Abstain: Constant.)

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.1 (a) Council by motion waive the 10-day noticing requirement for the following item, approve its placement on the agenda, and consider the following recommendation.**
- (b) Consider a request to reconsider the City Council's action to adopt Ordinance No. 29246 (Item 2.2a on the May 14th Council Agenda) – Amending Title 23 of the San José Municipal Code by amending Section 23.02.1045 and adding new Sections 23.02.155, 23.02.385, 23.02.424, 23.02.920 and 23.02.1045 to Chapter 23.02, and amending Section 23.04.020 of Chapter 23.04, all to add pedestrian wayfinding signs as signs that do not reduce signage otherwise allowable under Title 23, to allow for additional attached signs for large shopping center buildings and specify the maximize size of such signs, and to allow for entryway signs as a new type of attached sign on large shopping center buildings, and making other nonsubstantive, ministerial, technical, or typographical changes to said Chapters 23.02 and 23.04 of Title 23 of the San José Municipal Code. (Constant)**

- 4.1 (c) **Adopt Ordinance No. 29246 as revised to clarify that each primary Entryway Sign shall not exceed five (5) square feet for each linear foot of Public Entryway Width, to a maximum square footage of one hundred eighty (180) square feet.**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated May 20, 2013, recommending Council waive the 10-day noticing requirement, and to reconsider the request to adopt Ordinance No. 29246 as amended, clarifying as indicated in 4.1(c).

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

Action: Upon motion by Council Member Constant, seconded by Vice Mayor Nguyen and carried unanimously, the 10-day noticing requirement was waived and approved the placement of the item on the Agenda, Council reconsidered the request and Ordinance No. 29246 was adopted, as amended: to clarify that each primary Entryway Sign shall not exceed five (5) square feet for each linear foot of Public Entryway Width, to a maximum square footage of one hundred eighty (180) square feet. (9-0-2. Absent: Campos, Kalra.)

NEIGHBORHOOD SERVICES

- 5.1 **Adopt a resolution to authorize the City Manager or designee to submit a grant application and related documents to the Federal Highway Administration for grant funds of \$11,085,416 as part of the Transportation Investment Generating Economic Recovery grant program with a local match of \$2,771,353 for the Bay Trail Reaches 7A, 9 and 9B project. CEQA: Mitigated Negative Declaration, File No. PP01-150, and Addendum thereto, File No. PP02-116. (Parks, Recreation and Neighborhood Services)**

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Julie Edmonds-Mares, dated May 7, 2013, recommending adoption of a resolution.

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Herrera and carried unanimously, Resolution No. 76640, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager or Designee to Submit a Grant Application and Related Documents to the Federal Highway Administration for Grant Funds in the Amount of \$11,085,416 as Part of the Transportation Investment Generating Economic Recovery Grant Program with a Local Match of \$2,771,353 for the Bay Train Reaches 7A, 9 and 9B Project”, was adopted. (9-0-2. Absent: Campos, Kalra.)

- 5.2 **Approve a Parkland Agreement for Final Tract Map No. 10160 with The Flea Market, Inc., Bumb & Associates, BGT Development, LLC, and KB Home South Bay Inc. to dedicate approximately 3.59 acres of parkland to the City and to construct trail improvements to satisfy the Parkland Dedication Obligation for Final Tract Map No. 10160. CEQA: San José Flea Market EIR, File No. PDC03-108, Resolution 73956, for the park site. Mitigated Negative Declaration, File No. PP09-218, for the trail project. Council District 4. (Parks, Recreation and Neighborhood Services)**

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Julie Edmonds-Mares, dated May 7, 2013, recommending approval of a parkland agreement.

Action: Upon motion by Council Member Chu, seconded by Council Member Herrera and carried unanimously, a Parkland Agreement for Final Tract Map No. 10160 with The Flea Market, Inc., Bumb & Associates, BGT Development, LLC, and KB Home South Bay Inc. was approved. (11-0.)

TRANSPORTATION & AVIATION SERVICES

6.1 Adopt a resolution:

- (a) **Authorizing the City Manager or designee to submit a request to the Metropolitan Transportation Commission (MTC) for the allocation of Fiscal Year 2013-2014 Transportation Development Act, Article 3 (TDA3) State grant funding in the amount of \$1,225,799 for Citywide Bicycle and Pedestrian projects.**
- (b) **Making the certifications and assurances required under the grant program as explained in this memorandum.**
- (c) **Authorizing the City Manager or designee to accept any grant funding awarded from MTC and to negotiate and execute any grant documents to effectuate the grant.**

CEQA: Exempt, File No. PP13-037. (Transportation)

Documents Filed: Memorandum from Director of Transportation Hans F. Larsen, dated April 29, 2013, recommending adoption of a resolution.

Action: Upon motion by Council Member Herrera, seconded by Vice Mayor Nguyen and carried unanimously, Resolution No. 76641, entitled: “A Resolution of the Council of the City of San José (1) Authorizing the City Manager, or Designee, To Submit a Request to the Metropolitan Transportation Commission (MTC) for the Allocation of Fiscal Year 2013-2014 Transportation Development Act, Article 3 State Grant Funding in the Amount of \$1,225,799 for Citywide Bicycle and Pedestrian Projects; (2) Making the Certifications and Assurances Required Under the Grant Program and (3) Authorizing the City Manager, or Designee, To Accept Any Grant Funding Awarded from MTC and To Negotiate and Execute Any Grant Documents to Effectuate the Grant”, was adopted. (11-0.)

ENVIRONMENTAL & UTILITY SERVICES

- 7.3 Approve the master agreement with ADS Environmental Services, Inc. for consultant services for citywide storm and sanitary sewer flow monitoring from the date of execution to December 31, 2016, in a total amount not to exceed \$4,500,000. CEQA: Exempt, File No. PP10-066, Consultant services. (Public Works)**

Action: Renumbered to Item 2.18. See Item 2.18 for Council Action.

PUBLIC SAFETY SERVICES

- 8.1 Continued discussion of the *Public Safety Data Applications Study Session* to provide Council an opportunity to evaluate and comment. (Police/Fire)
(Continued from 5/16/13 – Study Session)**

Deputy Fire Chief Ruben Torres and Deputy Director of Fire Department Ron D'Acchioli continued the discussions of the Public Safety Data Applications for the Fire Department.

Acting Chief of Police Larry Esquivel, City Attorney Richard Doyle and Deputy Chief of Police David J. Hober responded to Council questions and concerns regarding the Police Department.

There was no Council action required.

OPEN FORUM

John Shepardson and Dianna Bernal-Tuyor expressed concerns about the possibility of contaminated soil at Watson Park.

ADJOURNMENT

The Council of the City of San José adjourned the afternoon session at 5:36 p.m.

RECESS/RECONVENE

The City Council recessed at 5:36 p.m. from the afternoon Council Session and reconvened at 7:01 p.m. in the Council Chambers, City Hall.

Present: Council Members - Campos, Chu, Constant, Herrera, Kalra, Khamis, Liccardo, Nguyen, Oliverio (7:12 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 by Vice Mayor Nguyen and carried unanimously, the below noted continuances and actions were taken as indicated. (11-0.)

CEREMONIAL ITEMS

1.3 Presentation of a commendation to Judy Rickard for being recognized as a Cesar Chavez “Champion of Change” by the White House for her work on immigration reform on behalf of same-sex bi-national families in the United States. (Mayor)

Mayor Reed and Council Members Liccardo and Rocha recognized and commended Judy Rickard for being recognized as a Cesar Chavez “Champion of Change” by the White House.

1.4 Presentation of a commendation to De Tran for 20 years of service as a journalist and publisher of V Times and Viet Mercury News. (Nguyen)

Mayor Reed and Vice Mayor Nguyen recognized and commended De Tran for his 20 years of service.

1.5 Presentation of a commendation to La Oferta for 35 years of service to the community. (Nguyen)

Mayor Reed, Vice Mayor Nguyen and Council Members Liccardo and Herrera recognized La Oferta for its outstanding service to the City of San José.

PUBLIC HEARINGS

- 11.4 Consideration of a Conditional Use Permit and Determination of Public Convenience or Necessity request to allow the off-sale of alcoholic beverages. The project includes exterior alterations to the existing 20,685 square foot vacant building within a neighborhood retail center on a 14.5 gross acres site located on the east side of South King Road, approximately 550 feet southerly of Story Road (1180 South King Road) (PDSJ, LLC, Owner; Smart and Final Food Market, Developer). CEQA: Mitigated Negative Declaration, File No. CP04-086. Planning Commission recommends approval (7-0-0).
CP13-014/ABC13-002 – District 5**

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated May 1, 2013, transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. CP13-014/ABC13-002, dated May 1, 2013. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated May 9, 2013, transmitting the Planning Commission recommendation. (3) Proof of Publication of Notice of Public Hearing, executed on April 19, 2013, submitted by the City Clerk.

Action: Upon motion by Council Member Campos, seconded by Council Member Constant and carried unanimously, the recommendation of the Planning Commission and Planning Director was approved, Resolution No. 76642, entitled: “A Resolution of the Council of the City of San José Approving a Conditional Use Permit and Granting a Determination of Public Convenience or Necessity to Allow Sale of Alcoholic Beverages for Off-Site Consumption (Type 21 General) Within a Proposed Food Market in an Existing 20,685 Square Foot Building Situated Within a Neighborhood Retail Center Located on the East Side of South King Road South of Story Road (1180 South King Road) on a 16.5 Gross Acre Site”, was adopted. (11-0.)

- 11.2 Consideration of an ordinance rezoning the real property located on the north side of Los Esteros Road, approximately 2,500 feet east of Grand Avenue (675 Los Esteros Road, APN: 015-30-071) from the A(PD) Planned Development Zoning District to the A(PD) Planned Development Zoning District to increase the maximum height of the landfill from 50 feet to 80 feet, increase the landfill capacity from 62,000 cubic yards to 700,000 cubic yards, modify the phasing plan of daily tonnage of waste accepted, and establish a phasing plan for the development of a 200,000 square foot materials recovery facility on a 52.5 gross acre site (Zanker Road Resource Management, Ltd, Owner). CEQA: Addendum to the Zanker Materials Recycling Facility EIR and subsequent Mitigated Negative Declaration. Planning Commission recommends approval (7-0-0).
PDC12-029 – District 4**

Action: Deferred to June 11, 2013 per Administration.

- 11.3 Consideration of a Conditional Use Permit and Determination of Public Convenience or Necessity request to allow the sale of alcoholic beverages for off-site consumption (Type 21 General) in a proposed convenience store within an existing tenant space on a 0.526 gross acre site in the CP Commercial Pedestrian Zoning District, located on the west side of White Road, approximately 210 feet northerly of Story Road (1075 South White Road) (De La Torre Props, LLC, Owner). CEQA: Exempt.
CP12-047/ABC12-014 – District 5**

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on April 19, 2013, submitted by the City Clerk.

Action: Item 11.3 was dropped.

ENVIRONMENTAL & UTILITY SERVICES

- 7.1 Adopt a resolution to supersede Resolution No. 76273, and to amend the Recycle Plus rates, effective July 1, 2013, as follows:**
- (a) Increase the rate for on-demand single-family large item collection services by \$0.44 to \$26.30.**
 - (b) Increase the rates for on-demand multi-family large item collection services by \$0.96 to \$58.36 for the first three items and by \$0.32 to \$19.45 for each additional item during the same collection.**
 - (c) Increase the single-family rate for optional subscription yard trimmings cart services from \$4.35 to \$4.69 per month.**
 - (d) Increase the multi-family rate for optional subscription yard trimmings cart services from \$10.92 to \$11.79 per month.**

CEQA: Not a Project, File No. PP10-067(a), Increase or Adjustment to Fees, Rates and Fares. (Environmental Services)

Documents Filed: City Council Action Request from Director of Environmental Services Kerrie Romanow, dated May 8, 2013, recommending adoption of a resolution.

Action: Upon motion by Council Member Constant, seconded by Council Member Campos and carried unanimously, Resolution No. 76643, entitled: “A Resolution of the Council of the City of San José Adopting Services Rates for the Recycle Plus Program Effective July 1, 2013 and Superseding Resolution No. 76273”, was adopted. (11-0.)

- 7.2**
- (a) Hold a public hearing to confirm that the proposed Maximum Commercial Solid Waste Services Rates are consistent with the terms of the Commercial Solid Waste and Recyclable Materials Collection Franchises Agreements between the City of San José and Allied Waste Services of North America, LLC, dba Republic Services.**
 - (b) Approve the Second Amendment to the Commercial Solid Waste and Recyclable Material Collection Franchises Agreement with Allied Waste Services of North America, LLC, dba Republic Services, to change the maximum service rate adjustment methodology.**

- 7.2 (c) **Adopt a resolution setting Maximum Commercial Solid Waste Services Rates in the City pursuant to the Commercial Solid Waste and Recyclable Materials Collection Franchises Agreements between the City of San José and Allied Waste Services of North America, LLC, dba Republic Services, including the total processing costs for organic processing services.**
CEQA: Not a Project, File No. PP10-067(a), Increase or Adjustment to Fees, Rates and Fares. (Environmental Services)

Documents Filed: (1) Memorandum from Director of Environmental Services Kerrie Romanow, dated April 26, 2013, recommending holding a public hearing, approval of the second amendment to the agreement and adoption of a resolution. (2) Supplemental memorandum from Director of Environmental Services Kerrie Romanow, dated May 21, 2013, providing clarification regarding the proposed increase to maximum commercial solid waste customer service rates for 2013-2014 and the commercial rate setting process. (3) Letter from Dennis Fong and Jennie Koski, dated May 20, 2013, submitting 21 protest letters from small business owners in protest of the proposed garbage rate increase.

Director of Environmental Services Kerrie Romanow provided introductory comments. Deputy Director of Environmental Services Jo Zientek presented the report.

Mayor Reed opened the Public Hearing.

Public Comments: Dennis Fong and Jennie Koski, representing Tropicana Shopping Center expressed opposition to Republic Services and indicated that the rate has increased, there have been several missed pickups and customer service is poor. Mr. Fong submitted twenty one complaints from small business owners protesting the garbage rate increase. Gil Chesio, Republic Services, provided explanations to the speakers and replied to Council concerns.

Mayor Reed closed the Public Hearing.

Council Member Campos provided meeting disclosures.

Director of Environmental Services Kerrie Romanow and Assistant City Manager Edward K. Shikada responded to Council questions.

Extensive Council discussion ensued.

Council Member Liccardo requested that Staff issue an information memorandum to the Mayor and Council Members explaining the rate increase, citing the issues discussed today and providing more detailed information that each District may pass on to their constituents.

7.2 (Cont'd.)

Action: Upon motion by Council Member Rocha, seconded by Council Member Constant and carried unanimously, the Second Amendment to the Commercial Solid Waste and Recyclable Material Collection Franchises Agreement with Allied Waste Services of North America, LLC, dba Republic Services, to change the maximum service rate adjustment methodology was approved and Resolution No. 76644, entitled: “A Resolution of the Council of the City of San José Fixing and Determining Maximum Commercial Solid Waste Service Rates in the City of San José Pursuant to the Commercial Solid Waste and Recyclable Materials Collection Franchises Agreement Between the City of San José and Allied Waste Services of North America, LLC dba Allied Waste Services of Santa Clara County Including the Total Processing Fee for Organics Processing Services, Effective July 1, 2013”, was adopted. (11-0.)

ADJOURNMENT

The Council of the City of San José was adjourned at 8:10 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Toni J. Taber, CMC
Acting City Clerk

smd/05-21-13 MIN